

ASSEMBLY THIRD READING
AB 2201 (Addis)
As Amended April 25, 2024
Majority vote

SUMMARY

Prohibits, on and after July 1, 2026, a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state an air care product that contains any intentionally added ingredient from a specified list.

Major Provisions

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COMMENTS

Chemicals in products: Industrial chemicals have become a part of everyday life, contributing to improvements in medicine, technology, and infrastructure and touching just about everything people come into contact with. More than 85,000 chemicals have been registered for use in the United States, and more than 700 new chemicals enter the marketplace each year. As more and more chemicals enter our homes and workplaces, the need to better understand and prevent the potential adverse effects these chemicals may have on human health and on the environment becomes even more critical.

Green Chemistry in California: In 2008, California enacted AB 1879 (Feuer and Huffman) Chapter 559, Statutes of 2008 to establish a regulatory process for identifying and prioritizing chemicals of concern in consumer products, to create methods for analyzing alternatives to existing hazardous chemicals, and to ultimately take regulatory action to reduce the level of harm from the chemicals in those products. The Department of Toxic Substances Control (DTSC) did this by promulgating the Safer Consumer Products (SCP) regulations, which took effect in October 2013. DTSC's approach provides science-based criteria and procedures for identifying and evaluating alternatives with the objective of replacing chemicals of concern with safer chemicals and avoiding the use of substitute chemicals that pose equal or greater harm.

The SCP regulatory process: To implement the Green Chemistry statutes, DTSC created what it called a "four-step continuous, science-based, and iterative" regulatory process, which it deemed the SCP regulations. The SCP regulations were adopted October 2013, and follow the process below:

- 1) Candidate Chemicals – The regulations establish a list of "candidate chemicals" based on the work already done by other authoritative organizations, and specify a process for DTSC to identify additional chemicals as candidate chemicals;
- 2) Priority Products – The regulations require DTSC to evaluate and prioritize product/candidate chemical combinations to develop a list of "priority products" for which alternatives analyses must be conducted. A candidate chemical that is the basis for a product being listed as a priority product is designated as a chemical of concern for that product and any alternative considered or selected to replace that product;

- 3) Alternatives Analysis – The regulations require responsible entities (manufacturers, importers, assemblers, and retailers) to notify DTSC when their product is listed as a priority product. DTSC will post this information on its website. Manufacturers (or other responsible entities) of a product listed as a priority product must perform an alternatives analysis for the product and the chemicals of concern in the product to determine how best to limit exposures to, or reduce the level of adverse public health and environmental impacts posed by, the chemicals of concern in the product; and,
- 4) Regulatory Responses – The regulations require DTSC to identify and implement regulatory responses designed to protect public health and/or the environment, and maximize the use of acceptable and feasible alternatives of least concern. DTSC may require regulatory responses for a priority product (if the manufacturer decides to retain the priority product), or for an alternative product selected to replace the priority product.

Chemical bans and the SCP Program: While the intent of AB 1879 is to establish a robust and thorough regulatory process rooted in science to consider exposure to chemicals in consumer products, it has long been recognized that DTSC does not have the resources to evaluate all, or even a significant percentage of, chemicals in every consumer product application. The permutations of product and chemical combinations are virtually limitless. To that end, the Safer Consumer Products statute does not preclude the Legislature from taking legislative action on the use of chemicals in consumer products. When there is credible scientific evidence to support a change in state policy to protect public health, the Legislature can respond to that science more expeditiously than can DTSC. Since AB 1879 was enacted, the Legislature has enacted policies on various chemical-product applications, which include prohibitions on perfluoroalkyl and polyfluoroalkyl substances (PFAS) (AB 1817 (Ting) Chapter 762, Statutes of 2022; AB 2771 (Friedman) Chapter 804, Statutes of 2022; AB 1200 (Ting) Chapter 503, Statutes of 2021; and AB 652 (Friedman) Chapter 500, Statutes of 2021); a ban on flame retardants in children's products, mattresses, and upholstered furniture (AB 2998 (Bloom) Chapter 924, Statutes of 2018); a ban on bisphenol A in toddler sippy cups and bottles (AB 1319 (Butler) Chapter 467, Statutes of 2011); a ban on the sale of jewelry with cadmium at certain levels (AB 929 (Pavley) Chapter 313, Statutes of 2010); and, a ban on the sale of brake pads containing copper in exceedances of certain levels (SB 346 (Kehoe) Chapter 307, Statutes of 2010).

DTSC, in fact, wrote in support of AB 1319 (Butler) stating: "DTSC does not believe that the [Safer Consumer Products] regulations should ever be viewed as excluding action that the Legislature might take to address specific product related concerns that are brought to its attention. Not only have the regulations taken longer to adopt than originally anticipated, DTSC also expects that the process to be represented in the regulations will be subject to time and resource constraints. There may be circumstances that warrant more timely action than DTSC can accommodate through its process."

Based upon the above legislative precedent, the Legislature may decide to move forward with chemical bans, regardless of the work by DTSC under the SCP Program.

Compliance and Enforcement under SCP: The mission of the SCP Program is to advance the design, development, and use of products that are chemically safer for people and the environment. DTSC provides compliance assistance to responsible entities and conducts compliance evaluation and enforcement activities to ensure that responsible entities comply with the SCP Regulations. DTSC may initiate formal enforcement actions against recalcitrant

responsible entities who fail to comply with regulatory requirements. DTSC's compliance and enforcement activities under the SCP include:

- 1) Hosting workshops and conducting other outreach to inform and engage stakeholders regarding program activities, including new legislation and regulatory requirements, proposed Priority Product listings, and important regulatory deadlines;
- 2) Offering compliance assistance, guidance, and training to help responsible entities successfully navigate the Alternatives Analysis process;
- 3) Conducting market surveillance and product testing to identify product ingredients and assess the presence of Priority Products on the California market; and,
- 4) Undertaking enforcement actions as warranted.

If the manufacturer of a Priority Product fails to comply with SCP regulations, DTSC places that manufacturer on DTSC's publicly available Failure to Comply List. Manufacturers of Priority Products have the principal duty to comply with SCP regulations. When a manufacturer does not comply, the duty to comply falls to the importer (if any), and then after continued non-compliance, this duty falls to the retailer or assembler. The SCP Regulations prohibit retailers and assemblers from purchasing or selling non-compliant Priority Products. Once a manufacturer is placed on the Failure to Comply List, retailers and assemblers of the non-compliant Priority Products must submit a Cease Ordering Notification to DTSC informing the Department that the retailer or assembler has ceased ordering the product.

This bill focuses on chemicals that have been identified as candidate chemicals under DTSC's SCP Program. Candidate chemicals are chemicals with one or more hazard traits present on DTSC's Candidate Chemical List. The SCP regulations define a candidate chemical as a chemical that exhibits a hazard trait and/or an environmental or toxicological endpoint and is found on one or more of the authoritative lists specified in regulation or is listed by DTSC using criteria specified in the regulation. Hazard traits are intrinsic properties of a chemical that may contribute to adverse effects in humans, animals, or in ecological communities. It is possible that DTSC would enforce this bill in a manner that is similar to how they enforce the SCP Program.

Disagreement on science: According to a variety of information provided by the opposition to this bill, they contend that the chemicals listed in the bill are safe, especially if dosage is taken into consideration. One key element the opposition makes is that the bill bans the chemical completely, however in the studies they have cited, they believe there are safe levels of these chemicals. The bulk of scientific studies submitted by the opposition includes information from the Research Institute for Fragrance Materials (RIFM; a member-supported nonprofit organization, with membership comprised of product manufacturers and other companies). After reviewing literature for over 18 chemicals list in the bill, on average the RIFM studies show that these chemicals do not present a concern for genotoxicity, phototoxicity, or photoallergenicity.

This bill: Prohibits, on and after July 1, 2026, a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state an air care product that contains any of the specified list of intentionally added ingredients. Other legislation banning chemicals from cosmetics has been modeled after chemicals prohibitions in the European Union, however, this bill would be the first of its kind – banning chemicals from air care products.

According to the Author

"Although air fresheners are advertised as improving indoor air quality, some chemicals used as ingredients in these products can pose significant health risks to consumers. Because we spend most of our time indoors, exposures to these products inside of homes, in our schools, and at our workplaces can add up quickly.

Consumers deserve to know that products being sold and used in the state are safe. With AB 2201, Californians will be able to breathe easier knowing that the air fresheners used in their homes and public spaces will no longer contain chemicals known to harm human health."

Arguments in Support

According to the Environmental Working Group:

"This bill will ban a number of chemicals that are in air fresheners. Simply put, when using some of these products, consumers think that they are "improving" their indoor air quality but have no idea that they are exposing themselves and their families, as well as visitors to their homes or businesses, to chemicals that may harm their health.

Air fresheners currently sold in the state of California can contain toxic ingredients that can expose the users to harmful chemicals. These chemicals are linked to asthma attacks, migraine headaches, hormone disruption, developmental or reproductive harm, and even cancer. Even air fresheners that are marketed as "green" or "organic" can contain potentially hazardous chemicals. And, these are not chemicals regulated by the CA Air Resources Board as [volatile organic compounds] or greenhouse gases.

These chemicals pose a greater risk to children, who are more vulnerable to their effects than adults. Studies have shown that higher exposure to certain household cleaners, including air fresheners, in utero and in infancy is associated with greater risk of asthma and wheezing in childhood. Infants who were exposed to cleaning products used by their mothers while they were in the womb may suffer respiratory symptoms that persist throughout childhood.

AB 2201 will lead to safer air fresheners and to greater consumer confidence that they are not exposing themselves to any toxic chemicals that might affect them short or long term."

Arguments in Opposition

According to a coalition opposing the bill:

"...given existing safety programs and regulations, both in California and elsewhere, we do not believe this legislation is warranted.

We care deeply about the safety of our ingredients, including those that go into air care products. The fragrance and consumer product industry are regulated from the raw material level to the final finished product. In addition, air fresheners go through rigorous safety testing and must comply with federal and state regulations, including air quality regulations and safety regulations.

Fragranced air fresheners are essential to combating malodors in both public and private settings. Air freshening products contain scent-based technologies that can capture or alter underlying malodors. In turn, this has direct positive benefits, reducing the negative impact on wellbeing that malodors can produce, increasing productivity and performance, improving use of public facilities and therefore hygiene, and more. We caution against legislation such

as this, that bans ingredients without considering exposure, could result in increased costs or decreased access to these vital products.

It must be emphasized that there are existing Californian regulatory systems in place to protect consumers. The Green Chemistry Initiative and its Safer Consumer Products (SCP) Program uses a science-based process to identify specific products that contain potentially harmful chemicals and to evaluate potential safer alternatives. The SCP Program provides an opportunity for industry, NGOs, and the public alike to weigh in on a particular ingredient or proposal. The proposed bans in this legislation would eliminate that constructive process and be duplicative of the work the Department of Toxic Substances Control (DTSC) is already undertaking.

Many of the ingredients on the proposed ban list in AB 2201 have already been assessed by RIFM, and our industry takes steps to ensure they are used in a safe manner based on exposure."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, enactment of this bill could cost DTSC approximately \$450,000 a year for two new positions to implement this bill.

VOTES

ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 5-2-0

YES: Garcia, Connolly, McKinnor, Papan, Reyes

NO: Hoover, Ta

ASM APPROPRIATIONS: 10-4-1

YES: Wicks, Arambula, Bryan, Calderon, Wendy Carrillo, Mike Fong, Grayson, Haney, Hart, Pellerin

NO: Sanchez, Dixon, Jim Patterson, Ta

ABS, ABST OR NV: Villapudua

UPDATED

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CONSULTANT: Josh Tooker / E.S. & T.M. /

FN: 0002985