S T A T E O F N E W Y O R K

603

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:

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

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

SECTION 350-J. DEFINITIONS.
350-K. BOTTLED WATER SOLD IN STATE TO BE LABELED.
350-L. BOTTLED WATER REPORT.
350-M. RULES AND REGULATIONS.
350-N. ENFORCEMENT BY ATTORNEY GENERAL.

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

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

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

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

S 350-K. BOTTLED WATER SOLD IN STATE TO BE LABELED. 1. IN ADDITION TO ANY REQUIREMENTS IMPOSED UNDER SECTION TWO HUNDRED TWENTY-FIVE OF THE PUBLIC HEALTH LAW AND ANY REGULATIONS PROMULGATED PURSUANT TO SUCH SECTION, ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, NO PERSON 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

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

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

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

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

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

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

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

I. A FULL DISCLOSURE OF ANY EXEMPTION OR VARIANCE THAT HAS BEEN GRANTED TO THE BOTTLER BY THE DEPARTMENT, INCLUDING AN EXPLANATION OF REASONS FOR EACH EXEMPTION OR VARIANCE AND THE DATE OF THE EXEMPTION OR VARIANCE.

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

S 350-N. ENFORCEMENT BY ATTORNEY GENERAL. WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT. THE SECOND VIOLATION AND ANY VIOLATION COMMITTED THEREAFTER SHALL BE PUNISHABLE BY A CIVIL PENALTY OF

NOT MORE THAN FIVE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN TWO HUNDRED FIFTY THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS ARTICLE IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

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

S 3. This act shall take effect immediately.