

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
AB 246 (Papan) – As Amended April 12, 2023

Policy Committee: Environmental Safety and Toxic Materials Vote: 8 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill prohibits the sale of menstrual products that contain regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Specifically, this bill, among other things:

- 1) Prohibits, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain regulated PFAS.
- 2) Requires a manufacturer to use the least toxic alternative, including alternative design, when removing regulated PFAS in menstrual products to comply with the restrictions in this bill.
- 3) Requires a manufacturer of a menstrual product to provide persons that offer the product for sale or distribution in the state with a certificate of compliance stating the menstrual product is in compliance with the requirements of this bill and does not contain any regulated PFAS.
- 4) Provides that a distributor or retailer of a menstrual product, if they are not also the manufacturer of the product, shall not be held in violation of the prohibitions in this bill if they relied in good faith on the certificate of compliance provided by the manufacturer.
- 5) Provides that, upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney, a person or entity that violates the restrictions of this bill shall be liable for a civil penalty not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for each subsequent violation.
- 6) Provides that these penalty provisions do not impair or impede any other rights, causes of action, claims, or defenses available under any other law, and that the remedies provided in this bill are cumulative with any other remedies available under any other law.

FISCAL EFFECT:

The Department of Justice (DOJ) anticipates minor and absorbable costs as a result of this bill but notes as numerous bills this session may result in no significant impact to DOJ, should an aggregate of these bills become law, DOJ would need to request additional resources to process the increase to its workload.

COMMENTS:

1) **Purpose.** According to the author:

The presence of PFAs in menstrual products contributes to existing to gender health inequities as exposure to PFAS is almost unavoidable. AB 246 takes a critical step towards protecting women's health and reducing the amount of PFAS in the environment by eliminating polyfluoroalkyl substances (PFAS) from menstrual products. California's pursuit for gender equity and clean drinking waters requires action to ensure that feminine hygiene products are safe, clean and free from forever chemicals. With viable alternatives available, there is no longer a good rationale for their use in menstrual products.

2) **Background.** PFAS are a ubiquitous class of more than 9,000 synthetic chemicals that have been in use in a wide range of industrial and consumer products since the 1940s for their heat, water, and lipid resistance properties. PFAS are linked to a variety of health harms, such as cancer, endocrine disruption, developmental and reproductive toxicity, and immune dysregulation. These chemicals are harmful at extremely low doses; contaminate the air, soil, drinking water, plants and wildlife during production, use and disposal; and are extremely persistent in the environment. In fact, PFAS are commonly referred to as "forever chemicals" because they do not break down and instead bioaccumulate and persist in human and animal tissues.

Several state agencies, including the Department of Toxic Substances Control, the State Water Board, and the Office of Environmental Health Hazard Assessment, have undertaken efforts to address PFAS. The Legislature has also enacted bans on PFAS in textiles, food packaging, juvenile products, certain cosmetics, and firefighting foam; authorized the State Water Board to order public water systems to monitor for PFAS; and required municipalities to notify customers for PFAS detected above notification levels. Many studies have shown that PFAS are prevalent in menstrual products, including in products advertised as "organic" and "natural". The author cites a recent study, which found that 48% of sanitary pads, incontinence pads, and panty liners tested were found to contain PFAS, as were 22% of tampons.

Enforcement. Like this bill, most of the state's chemical prohibition bills are placed in what is sometimes referred to as the "orphan codes." In these code sections, no state agency is designated to provide oversight of the provisions of the law. As a result, there is no compliance program, no guidance for manufacturers seeking to comply with these laws, no related information for consumers, and no state entity investigating complaints, testing products for compliance, or bringing enforcement actions against violators. This bill and the bills listed under "related legislation" include provisions that provide the Attorney General (AG) and local government attorneys with specified civil penalties to bring against violators of the law. These penalty provisions are in addition to the AG's existing authority to enforce this and related product safety bills, such as through the Unfair Competition Law (UCL), although this committee and the policy committee are not aware of any enforcement actions taken by the AG or a district attorney under the UCL, or any other law, to enforce the chemical prohibition laws under the "orphan codes." The authors of these bills, committee staff, and stakeholders are continuing to discuss what a more comprehensive enforcement program might look like for laws regulating dangerous chemicals in consumer products.

3) Related Legislation. AB 418 (Gabriel) prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, distributing, holding, or offering for sale, in commerce a food product that contains any of several specified substances. AB 418 is pending in this committee.

AB 727 (Weber) prohibits, beginning January 1, 2025, a person from manufacturing, selling, delivering, distributing, holding, or offering for sale, a cleaning product that contains intentionally added PFAS or PFAS at or above 50 parts per million (PPM), and on January 1, 2027, a cleaning product that contains PFAS at or above 25 PPM. AB 727 is pending in this committee.

AB 1423 (Schiavo) prohibits, commencing January 1, 2025, the manufacturing or sale of artificial turf that contains PFAS, and, commencing January 1, 2024, a public entity, a public or private school, or a public or private institution of higher learning, from purchasing or installing artificial turf that contains PFAS. AB 1423 is pending in this committee.

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