
THIRD READING

Bill No: AB 246
Author: Papan (D), et al.
Amended: 7/10/23 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 6/21/23
AYES: Allen, Gonzalez, Hurtado, Menjivar, Skinner
NO VOTE RECORDED: Dahle, Nguyen

SENATE JUDICIARY COMMITTEE: 10-0, 7/6/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Stern,
Wiener
NO VOTE RECORDED: Niello

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 70-0, 5/15/23 - See last page for vote

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

SOURCE: Author

DIGEST: 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 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) Enacts the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (HSC § 25249.5 et seq.), which:

- 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) Requires, under the Menstrual Products Right to Know Act of 2020, 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.
 - a) 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 provisions in this bill if they relied in good faith on the certificate of compliance.
- 6) Provides that a person or entity that violates the prohibitions in this bill shall be liable for a civil penalty not to exceed \$10,000 per day for each violation.
 - a) Provides that an action to enforce the prohibitions in this bill may be brought by the Attorney General, a city attorney, a county counsel, or a district attorney in a court of competent jurisdiction.
 - b) Provides that a violation is deemed to have occurred upon the manufacture, distribution, sale, or offer for sale of a menstrual product in violation of the prohibitions in this bill, and that menstrual products belonging to the same stock keeping unit (SKU) are considered part of the same, single 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 this 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.

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. 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.

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. As with enforcement, determining an acceptable level of exposure 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 a protective standard in statute. 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. 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, Chapter 762, Statutes of 2022). Any PFAS in a product can eventually end up in the environment, including in drinking water.

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. Concerns have been raised by the opposition 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 for concentrations as low as 10 ppm can be unreliable. Laboratories appear to conduct testing on a variety of products for total organic fluorine at

concentrations below 10 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.

Related/Prior Legislation

AB 727 (Weber, 2023) prohibits, 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.

AB 1817 (Ting, Chapter 762, Statutes of 2022) prohibited, 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.

[NOTE: See the Senate Environmental Quality Committee analysis for detailed background of this bill.]

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

SUPPORT: (Verified 8/15/23)

A Voice for Choice Advocacy
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
CALPIRG
Center for Public Environmental Oversight
City of Camarillo
Clean Seas Lobbying Coalition
Clean Water Action
Cleaneearth4kids.org
Environmental Working Group
Green Science Policy Institute
Irvine Ranch Water District

Los Angeles County Sanitation Districts
NARAL Pro-Choice California
National Stewardship Action Council
Natural Resources Defense Council
Republic Services - Western Region
Responsible Purchasing Network
San Diego County Water Authority
Sierra Club California
Solano County Democratic Central Committee
Weideman Group
Women's Voices for the Earth

OPPOSITION: (Verified 8/15/23)

California Manufacturers & Technology Association

ARGUMENTS IN SUPPORT: According to supporters, “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 laundered or others are disposed of.”

ARGUMENTS IN OPPOSITION: According to the California Manufacturers & Technology Association (CMTA), “The challenge presented with unintentional PFAS contamination is that it may extend beyond what a manufacturer can control. PFAS are ubiquitous, as they are detected in air emissions, wastewater, soils, surface water, and groundwater and can also be found with no obvious source at all. Expanding state legislative policy that now includes unintentionally added PFAS requires further regulatory guidance and oversight from state regulators. We know that product testing data down to ten parts per million (PPM) is often unreliable, especially given that PFAS are not intentionally added to serve any functional or technical effect in a product.”

ASSEMBLY FLOOR: 70-0, 5/15/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Davies, Dixon, Flora, Mike Fong, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NO VOTE RECORDED: Megan Dahle, Essayli, Vince Fong, Friedman, Gallagher, Lackey, Jim Patterson, Joe Patterson, Ta, Waldron

Prepared by: Theresa Keates / E.Q. / (916) 651-4108
8/16/23 10:34:04

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