Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1989
Author: Cristina Garcia (D)
Amended: 8/25/20 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 7-0, 8/1/20
AYES: Pan, Lena Gonzalez, Hurtado, Leyva, Mitchell, Monning, Rubio
NO VOTE RECORDED: Grove, Melendez

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 67-0, 6/15/20 - See last page for vote

SUBJECT: Menstrual Products Right to Know Act of 2020

SOURCE: Author

DIGEST: This bill requires a package or box containing menstrual products manufactured on or after January 1, 2023, for sale or distribution in this state, to have printed on the label a plain and conspicuous list of all ingredients in the product. Prohibits menstrual products from being sold in the state unless the product and its manufacturer comply with this bill.

Senate Floor Amendments of 8/25/20 make technical, clarifying changes.

ANALYSIS:

Existing law:

1) Requires the Department of Public Health (DPH), under the Sherman Food, Drug, and Cosmetic Law (Sherman Law), to regulate the manufacturing, distribution, and labeling of various drugs, devices, and cosmetics, including menstrual products. [HSC §109875, et seq.]

2) Requires cosmetic manufacturers, under the Safe Cosmetics Act, to submit to DPH a list of its cosmetic products sold in California that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity. [HSC §111792]

3) Requires cleaning product manufacturers, under the Cleaning Products Right to Know Act, to disclose specified chemical ingredients on a product label and on the manufacturer's website. [HSC §108950]

This bill:

1) Requires a package or box containing menstrual products manufactured on or after January 1, 2023, for sale or distribution in this state, to have printed on the label a plain and conspicuous list of all ingredients in the product. Prohibits menstrual products from being sold in the state unless the product and its manufacturer comply with this bill.

2) Requires ingredients to be listed in order of predominance by weight in the menstrual product, except that ingredients present at a weight below 1% may be listed in any order following the other ingredients.

3) Requires ingredients to be identified using a standardized nomenclature, including, but not limited to, the International Nomenclature of Cosmetic Ingredients (INCI), the Household Commercial Products Association's Consumer Product Ingredient Dictionary (HCPA Dictionary), or common chemical name. Requires a name established by the Center for Baby and Adult Hygiene Products (BAHP) to be used if a standardized nomenclature does not otherwise exist for an ingredient. Permits a manufacturer to identify any ingredient that is confidential business information by its common name to protect its confidential identity.

4) Requires manufacturers, beginning January 1, 2023, to post on a website, in an electronically readable format, the ingredient information that is required to be disclosed on a package or box containing menstrual products. Specifies that this bill does not prohibit a manufacturer from using technologies, including, but not limited to, digital link, to communicate this information.

5) Requires a manufacturer, when it is required to make a revision to information disclosed online due to a change in a "designated list," as defined, or a change in an ingredient or an addition of a new ingredient, to make the revision no later

than six months after the change to the ingredient or after the adoption of the revised list by its authoritative body. Defines "designated list" as one of any of 22 authoritative lists identified in this bill, including any subsequent revisions to those lists when adopted by the authoritative body.

6) Requires a manufacturer, when it is required to change the label on a menstrual product because of a change in a designated list, or a change to an ingredient or an addition of a new ingredient, to make the change within 18 months of the change or addition of the ingredient, or after the adoption of the revised designated list by its authoritative body, unless a later effective date is imposed by the relevant authoritative body.

7) Requires a manufacturer that protects an intentionally added ingredient, including a fragrance ingredient, or combination of intentionally added ingredients pursuant to the Uniform Trade Secrets Act to maintain justification for protecting confidential business information consistent with the requirements of the act and provide that justification on request for audit by the Attorney General.

8) Specifies that the requirements of this bill apply in addition to other labeling requirements established in law.

Comments

1) *Author's statement.* According to the author, this bill will protect people's health by requiring the disclosure of all ingredients in menstrual products including tampons, pads, cups, disks, sponges, and menstrual underwear. It is imperative that consumers have a right to know what is in the products they will be using for over 40 years of their life, in order to protect their health. My goal with this legislation is to increase the awareness of the toxic chemicals currently in our menstrual products. It was troubling at best to learn that products people rely on contain Phthalates, Bisphenols, Parabens, and Per- and polyfluoroalkyl substances (PFAS) which all have been found to be harmful to human health. Periods are not a luxury and people should have the knowledge to make safer choices.

2) *Regulation of menstrual products.* The federal Food and Drug Administration (FDA) has broad authority to regulate medical devices for safety and effectiveness. Menstrual products are considered medical devices because they are intended to affect the function of the body. Menstrual products are not FDA approved; rather, they are registered and given clearance for marketing. Federal

registration subjects these products to FDA oversight and consumer compliance tracking. DPH's Food and Drug Branch (FDB) licenses and inspects menstrual products as medical devices in California. Under the Sherman Law, FDB has broad authority for licensing, inspection, enforcement, and embargoing of products. In addition, the Sherman Act provides DPH broad authority to ensure that consumer goods such as menstrual products are properly manufactured, packaged, labelled and that the products are not adulterated, misbranded, or falsely advertised. DPH adopts federal Good Manufacturing Practices and federal new drug and new device regulations. According to DPH, no violations or enforcement actions have been taken by FDB on menstrual products.

3) *Authoritative lists.* The Cleaning Products Right to Know Act [SB 258 (Lara, Chapter 830, Statutes of 2017)] required a manufacturer of a cleaning product to disclose on the product label and on the product's website information related to chemicals contained in the product. The law required a chemical to be disclosed if it is included on any of the 22 authoritative lists of chemicals that exhibit hazardous traits and/or an environmental or toxicological endpoint, as identified by the United States Environmental Protection Agency, the state of California, the European Union, Canada, the International Agency on Cancer Research, the federal Agency for Toxic Substances and Disease Registry, among others. These 22 lists of chemicals are the same authoritative lists included in this bill.

4) *New York law*. In October 2019, New York Governor Mario Cuomo signed legislation (S.2387B/A.164B) to require menstrual product packages to contain a plain and conspicuous printed list of all ingredients. Each package of menstrual products will be required to be compliant within 18 months of the law taking effect. Many supporters of the New York legislation opposed this bill in the Assembly due to potential conflicts with the New York law, and the threshold for reporting fragrance ingredients. Over the course of the last few months, this bill has been amended to address some of those concerns, and many of these organizations are now neutral on this bill. However, some remain opposed. This bill is more prescriptive in what menstrual product manufacturers must include on packaging compared to the New York law. Under the New York law, packaging will include a list of all "ingredients," which is defined broadly as "an intentionally added substance present in the menstrual product." According to the author, if this bill passes, the menstrual product industry will make one label that will comply with both laws for products across the country.

Related/Prior Legislation

SB 574 (Leyva of 2019) would have required manufacturers of cosmetic products to report flavor and fragrance ingredients in their products that are deemed toxic according to the SB 258 authoritative lists, with some exceptions for trade secrets, and would have required DPH to publish the data. *SB 574 was held on suspense in the Assembly Appropriations Committee.*

AB 1575 (Kalra of 2017) and AB 2775 (Kalra, Chapter 393, Statutes of 2018) required a professional cosmetic manufactured on or after July 1, 2020, for sale in this state to have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to specific federal laws. *AB 1575 was held on the Senate Appropriations Committee suspense file.*

SB 258 (Lara, Chapter 830, Statutes of 2017) required a manufacturer of a cleaning product to disclose on the product label and on the product's internet website information related to chemicals contained in the product.

SB 484 (Migden, Chapter 729, Statutes of 2005) established the Safe Cosmetics Act and required cosmetic manufacturers to provide DPH with a complete and accurate list of its cosmetic products that are sold in the state and that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/26/20)

A Voice for Choice Advocacy
California Health Coalition Advocacy
City of West Hollywood
Educate. Advocate.
Empower Family California
The Procter and Gamble Company

OPPOSITION: (Verified 8/26/20)

ACT for Women and Girls

ASSEMBLY FLOOR: 67-0, 6/15/20
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley,

Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Bigelow, Brough, Chen, Choi, Flora, Fong, Frazier, Gallagher, Kiley, Mathis, Obernolte, Patterson

Prepared by: Melanie Moreno / HEALTH / (916) 651-4111
8/26/20 14:49:55

****** END ******