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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2023 - 2024 Regular**

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<b>Bill No.</b>	AB 246	<b>Hearing Date:</b>	6/21/2023
<b>Author:</b>	Papan		
<b>Version:</b>	4/12/2023		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Theresa Keates		

**SUBJECT:** Product safety: menstrual products: perfluoroalkyl and polyfluoroalkyl substances

**DIGEST:** Prohibits, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS) or, commencing January 1, 2027, concentrations of PFAS at or above 10 parts per million (ppm).

**ANALYSIS:**

Existing law:

- 1) Under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (HSC § 25249.5 et seq.):
  - a) Prohibits a person, in the course of doing business, from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water.
  - b) Prohibits a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual.
  - c) Requires the Governor to publish a list of chemicals known to cause cancer or reproductive toxicity and to annually revise the list. The Office of Environmental Health Hazard Assessment (OEHHA) has listed perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), which are members of the PFAS class, as chemicals known to the state to cause developmental toxicity and cancer.

- 2) Under the Safer Consumer Products (Green Chemistry) statutes (HSC § 25252 et seq.):
  - a) Requires the Department of Toxic Substances Control (DTSC) to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered chemicals of concern, as specified.
  - b) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products, and their potential alternatives, to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern.
  - c) Specifies, but does not limit, regulatory responses that DTSC can take following the completion of an alternatives analysis, ranging from no action, to a prohibition of the chemical in the product.
- 3) Under the Menstrual Products Right to Know Act of 2020, requires a package containing menstrual products manufactured on or after January 1, 2023 for sale or distribution in the state to be labeled with all ingredients in the product by weight and this information to be posted on the internet.

This bill:

- 1) Defines “menstrual product” as a product used to collect menstruation and vaginal discharge, including, but not limited to, tampons, pads, sponges, menstruation underwear, disks, and menstrual cups, whether disposable or reusable.
- 2) Defines “perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- 3) Prohibits a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain:
  - a) Commencing January 1, 2025, 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.

- b) Commencing January 1, 2027, PFAS in a product or product component at or above 10 parts per million (ppm), as measured in total organic fluorine.
- 4) 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.
- 5) 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 with the requirements of this bill.
- 6) 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 five thousand dollars (\$5,000) for a first violation, and not to exceed ten thousand dollars (\$10,000) for each subsequent violation.
- 7) Provides that these penalty provisions do not impair or impede any other rights, causes of action, claims, or defenses available under any other law. Provides that the remedies delineated in the bill are cumulative with any other remedies available under any other law.

## Background

- 1) *Perfluoroalkyl and polyfluoroalkyl substances (PFAS)*. Per- and polyfluoroalkyl substances (PFAS) are a large group of synthetic substances that have been widely used in industrial and consumer applications for their heat, water, and oil resistance properties since their invention in the 1930s. PFAS are used extensively in carpets, furniture fabrics, apparel, paper packaging for food, non-stick cookware, personal care products, and other products designed to be waterproof; grease, heat, water and stain resistant; or, non-stick. Commercial applications span many sectors of the economy, including aerospace, apparel, automotive, building and construction, pharmaceuticals, medical devices, paints, electronics, semiconductors, energy, oil and gas exploration, first responder safety, firefighting foams, and health care.

Scientific studies have shown that exposure to some PFAS may be linked to harmful health effects in humans and animals. PFAS are long-lasting chemicals that break down very slowly over time. During production, use, and disposal, PFAS can migrate into the soil, water, and air. PFAS have been found in indoor and outdoor environments, plants, soil, food, drinking water, wildlife and domestic animals, and humans. The persistence and proliferation of PFAS

chemicals makes it challenging to study and assess the overall potential human health and environmental risks of PFAS exposure.

- 2) *Hazards of PFAS.* PFAS exposure occurs mainly through ingestion of contaminated food or liquids. Exposure can also occur through inhalation and touch, and PFAS can be transferred through pregnancy and breastfeeding. PFAS remains in the body for a long time, so as people continue to be exposed to PFAS, the PFAS levels in their bodies may increase to the point that they suffer adverse health effects. According to the United States Environmental Protection Agency (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 people; 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.
- 3) *Regulating PFAS as a class.* There are many thousands of chemicals in the PFAS class (the US EPA's master list of PFAS chemicals listed over 12,000 as of the writing of this analysis) and more types of PFAS can be developed. DTSC has adopted a rationale for regulating this large and diverse number of PFAS chemicals as a class rather than with a piecemeal approach. This is because all PFAS share at least one common hazard trait and regulations that focus on subsets of these chemicals have resulted in their replacement with other PFAS with similar hazards.
- 4) *DTSC's Safer Consumer Products Program.* DTSC administers the Safer Consumer Products (SCP, previously known as Green Chemistry) Program, which aims to advance the design, development, and use of products that are chemically safer for people and the environment. 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. Under DTSC's SCP Program, all PFAS chemicals are "Candidate Chemicals" because they exhibit specified hazard traits. DTSC has designated two product categories that contain PFAS as "Priority Products": carpets and rugs and certain surface treatments. A Priority Product is a consumer product identified by DTSC that contains one or more Candidate Chemicals and that has the potential to contribute to significant or widespread adverse impacts to humans or the environment. Manufacturers of a Priority Product must submit certain

documentation regarding their product to DTSC and submit an alternatives analysis or they can remove the product for sale in California or remove or replace the chemical of concern. DTSC has proposed evaluating artificial turf with PFAS in its 2021-2023 Priority Product Work Plan, and previously proposed investigating PFAS in other product categories, such as food packaging and children's products, but during the investigative period the Legislature prohibited PFAS in those product categories and it appears DTSC has shifted its resources to investigating other product/chemical combinations.

While the intent of the SCP regulations 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. To that end, the SCP statute does not preclude the Legislature from taking legislative action on the use of chemicals in consumer product applications. 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 quickly than DTSC can. However, many PFAS prohibitions, including this bill, have not been assigned to an agency and therefore lack oversight and enforcement (see "Who is in charge?" comment).

- 5) *Prior PFAS legislation.* The Legislature has enacted several PFAS prohibitions in the last several years. These include PFAS prohibitions at different levels across many product categories: a ban on PFAS in textiles (AB 1817, Ting, Chapter 762, Statutes of 2022); cosmetic products (AB 2771, Friedman, Chapter 804, Statutes of 2022); food packaging (AB 1200, Ting, Chapter 503, Statutes of 2021); new juvenile products (AB 652, Friedman, Chapter 500, Statutes of 2021); and, firefighting foam (SB 1044, Allen, Chapter 308, Statutes of 2020). The Legislature also authorized the State Water Board to order public water systems to monitor for PFAS and required municipalities to notify consumers for PFAS detected above notification levels (AB 756, C. Garcia, Chapter 162, Statutes of 2019). California is not alone in this: just this year, 195 new bills were introduced in dozens of state legislatures in the country seeking to ban PFAS in an expanding list of products. In early February 2023, the European Union, which already bans certain PFAS types, proposed an across-the-board ban on the use of PFAS. If adopted, the E.U.'s ban would come into effect in 2027.

## Comments

- 1) *Purpose of Bill.* 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.”

- 2) *PFAS in menstrual products.* People who menstruate rely on a diverse range of menstrual products, such as tampons, pads, menstrual cups, or period underwear. In the United States, this is approximately 72.7 million people between the ages of 15-49. Exposure to PFAS through menstrual products is particularly concerning because the vagina is an area with high blood flow where toxins can be taken up through the skin more readily than other places on 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.

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. The tests for this study were conducted at US EPA-certified laboratories between 2020 and 2022 and detected organic fluorine, a marker for PFAS, in several menstrual products. The study found PFAS at concentrations ranging from 19 to 28 ppm in 22% of 23 tested tampon products. Of 46 sanitary pads, panty liners, and incontinence pads tested, 48% showed concentrations ranging from 11 to 154 ppm. Additional tests of period underwear products found that 65% had PFAS at concentrations ranging from 10 to 940 ppm. Detections of PFAS at concentrations greater than 3,000 ppm in period underwear had previously led to a high-profile lawsuit against the manufacturer, which was settled in January 2023.

- 3) *Who is in charge?* Many chemical prohibition bills, including this one, are placed in a unique location in the California Codes, 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 direct enforcement, no establishment of standardized testing methods, no compliance program, no guidance for manufacturers seeking to comply with these laws, and no related information for consumers. Because of these deficiencies, it is challenging for some manufacturers to comply and difficult or impossible to know if manufacturers are complying with the requirements of the law.

The only current option for enforcement of the prohibitions in the “orphan codes” is for a district attorney or the state Attorney General to bring an action against a manufacturer under the Unfair Competition Law (UCL), unless specified otherwise. However, this requires a member of the public to pay for the testing of a product for the presence of a prohibited chemical, and then the Attorney General or district attorney must have the resources and ability to prioritize action on these complaints. To the knowledge of this and prior Committees that have considered this bill, this kind of enforcement has not happened, nor has any comprehensive report or investigation been done on compliance with the prohibitions in the “orphan code.”

This bill takes a step forward on statutory chemical prohibitions by adding civil penalties for violations of the restrictions in the bill. These penalty provisions are in addition to the authority to enforce under the UCL, and are consistent with existing statutory penalties relating to PFAS in firefighting foam. However, there remains no entity providing guidance, including details such as testing standards, or ensuring compliance with the prohibitions. Moving forward, the authors of chemical prohibition bills, along with stakeholders, the policy committees, and the Administration, should continue to discuss effective oversight of these new and existing chemical prohibition laws.

- 4) *Regrettable substitutions.* When prohibiting a toxic or otherwise hazardous chemical, it is important to avoid a replacement of the prohibited chemical with another hazardous chemical, or a chemical even more hazardous than the one prohibited. Like several other statutes dealing with chemicals in the “orphan code,” this bill 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. However, without a state entity overseeing these substitutions, it is difficult to know whether manufacturers are replacing prohibited chemicals with substances that are safer or more hazardous. DTSC does have a process for this that takes a lifecycle

perspective: manufacturers conduct alternative analyses which consider not only the toxicity of a chemical, but also its persistence and environmental impact.

- 5) *PFAS concentration thresholds.* This and several other PFAS prohibitions prohibit intentionally added PFAS and additionally set a concentration threshold for any PFAS in a product, intentionally added or not. Such a threshold may be warranted because determining whether PFAS were intentionally added in the manufacturing of a product can be a challenge when certain manufacturing information is proprietary or contaminated product components are used. Setting a concentration threshold can further protect public health, but the chosen concentration should be appropriate. There is no concentration of PFAS that has been proven safe, and as long-lasting chemicals, they build up in the human body and in the environment over time. PFAS in different types of products may be of greater concern than others depending on how likely the chemicals are to enter the body. A menstrual product containing PFAS likely poses a more acute health risk than, for example, a jacket containing PFAS. Even if direct exposure to the product is limited, any PFAS in a product can, eventually, end up in the environment, including in drinking water.

As with enforcement, determining an appropriate concentration threshold could benefit from a public entity with scientists with health and environmental backgrounds determining the risks of chemical exposure at different levels. Without that resource, the Legislature is tasked with setting the appropriately protective standard in statute, and presumably updating those statutory thresholds by legislation when needed.

This bill prohibits intentionally added PFAS in menstrual products and commencing January 1, 2027, PFAS at or above 10 ppm, as measured in total organic fluorine. For the threshold set in this bill, the author's office points to limits established by OEKO-TEX, an organization of 17 independent research and testing institutions in Europe and Japan that continually develops test methods and define limits for chemicals in textiles and leathers. OEKO-TEX's ECO PASSPORT standard, which is an internationally-recognized certificate for textile and leather determined safe and environmentally friendly, disallow any intentionally added PFAS or any PFAS above 10 ppm as measured in extractable organic fluorine.

Concerns have been raised that the 10 ppm threshold is too low. These assert that unavoidable trace quantities of PFAS through the manufacturing processes could exceed this value and that detection methods down to concentrations as



low as 10 ppm can be unreliable. Committee staff have not been provided with data demonstrating what concentrations may constitute technically unavoidable trace quantities. Commercial labs regularly test cosmetics for PFAS concentrations down to 10 ppm and research laboratories often test for concentrations lower as 1 ppm. Testing sensitivities have improved over time and the author indicates that an implementation date of 2027 leaves time for more accurate and reliable tests to become more widespread.

Other proposed and statutory PFAS bans have differing concentration thresholds in different product categories ranging from 1 ppm to 100 ppm, and some have this threshold decrease over time (see the “Related/Prior Legislation” section of this analysis). AB 727 (Weber), for example, would set a 10 ppm limit in cleaning products beginning in 2028, and AB 1423 (Schiavo) would set a 1 ppm limit for artificial turf beginning in 2024. For drinking water, which may deserve the most stringent concentration threshold, the US EPA’s proposed legally enforceable Maximum Contaminant Level (MCLs) is 4 parts per *trillion* (ppt) for PFOA and PFOS, two chemicals in the PFAS family considered separately due to their likely carcinogenicity (these are also on California’s Prop 65 list). In 2027, the same time the 10 ppm threshold of this bill would go into effect, certain textiles, including clothing, may not contain more than 50 ppm of PFAS under AB 1817 (Ting, 2022). Menstrual products generally have a higher risk of PFAS entering the body than most clothing articles.

### **Related/Prior Legislation**

AB 727 (Weber) would prohibit, beginning January 1, 2026, 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 ppm, on January 1, 2027, a cleaning product that contains PFAS at or above 25 ppm, and on January 1, 2028, at or above 10 ppm. This bill is pending before the Senate Environmental Quality Committee.

AB 1423 (Schiavo) would prohibit, commencing January 1, 2024, a public entity and certain educational institutions from purchasing or installing a covered surface that contains intentionally added PFAS or PFAS at a concentration at or above 1 ppm, and commencing January 1, 2025, would prohibit a person or entity from manufacturing, distributing, selling, or offering for sale in the state any covered surface that contains intentionally added PFAS or PFAS at a concentration at or above 1 ppm. This bill is pending before the Senate Environmental Quality Committee.

AB 347 (Ting) would require DTSC to enforce and ensure compliance with PFAS prohibitions and require DTSC to test at least 200 juvenile products and 200 food packaging samples by January 1, 2025. It would authorize DTSC to assess fines against manufacturers in violation of the PFAS prohibitions. This bill is pending before the Senate Environmental Quality Committee.

AB 1817 (Ting, Chapter 762, Statutes of 2022) prohibits, beginning January 1, 2024, a person from distributing, selling, or offering for sale in the state a textile article, as defined, that contains intentionally added PFAS, or starting January 1, 2025, any PFAS at concentrations of 100 ppm or more, or starting January 1, 2027, 50 ppm or more.

AB 2771 (Friedman, Chapter 804, Statutes of 2022) prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains intentionally added PFAS.

AB 502 (Allen, Chapter 701, Statutes of 2022) makes a number of updates to California's Safer Consumer Products Program in line with perceived shortcomings from its first ten years with regards to the speed of the program to filling existing data gaps.

AB 1200 (Ting, Chapter 503, Statutes of 2021) prohibits, commencing January 1, 2023, the sale of food packaging, as defined, that contains intentionally added PFAS or PFAS at concentrations at or above 100 ppm. This bill also requires, starting January 1, 2024, certain labels for cookware products containing intentionally added chemicals from specified lists.

AB 652 (Friedman, Chapter 500, Statutes of 2021) prohibits, on or after July 1, 2023, a person from selling or distributing in commerce any new juvenile products that contain intentionally added PFAS or PFAS at or above 100 ppm.

AB 2762 (Muratsuchi, Chapter 314, Statutes of 2020) prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale, in commerce any cosmetic product that contains any specified intentionally added ingredients, including some PFAS chemicals.

SB 1044 (Allen, Chapter 308, Statutes of 2020) prohibits the manufacture, sale, distribution, and use of firefighting foam containing intentionally added PFAS chemicals by January 1, 2022, with some exceptions, and requires notification of the presence of intentionally added PFAS in the protective equipment of firefighters.

**DOUBLE REFERRAL:**

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

**SOURCE:** Author

**SUPPORT:**

American College of Obstetricians and Gynecologists District IX  
Breast Cancer Prevention Partners  
California Association of Sanitation Agencies  
California Legislative Women's Caucus  
California Professional Firefighters  
California Water Service  
Californians Against Waste  
CALPRIG  
Center for Public Environmental Oversight  
City of Camarillo  
Clean Seas Lobbying Coalition  
Clean Water Action  
Environmental Working Group  
Green Science Policy Institute  
Irvine Ranch Water District  
Los Angeles County Sanitation Districts  
National Stewardship Action Council  
Natural Resources Defense Council (NRDC)  
Republic Services - Western Region  
Responsible Purchasing Network  
San Diego County Water Authority  
Sierra Club California  
Weideman Group  
Women's Voices for The Earth

**OPPOSITION:**

None received

**ARGUMENTS IN SUPPORT:**

According to a coalition of supporters, “We also support the threshold of 10 ppm PFAS as part of the definition of regulated PFAS. With the threshold, AB 246 is in line with other bills passed by this Legislature to ban PFAS in textiles, children’s products, and food packaging by defining regulated PFAS as PFAS that a

manufacturer has intentionally added to a product and that have a functional or technical effect in the product as well as the presence of PFAS in a product or product component at or above a specified threshold, as measured in total organic fluorine.

“Setting a robust threshold is especially important in AB 246 because it addresses the use of PFAS in products that are used within, or in close contact with sensitive parts of women’s bodies. Given that these chemicals are associated with reproductive harm, cancers, immune system interference and other serious health impacts, they have no business being used in such intimate personal care products. In addition, their use can contribute to water contamination when reusable products are washed or others are disposed of.”

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