

ASSEMBLY THIRD READING

AB 246 (Papan)

As Amended April 12, 2023

Majority vote

SUMMARY

Prohibits, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Major Provisions

- 1) Defines "regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS" as either of the following:
 - a) PFAS that a manufacturer has intentionally added to a product and that has a functional or technical effect in the product, including the PFAS components of intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product; or,
 - b) Commencing January 1, 2027, the presence of PFAS in a product or product component at or above 10 parts per million (ppm), as measured in total organic fluorine.
- 2) 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.
- 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 that the menstrual product is in compliance with the requirements of this bill and does not contain any regulated PFAS.
- 4) 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 PFAS 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.

COMMENTS

Perfluoroalkyl and polyfluoroalkyl substances (PFAS): Per- and polyfluorinated substances (PFASs) are a large group of synthetic, highly fluorinated substances that have been widely used in industrial and consumer applications for their heat, water, and lipid resistance properties for more than seven decades. PFAS are long-lasting chemicals that break down very slowly over time. PFAS are ubiquitous, and researchers have found PFAS in indoor and outdoor environments, plants, soil, food, drinking water, wildlife, companion animals, production animals, and humans at locations across the nation and around the globe. Scientific studies have shown that exposure to some PFAS may be linked to harmful health effects in humans and animals. More than 9,000 PFAS chemicals are included in the United States Environmental Protection Agency's (US EPA's) Master List of PFAS Substances.

Exposure to PFAS: The main route of exposure to PFAS is through ingestion of contaminated food or liquid (accounting for up to half of total exposure), and through inhalation and ingestion of contaminated indoor air and dust. Food can become contaminated with PFAS through contaminated soil and water used to grow the food, food packaging containing PFAS, and equipment that uses PFAS during food processing. Some foods, such as fish, meat, eggs and leafy vegetables, may contain PFAS due to bioaccumulation and crop uptake. Studies have shown that PFAS can transfer from pregnant mothers to their fetuses via the placenta during gestation, as well as transfer from nursing mothers to their infants via breastfeeding. Dermal exposure is also possible when people touch products treated with PFAS, such as carpets or clothing. Young children may be susceptible to higher levels of exposure than adults because they ingest more dust containing PFAS and mouth PFAS-treated consumer products. Workers, such as carpet installers, carpet cleaners, firefighters, and workers in furniture, furnishings, outdoor clothing, and carpet stores, may also experience above average PFAS exposure levels.

Exposure to PFAS in drinking water is an escalating concern due to the persistence of PFAS chemicals in the environment and their tendency to accumulate in groundwater.

Hazard traits of PFAS: An intrinsic property of PFAS is the extreme environmental persistence of either the individual compounds or their degradation products or both, resulting in their classification as "forever chemicals." Most PFAS are mobile in environmental media such as air and water, and thus are widespread in living organisms and the environment. Several PFAS bioaccumulate significantly in animals or plants and emerging evidence points to their phytotoxicity, aquatic toxicity, and terrestrial ecotoxicity.

According to the US EPA, current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to: reproductive effects such as decreased fertility or increased high blood pressure in pregnant women; developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes; increased risk of some cancers, including prostate, kidney, and testicular cancers; reduced ability of the body's immune system to fight infections, including reduced vaccine response; interference with the body's natural hormones; and, increased cholesterol levels and/or risk of obesity.

Regulating PFAS as a class: The Department of Toxic Substances Control (DTSC) has adopted a rationale for regulating PFAS chemicals as a class, concluding, "it is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach." This rationale was presented in the February, 2021, *Environmental Health Perspectives* article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program," which states, "The widespread use, large number, and diverse chemical structures of PFAS pose challenges to any sufficiently protective regulation, emissions reduction, and remediation at contaminated sites. Regulating only a subset of PFAS has led to their replacement with other members of the class with similar hazards, that is, regrettable substitutions... Regulating PFAS as a class is thus logical, necessary, and forward-thinking."

PFAS in menstrual products: In the United States, approximately 72.7 million women are of reproductive age (15 - 49). During the reproductive stage of their lives, people who menstruate rely on a diverse range of menstrual products, from tampons to pads to menstrual cups to period underwear. To illustrate the prevalence of PFAS in menstrual products, the author of the bill points to tests on menstrual products commissioned by the consumer watchdog site, Mamavation, and Environmental Health News. Conducted at US EPA-certified laboratories

between 2020 and 2022, the tests detected organic fluorine, a marker for PFAS, in several menstrual products. For example, 22% of the 23 tampon products tested had indications of PFAS, including two products advertised as "organic." Forty eight percent of 46 different sanitary pads, panty liners, and incontinence pads tested had indications of PFAS, including several products marketed as "organic" and "natural." Sixty-five percent of period underwear products tested, and 57% of the period underwear brands tested, had detectable levels of fluorine present. Exposure to PFAS through menstrual products is particularly concerning because the vagina is an extremely vascular area and dermal exposure in the vaginal area is often higher than other places of the body. Additionally, people using menstrual products are of reproductive age, thus exposure could potentially impact unborn children as well as the person using the product.

This bill: This bill 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.

Enforcement: Like this bill, most of the state's chemical prohibition bills were 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: This bill provides the Attorney General (AG) and other 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 statutory provisions, such as through the Unfair Competition Law. The author of this bill, Committee staff, and stakeholders are continuing to discuss the development of a more comprehensive enforcement program for laws regulating dangerous chemicals in consumer products.

According to the Author

"These once ubiquitous, forever compounds have been linked to health problems, including breast and other cancers, hormone disruption, kidney and liver damage, thyroid disease, developmental harm, and immune system disruption. The presence of PFAS in menstrual products contributes to existing gender health inequities as exposure to PFAS is almost unavoidable. In a recent study, 48% of sanitary pads, incontinence pads, and panty liners tested were found to contain PFAS, as were 22% of tampons. Additionally, menstrual products have shown higher levels of PFAS than the levels found in tap water.

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. Women's health must be prioritized over the use of these unnecessary chemicals. It's past time to protect women and our environment."

Arguments in Support

The California Professional Firefighters argue, "AB 246 prohibits the sale and distribution of all menstrual products containing intentionally-added PFAS, including both disposable and reusable products. These health and sanitary items can lead to extended and frequent exposure to these

toxic substances over many years of use, leading to decades' worth of unnecessary exposure when viable alternatives are available. In order to address this, manufacturers will be required to use the least toxic alternatives in their reformulation of their products, ensuring that all menstrual products sold and distributed in California are manufactured with the health and safety of their users as a priority... Firefighters face elevated levels of exposure to PFAS through a variety of means, including personal protective equipment (PPE) that is treated with PFAS for its water-resistant properties. Reducing exposure to PFAS wherever possible is critical for the health and safety of California's fire service."

The California Association of Sanitation Agencies argues, "This is an important source control strategy for reducing PFAS contamination in wastewater systems and California's watersheds. Feminine hygiene products that contain PFAS have a direct pathway to wastewater when disposable products are erroneously flushed, or when reusable products are washed in household laundry systems."

Arguments in Opposition

The Center for Baby and Adult Hygiene Products (BAHP) argues, "We share the author's intent with AB246 to protect the health and safety of California consumers of menstrual products. However, the April 10th amendment including PFAS not intentionally added in instances where presence of the substance is measured at the low level of 10 parts per million poses serious compliance challenges. The product testing data for that low threshold is inherently unreliable under Total Organofluorine (TOF) testing and it can indicate fluorinated compounds that are not PFAS. If the Committee is intent on addressing some level of PFAS that is not intentionally added, aligning AB246 with the 2021 California law (AB652) addressing PFAS in juvenile products with respect to its 100ppm threshold is a reasonable approach."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, the Department of Justice (DOJ) anticipates minor and absorbable costs as a result of enactment of this bill. The DOJ notes, however, that while enactment of individual chemical prohibition bills this session may result in no significant impact to the DOJ, should several of the current chemical prohibition bills with similar enforcement provisions become law, the DOJ would need to request additional resources to process the increase in its workload.

VOTES

ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 8-0-1

YES: Lee, Hoover, Arambula, Bauer-Kahan, Connolly, McKinnor, Pacheco, Zbur

ABS, ABST OR NV: Ta

ASM APPROPRIATIONS: 14-0-2

YES: Holden, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Robert Rivas, Sanchez, Weber, Wilson

ABS, ABST OR NV: Megan Dahle, Mathis

UPDATED

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