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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ, JAFFEE -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, COLTON, CYMBROWITZ, HOOPER, JACOBS, MARKEY, ORTIZ, RIVERA, SWEENEY, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to labelling bottled water sold or offered for sale

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new article
2 22-C to read as follows:

3 ARTICLE 22-C
4 LABELLING BOTTLED WATER
5 SOLD OR OFFERED FOR SALE

6 SECTION 350-J. DEFINITIONS.

7 350-K. BOTTLED WATER SOLD IN STATE TO BE LABELED.

8 350-L. BOTTLED WATER REPORT.

9 350-M. RULES AND REGULATIONS.

10 350-N. ENFORCEMENT BY ATTORNEY GENERAL.

11 S 350-J. DEFINITIONS. WHEN USED IN THIS ARTICLE, THE FOLLOWING TERMS
12 SHALL HAVE THE FOLLOWING MEANING ASCRIBED TO THEM:

13 1. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OF HEALTH.

14 2. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF HEALTH.

15 3. "MAXIMUM CONTAMINANT LEVEL" SHALL MEAN THE MAXIMUM PERMISSIBLE
16 LEVEL OF PHYSICAL, CHEMICAL, RADIOLOGICAL OR MICROBIOLOGICAL SUBSTANCE
17 IN WATER.

18 S 350-K. BOTTLED WATER SOLD IN STATE TO BE LABELED. 1. IN ADDITION TO
19 ANY REQUIREMENTS IMPOSED UNDER SECTION TWO HUNDRED TWENTY-FIVE OF THE
20 PUBLIC HEALTH LAW AND ANY REGULATIONS PROMULGATED PURSUANT TO SUCH
21 SECTION, ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, NO PERSON
22 SHALL SELL AT RETAIL OR WHOLESALE, OFFER FOR SALE AT RETAIL OR WHOLESALE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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OR DELIVER BOTTLED WATER FOR HUMAN CONSUMPTION, FOOD PREPARATION OR CULINARY PURPOSES IN THIS STATE IN A BEVERAGE CONTAINER UNLESS SUCH CONTAINER INCLUDES ON ITS LABEL, OR ON AN ADDITIONAL LABEL AFFIXED TO THE BOTTLE, OR ON A PACKAGE INSERT OR ATTACHMENT, ALL THE FOLLOWING IN LEGIBLE TYPE:

A. THE NAME AND CONTACT INFORMATION FOR THE BOTTLER OR BRAND OWNER;

B. THE SOURCE OF THE BOTTLED WATER, IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL REGULATIONS; AND

C. A CLEAR AND CONSPICUOUS STATEMENT THAT INFORMS CONSUMERS ABOUT HOW TO ACCESS WATER QUALITY INFORMATION CONTAINED IN THE BOTTLED WATER REPORT REQUIRED BY SECTION THREE HUNDRED FIFTY-L OF THIS ARTICLE.

2. THE STATEMENT REQUIRED BY PARAGRAPH C OF SUBDIVISION ONE OF THIS SECTION SHALL INFORM CUSTOMERS ABOUT METHODS OF GAINING ACCESS TO THE FULL BOTTLED WATER REPORT AND INCLUDE A TELEPHONE NUMBER, WHERE INFORMATION CAN BE REQUESTED FROM THE BOTTLED WATER COMPANY AND ONE OTHER MEANS OF CONTACT FOR THE BOTTLED WATER COMPANY, INCLUDING, BUT NOT LIMITED TO, A MAILING ADDRESS, ELECTRONIC MAIL ADDRESS, OR THE BOTTLED WATER COMPANY'S INTERNET WEB SITE. THE FOLLOWING STATEMENT MAY BE USED TO FULFILL THE REQUIREMENTS OF THIS PARAGRAPH:

"FOR MORE INFORMATION AND TO OBTAIN ADDITIONAL CONSUMER INFORMATION RELATING TO WATER QUALITY, INCLUDING A BOTTLED WATER REPORT, CONTACT (NAME OF BOTTLED WATER COMPANY) AT (TELEPHONE NUMBER OR TOLL-FREE TELEPHONE NUMBER) AND (AT LEAST ONE OF THE FOLLOWING: MAILING ADDRESS, E-MAIL ADDRESS, OR THE BOTTLED WATER COMPANY'S INTERNET WEB SITE)."

S 350-L. BOTTLED WATER REPORT. 1. ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, AS A CONDITION OF CERTIFICATION BY THE DEPARTMENT PURSUANT TO SECTION TWO HUNDRED TWENTY-FIVE OF THE PUBLIC HEALTH LAW, PURVEYORS OF BOTTLED WATER SHALL ANNUALLY PREPARE A BOTTLED WATER REPORT AND SHALL, UPON REQUEST, MAKE SUCH REPORT AVAILABLE TO CONSUMERS. SUCH ANNUAL REPORT SHALL BE PREPARED IN ENGLISH AND SPANISH.

2. FOR PURPOSES OF COMPLYING WITH THIS SECTION, WHEN BOTTLED WATER COMES FROM A MUNICIPAL SOURCE, THE RELEVANT INFORMATION FROM THE ANNUAL WATER SUPPLY STATEMENT PREPARED FOR THAT YEAR BY THE PUBLIC WATER SYSTEM PURSUANT TO SECTION ELEVEN HUNDRED FIFTY-ONE OR ELEVEN HUNDRED FIFTY-TWO OF THE PUBLIC HEALTH LAW, MAY BE USED.

3. THE BOTTLED WATER REPORT SHALL INCLUDE SUCH INFORMATION AS IS REQUIRED IN THIS SECTION AS WELL AS ANY ADDITIONAL INFORMATION REQUIRED BY THE COMMISSIONER. ADDITIONALLY, THE STATEMENT SHALL PROVIDE A SECTION WHICH EXPLAINS, IN PLAIN LANGUAGE, THE INFORMATION REQUIRED IN THE STATEMENT, INCLUDING BRIEF AND PLAINLY WORDED DEFINITIONS OF ANY TERMS THE COMMISSIONER DETERMINES TO BE APPROPRIATE FOR CARRYING OUT THE PURPOSES OF THIS ARTICLE. THE DEPARTMENT MAY PREPARE OR PRESCRIBE A FORMAT OR MODEL UPON WHICH ALL SUCH REPORTS SHALL BE PRODUCED. THE ANNUAL BOTTLED WATER REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING ITEMS OF INFORMATION:

A. A BRIEF DESCRIPTION OF THE SOURCE OR SOURCES OF THE WATER AND THE GENERAL QUALITATIVE AND QUANTITATIVE CONDITION OF THE WATER SOURCE, CONSISTENT WITH APPLICABLE STATE AND FEDERAL REGULATIONS;

B. THE ANALYTICAL TESTING RESULTS FOR THOSE CONSTITUENTS REQUIRED TO BE TESTED FOR UNDER PART FIVE OF THE STATE SANITARY CODE OR AS REQUIRED BY APPROPRIATE LOCAL HEALTH UNITS, EXCEPT FOR MICROBIOLOGICAL RESULTS, FOR EACH SOURCE OF WATER. WHERE MORE THAN ONE ANALYSIS PER YEAR IS CONDUCTED ON A SPECIFIC CONSTITUENT, THE BOTTLED WATER COMPANY SHALL LIST THE RANGE OF RESULTS FROM HIGHEST TO LOWEST DURING THE REPORTING PERIOD. THE APPLICABLE STATE GUIDELINE, STANDARD, OR MAXIMUM CONTAMINANT LEVEL FOR EACH CONSTITUENT PRESENT SHALL BE LISTED AND ANY INSTANCE

1 WHERE A STATE GUIDELINE, STANDARD, OR MAXIMUM CONTAMINANT LEVEL IS
2 VIOLATED SHALL BE NOTED. FOR MICROBIOLOGICAL ANALYSES AS REQUIRED BY
3 PART FIVE OF THE STATE SANITARY CODE, THE BOTTLED WATER COMPANY SHALL
4 INDICATE ANY INSTANCE WHERE THE WATER SUPPLY VIOLATED THE MAXIMUM
5 CONTAMINANT LEVEL. THE DATE OR DATES OF VIOLATION, THE LOCATION WHERE
6 THE VIOLATION OCCURRED, AND THE RESPONSE OF THE BOTTLED WATER COMPANY
7 SHALL BE LISTED;

8 C. A BRIEF DESCRIPTION OF THE TYPES OF TREATMENT THAT THE WATER
9 RECEIVES BEFORE BEING BOTTLED;

10 D. A STATEMENT INDICATING WHETHER THE WATER CONTAINS FLUORIDE. IF THE
11 WATER CONTAINS FLUORIDE SUCH STATEMENT SHALL INDICATE THE AVERAGE AMOUNT
12 PRESENT IN A BOTTLE;

13 E. A DESCRIPTION OF THE RISKS ASSOCIATED WITH EXPOSURE TO CRYPTOSPORI-
14 DIUM PARVUM OR GIARDIA LAMBLIA FOR SPECIFIC AT-RISK POPULATIONS AND THE
15 GENERAL PUBLIC AND MEASURES THAT AT-RISK POPULATIONS CAN TAKE TO PROTECT
16 THEMSELVES ACCORDING TO RECOMMENDATIONS BY THE DEPARTMENT OR OTHER
17 GOVERNMENTAL PUBLIC HEALTH OR ENVIRONMENTAL AGENCIES. IN ADDITION, FOR
18 WATER WORKS CORPORATIONS THAT TEST FOR CRYPTOSPORIDIUM PARVUM OR GIARDIA
19 LAMBLIA, A SUMMARY OF THE FOLLOWING: SAMPLING SITES; NUMBER OF TESTS PER
20 YEAR; TESTING RESULTS AND ACTIONS TAKEN IN RESPONSE TO THOSE RESULTS.
21 THE COMMISSIONER MAY ADD SUCH ADDITIONAL REQUIREMENTS AS HE OR SHE
22 DETERMINES TO BE APPROPRIATE;

23 F. A REFERENCE TO THE UNITED STATES FOOD AND DRUG ADMINISTRATION
24 INTERNET WEB SITE THAT PROVIDES PRODUCT RECALL INFORMATION;

25 G. THE BOTTLED WATER COMPANY'S ADDRESS AND TELEPHONE NUMBER THAT
26 ENABLES CUSTOMERS TO OBTAIN FURTHER INFORMATION CONCERNING CONTAMINANTS
27 AND POTENTIAL HEALTH EFFECTS;

28 H. INFORMATION ON THE LEVELS OF UNREGULATED SUBSTANCES, IF ANY, FOR
29 WHICH PURVEYORS OF BOTTLED WATER ARE REQUIRED TO MONITOR PURSUANT TO
30 STATE OR FEDERAL LAW OR REGULATION; AND

31 I. A FULL DISCLOSURE OF ANY EXEMPTION OR VARIANCE THAT HAS BEEN GRANT-
32 ED TO THE BOTTLER BY THE DEPARTMENT, INCLUDING AN EXPLANATION OF REASONS
33 FOR EACH EXEMPTION OR VARIANCE AND THE DATE OF THE EXEMPTION OR VARI-
34 ANCE.

35 S 350-M. RULES AND REGULATIONS. THE COMMISSIONER IS HEREBY AUTHORIZED
36 AND DIRECTED TO PROMULGATE SUCH RULES AND REGULATIONS NECESSARY AND
37 PROPER TO EFFECTUATE THE PURPOSES OF THIS ARTICLE.

38 S 350-N. ENFORCEMENT BY ATTORNEY GENERAL. WHENEVER THERE SHALL BE A
39 VIOLATION OF THIS ARTICLE, APPLICATION MAY BE MADE BY THE ATTORNEY
40 GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR
41 JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNC-
42 TION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO
43 ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL
44 APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT
45 HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH
46 COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITH-
47 OUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR
48 DAMAGED THEREBY. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE
49 ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF
50 THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL
51 PRACTICE LAW AND RULES. WHENEVER THE COURT SHALL DETERMINE THAT A
52 VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL
53 PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND
54 NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS
55 RESULTING FROM A SINGLE ACT OR INCIDENT. THE SECOND VIOLATION AND ANY
56 VIOLATION COMMITTED THEREAFTER SHALL BE PUNISHABLE BY A CIVIL PENALTY OF

1 NOT MORE THAN FIVE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND NOT MORE
2 THAN TWO HUNDRED FIFTY THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULT-
3 ING FROM A SINGLE ACT OR INCIDENT. NO PERSON, FIRM, PARTNERSHIP, ASSOCI-
4 ATION OR CORPORATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF
5 THIS ARTICLE IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPO-
6 RATION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS
7 NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING
8 THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

9 S 2. For the purposes of informing and educating persons engaged in
10 the sale, offering for sale or delivery of bottled water, the department
11 of health is authorized to issue warnings for the violation of article
12 22-C of the general business law, as added by section one of this act,
13 during the period commencing January 1, 2015 and ending May 1, 2017.

14 S 3. This act shall take effect immediately.