

AMENDED IN SENATE APRIL 11, 2024

AMENDED IN SENATE MARCH 18, 2024

AMENDED IN SENATE FEBRUARY 21, 2024

## **SENATE BILL**

**No. 903**

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### **Introduced by Senator Skinner**

January 4, 2024

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An act to add Chapter 18 (commencing with Section 109030) to Part 3 of Division 104 of the Health and Safety Code, relating to product safety.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 903, as amended, Skinner. Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances.

Existing law, commencing January 1, 2025, prohibits the manufacture, distribution, sale, or offering for sale in the state of any new, not previously used, textile articles that contain regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS). Existing law, commencing January 1, 2025, prohibits the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product that contains intentionally added PFAS.

Existing law prohibits the distribution, sale, or offering for sale in the state of certain food packaging that contains regulated PFAS. Existing law prohibits the sale or distribution in commerce in the state of any new, not previously owned, juvenile product, as defined, that contains regulated perfluoroalkyl and polyfluoroalkyl chemicals.

This bill would, beginning January 1, ~~2030~~, 2032, prohibit a person from distributing, selling, or offering for sale a product that contains intentionally added PFAS, as defined, unless the Department of Toxic

Substances Control has made a determination that the use of PFAS in the product is a currently unavoidable use, the prohibition is preempted by federal law, or the product is *previously* used. The bill would specify the criteria and procedures for determining whether the use of PFAS in a product is a currently unavoidable use, for renewing that determination, and for revoking that determination. The bill would require the department to maintain on its internet website a list of each determination of currently unavoidable use, when each determination expires, and the products and uses that are exempt from the prohibition. The bill would impose ~~a civil~~ *an administrative* penalty for a violation of the prohibition, as specified. The bill would establish the PFAS Penalty Account and require all ~~civil~~ *administrative* penalties received to be deposited into that account and, upon appropriation by the Legislature, to be used for the administration and enforcement of these provisions, as specified.

This bill would require the department, on or before January 1, 2027, to adopt regulations to carry out the provisions of this bill. The bill would require the regulations to establish and provide for the assessment of an application ~~fee~~. *fee and to establish an administrative appeal process to review penalties assessed and certain actions and determinations of the department under the bill.* The bill would create the PFAS Oversight Fund and require all application fees to be deposited into the fund. The bill would require moneys in the account, upon appropriation by the Legislature, to be used to cover the department's reasonable costs of administering this act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are
- 4 a class of persistent and highly toxic chemicals with widespread
- 5 contamination across the United States, including California. The
- 6 United States Geological Survey estimates that 45 percent of the
- 7 United States' tap water is contaminated with PFAS. It is also
- 8 estimated that 98 percent of people living in the United States have
- 9 PFAS in their blood.

(b) PFAS have been and continue to be used in a broad range of industrial processes and in manufacturing products because of their water and stain resistant, nonstick, surfactant, and other properties, including for making packaging, plastic food ware, cleaning products, ski waxes, menstrual products, metal products, propellants, coatings and paints, and much more, despite the growing body of evidence that these chemicals may leach into food, water supplies, and even the human body through exposures.

(c) Exposure to PFAS poses a significant threat to the environment and public health. Adverse health effects associated with PFAS include, but are not limited to, kidney and liver damage, decreased immune system function, including interference with vaccine response and increased risk of asthma, developmental and reproductive harm, increased cholesterol levels, increased thyroid disorders and other hormone disruption, and increased incidences of testicular and kidney cancer.

(d) PFAS in products is a major source of PFAS contamination and phasing out nonessential uses of PFAS must be an immediate legislative objective.

(e) The intent of this act is to phase out the sale of products with avoidable PFAS use to address the imminent threat of further contamination of the environment in the state.

SEC. 2. Chapter 18 (commencing with Section 109030) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 18. PERFLUOROALKYL AND POLYFLUOROALKYL  
SUBSTANCES

109030. For purposes of this chapter, the following definitions apply unless the context otherwise indicates:

(a) “Component” means an identifiable ingredient, part, or piece of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

(b) “Currently unavoidable use” means a use of PFAS that the department has determined is permissible for a limited time pursuant to subdivision (a) of Section 109030.2.

(c) “Department” means the Department of Toxic Substances Control.

(d) “Intentionally added PFAS” means either of the following:

(1) PFAS added to a product that have a functional or technical effect in the product, including the PFAS components of intentionally added chemical mixtures and PFAS that are intentional products of an added chemical or process.

(2) PFAS used or produced during a product's manufacture or processing that is introduced into or onto the product, whether or not it confers a functional or technical effect in the product. This includes any source of PFAS that is reasonably known to be present, including the use of processing agents, mold release agents, or fluorination.

(e) (1) Subject to paragraphs (2) and (3), "manufacturer" means either of the following:

(A) A person that manufactures the product and whose name appears on the product label.

(B) A person for whom the product is manufactured or by whom it is distributed, and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

(2) In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if no person that meets the requirements of subparagraph (A) or (B) of paragraph (1) has a presence in the United States.

(3) "Manufacturer" does not include trade associations or similar entities.

(4) For purposes of this chapter, a product may have more than one manufacturer.

(f) "Necessary for the product to work" means required for the product to perform its primary function, as determined by the department.

(g) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(h) "Person" means an individual, firm, corporation, association, or other entity doing business in California.

(i) "Product" means an item ~~manufactured, assembled, packaged, or otherwise prepared~~ sold, distributed, or offered for sale in California, including, but not limited to, its components, ~~sold or distributed~~ sold, distributed, or offered for sale for personal,

1 residential, commercial, or industrial use, including for use in  
2 making other products.

3 (j) “Product category” means a group of similar products that  
4 are used for a similar purpose and that could functionally replace  
5 each other for that purpose, as determined by the department, and  
6 does not mean variations within a product that do not affect the  
7 product’s primary function. For example, pants, insulation, and  
8 cookware are each a product category whereas stain-resistant pants,  
9 spray insulation, and nonstick cookware are ~~specific~~ variations of  
10 products within those product categories.

11 (k) “Reliable information” means a study or evaluation that  
12 meets both the following:

13 (1) The study or evaluation design was appropriate to the  
14 hypothesis being tested, and sufficient to support the proposition  
15 for which the study or evaluation is presented to the department.

16 (2) The study or evaluation was published in one of the  
17 following:

18 (A) A scientifically peer-reviewed report or other literature.

19 (B) A report of the United States National Academies.

20 (C) A report by an international, federal, state, or local agency  
21 that implements laws governing chemicals.

22 (l) “Safer alternative” means an alternative that, in comparison  
23 with another product or product manufacturing process, has reduced  
24 adverse impacts or potential exposures associated with PFAS.  
25 Alternatives include materials, processes, designs, products, or  
26 chemicals that achieve the desired result. For example, a safer  
27 alternative to stain-resistant sprays for avoiding stains could be  
28 the use of detergents or the use of fibers that are inherently stain  
29 resistant.

30 109030.1. (a) (1) Except as provided in subdivision (b),  
31 beginning January 1, ~~2030~~, 2032, a person shall not distribute, sell,  
32 or offer for sale in this state a product that contains intentionally  
33 added PFAS.

34 (2) The department may establish by regulation an effective  
35 date for the prohibition of PFAS in a product or product category  
36 that is before January 1, ~~2030~~, 2032, if it is feasible to do so. The  
37 department shall consider public petitions that request an earlier  
38 effective date for a product category. Feasibility shall be deemed  
39 to exist if any of the following conditions is met:

40 (A) The department finds any of the following:

1 (i) There are safer alternatives to PFAS that are reasonably  
2 available.

3 (ii) The function provided by PFAS in the product is not  
4 necessary for the product to work.

5 (iii) The use of PFAS in the product is not critical for the health,  
6 the safety, or the functioning of society.

7 (B) If the findings of all or part of an applicable publicly  
8 available study or evaluation of alternatives shows the viability of  
9 safer alternatives to PFAS in the product or product category. The  
10 department shall only rely on a study or evaluation that is reliable  
11 information.

12 (C) If the product or product category is prohibited from being  
13 sold, used, or distributed, as of the date of the feasibility analysis,  
14 in another state or states within the United States, or in another  
15 country, because it contains PFAS.

16 (b) A prohibition described in subdivision (a) shall not apply  
17 to any of the following:

18 (1) A product or product category for which there is an  
19 applicable determination of currently unavoidable use identified  
20 on the department's internet website pursuant to subdivision (g)  
21 of Section 109030.2.

22 (2) A product or product category for which federal law governs  
23 the presence of PFAS in the product in a manner that preempts  
24 state authority.

25 (3) A *previously* used product.

26 109030.2. (a) Upon a petition from the manufacturer of a  
27 product or an association or group of manufacturers of a product  
28 or product category, the department shall review and determine  
29 whether the use of PFAS in the product category to which the  
30 product ~~belongs~~, *belongs* is a currently unavoidable use. In making  
31 that determination, the department shall use the broadest reasonable  
32 product category when selecting the product category to which  
33 the product belongs, and shall rely on analysis and findings from  
34 a prior determination for a product category, if a prior  
35 determination exists. The department may identify exclusions from  
36 a product category. Exclusions shall be construed as narrowly as  
37 possible. The department shall find that the use of PFAS in the  
38 product category or for an exclusion is a currently unavoidable  
39 use only if it finds all the following:

1 (1) There are no safer alternatives to PFAS that are reasonably  
2 available.

3 (2) The function provided by PFAS in the product is necessary  
4 for the product to work.

5 (3) The use of PFAS in the product is critical for health, safety,  
6 or the functioning of society.

7 (b) The manufacturer, association, or group, in its petition, shall  
8 provide all of the following:

9 (1) Evidence that demonstrates the criteria in paragraphs (1) to  
10 (3), inclusive, of subdivision (a) are met.

11 (2) Any additional information requested by the department to  
12 assist in making the determination.

13 (3) Any other information that the manufacturer believes is  
14 relevant, with an explanation of the relevance.

15 (4) The applicable application fee established pursuant to Section  
16 109030.4.

17 (c) When determining whether the use of PFAS in a product  
18 category is a currently unavoidable use, the department shall do  
19 all of the following:

20 (1) Consider the information provided pursuant to subdivision  
21 (b), including relevance and significance for the product category.

22 (2) Consider available reliable information.

23 (3) Consider bans on the sale or use of PFAS in the product or  
24 product category in another state, the United States, or other  
25 countries. If the product or product category is prohibited from  
26 being sold, used, or distributed in a relevant jurisdiction, as of the  
27 date of its unavoidable-use analysis, because it contains PFAS,  
28 then that prohibition demonstrates that the use of PFAS is not a  
29 currently unavoidable use.

30 (4) Provide an opportunity for public comment.

31 (d) When determining whether the use of PFAS in a product  
32 category is a currently unavoidable use, the department shall make  
33 a determination without evaluating all the criteria pursuant to  
34 subdivision (b) if the determination can be made based on fewer  
35 criteria.

36 (e) (1) Upon finding that the use of PFAS in a product category  
37 is a currently unavoidable use, the department shall issue a  
38 determination of currently unavoidable use.

39 (2) A determination of currently unavoidable use shall expire  
40 five years after its issuance.

(3) The department may review a determination of currently unavoidable use before its expiration and may revoke the determination if there is a significant change in the information supporting the determination.

(4) The department shall consider public petitions requesting a review of a determination of currently unavoidable use based on a significant change of information.

(f) A manufacturer, association, or group may submit a petition to renew a determination of currently unavoidable use no later than six months before its expiration. The petition for renewal shall comply with subdivision (b) and also provide evidence of significant efforts to develop a safer alternative to the continued use of PFAS in the product or product category, including, but not limited to, published peer-reviewed papers and funding of third-party research with no financial conflict of interest. In reviewing a petition to renew, the department shall comply with subdivisions (a), (c), (d), and (g).

(g) The department shall maintain on its internet website a list of each determination of currently unavoidable use, when each determination expires, and the products and uses that are exempt from the prohibition specified in subdivision (a) of Section 109030.1.

(h) A manufacturer, association, or group subject to the prohibition in paragraph (1) of subdivision (a) of Section 109030.1 shall not submit a petition for unavoidable use determination before January 1, 2030, or on or after ~~January 1, 2032~~ *July 1, 2031*.

109030.3. (a) A person who violates Section 109030.1 or fails to comply with the requirements of subdivision (b) shall be ~~liable for a civil~~ *assessed an administrative* penalty not to exceed one thousand dollars (\$1,000) for each day during which the violation ~~continues, and, in addition, the person may be enjoined from continuing the violation.~~ *continues*. For a second violation, the person shall be ~~liable to the people of the state for a civil~~ *assessed an administrative* penalty not to exceed two thousand five hundred dollars (\$2,500) for each day during which the violation continues. Any ~~civil~~ *administrative* penalties received pursuant to this subdivision shall be deposited into the PFAS Penalty Account, ~~that which~~ is hereby created in the PFAS Oversight Fund created pursuant to Section 109030.4. Moneys in the fund, upon



1 appropriation by the Legislature, shall be used for the  
2 administration and enforcement of this chapter.

3 (b) If the department has reason to believe that a product  
4 contains intentionally added PFAS and is being distributed, sold,  
5 or offered for sale in violation of Section 109030.1, the department  
6 shall direct the manufacturer of the product to, within 30 days, do  
7 either of the following:

8 (1) Provide the department with independent, third-party  
9 laboratory test results demonstrating that the product does not  
10 contain the intentionally added PFAS.

11 (2) Notify persons who sell that product in the state that the sale  
12 of that product is prohibited in this state and provide the department  
13 with a list of the names and addresses of those notified.

14 109030.4. (a) On or before January 1, 2027, the department  
15 shall adopt regulations to administer this chapter. The regulations  
16 shall establish and provide for the assessment of an application  
17 fee. Moneys received from the application fee shall be deposited  
18 into the PFAS Oversight Fund, that is hereby created in the State  
19 Treasury. Moneys in the account shall, upon appropriation by the  
20 Legislature, be used to cover the department's reasonable costs of  
21 administering this chapter.

22 (b) *The regulations shall include an administrative appeal*  
23 *process to review a penalty assessed pursuant to subdivision (a)*  
24 *of Section 109030.3, an action taken by the department pursuant*  
25 *to subdivision (b) of Section 109030.3, and a determination of*  
26 *unavoidable use pursuant to Section 109030.2.*