



AB-246 Product safety: menstrual products: perfluoroalkyl and polyfluoroalkyl substances. (2023-2024)

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CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 246

Introduced by Assembly Member Papan

(Coauthors: Assembly Members Aguiar-Curry, Bauer-Kahan, Calderon, Ortega, and Waldron)

(Coauthors: Senators Blakespear and Skinner)

January 17, 2023

An act to add Chapter 14.5 (commencing with Section 108985) to Part 3 of Division 104 of the Health and Safety Code, relating to product safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 246, Papan. Product safety: menstrual products: perfluoroalkyl and polyfluoroalkyl substances.

Existing law prohibits, beginning 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 perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined. Existing law similarly prohibits, beginning January 1, 2025, any person from manufacturing, distributing, selling, or offering for sale in the state any new, not previously owned, textile articles that contain regulated PFAS, except as specified, and requires a manufacturer to use the least toxic alternative when removing regulated PFAS in textile articles to comply with these provisions.

This bill would, beginning January 1, 2025, similarly prohibit any person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain regulated PFAS, and requires a manufacturer to use the least toxic alternative when removing regulated PFAS in menstrual products to comply with these provisions. The bill would require 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 these provisions and does not contain any regulated PFAS. The bill would make a violation of these provisions punishable by a civil penalty not to exceed \$10,000 per day for each violation, as specified, and would authorize the Attorney General, a city prosecutor, a city or county attorney, a county counsel, or a district attorney to bring an action to enforce these provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) Perfluoroalkyl and polyfluoroalkyl substances, or PFAS, are persistent, toxic, and bioaccumulative substances with multiple adverse effects on human health.
- (2) PFAS are utilized in a broad range of products for their water- and stain-resistant properties, including clothing and textiles, despite the growing body of evidence that these materials may leach into food, water supplies, and even the human body through prolonged exposure.
- (3) Adverse health impacts associated with PFAS include kidney and liver damage, decreased immune system function, interference with vaccine uptake, developmental and reproductive harm, increased risk of asthma, and increased incidences of testicular and kidney cancer for those with high exposure.
- (4) Multiple alternatives to PFAS have been identified for water resistance in menstrual products and textiles. For addressing stains, soap and water work well for most situations, and alternative materials and cleaning solutions offer additional options.

(b) Therefore, it is the intent of the Legislature, in enacting this act, to phase out the use of PFAS in menstrual products.

SEC. 2. Chapter 14.5 (commencing with Section 108985) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 14.5. Menstrual Products

108985. For purposes of this chapter, the following terms have the following definitions:

- (a) "Manufacturer" has the same meaning as that term is defined in Section 108952.
- (b) "Menstrual product" means 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.
- (c) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- (d) "Regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS" means either of the following:
 - (1) PFAS that a manufacturer has intentionally added to a product and that have 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.
 - (2) Commencing January 1, 2027, the presence of PFAS in a product or product component at or above 10 parts per million, as measured in total organic fluorine.

108986. (a) Commencing January 1, 2025, no person shall manufacture, distribute, sell, or offer for sale in the state any menstrual products that contain regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS.

(b) A manufacturer shall use the least toxic alternative, including alternative design, when removing regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS in menstrual products to comply with this chapter.

(c) A manufacturer of a menstrual product shall 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 chapter and does not contain any regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS. A certificate of compliance provided pursuant to this subdivision shall be signed by an authorized official of the manufacturer. The certificate of compliance may be provided electronically.

(d) 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 this chapter if they relied in good faith on the certificate of compliance provided by the manufacturer pursuant to subdivision (c).

(e) (1) A person or entity who violates this section is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per day for each violation. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:

- (A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this chapter and when these measures were taken.

(E) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(F) Whether there were contributing environmental factors about which a reasonable person knew or should have known.

(f) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the state, by a district attorney, by a city or county attorney, by a county counsel, or by a city prosecutor.

(g) Civil penalties collected pursuant to this section shall be paid to the office of the city or county attorney, city prosecutor, county counsel, district attorney, or Attorney General, whichever office brought the action.

(h) This section does not impair or impede any other rights, causes of action, claims, or defenses available under any other law. The remedies provided in this section are cumulative with any other remedies available under any other law.