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AB-1423 Product safety: PFAS: artificial turf or synthetic surfaces. (2023-2024)

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AMENDED IN SENATE SEPTEMBER 01, 2023

AMENDED IN SENATE JULY 03, 2023

AMENDED IN SENATE JUNE 14, 2023

AMENDED IN ASSEMBLY APRIL 13, 2023

AMENDED IN ASSEMBLY APRIL 10, 2023

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 1423

Introduced by Assembly Member Schiavo

February 17, 2023

An act to add Chapter 12.6 (commencing with Section 108948) to Part 3 of Division 104 of the Health and Safety Code, relating to product safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1423, as amended, Schiavo. Product safety: PFAS: artificial turf or synthetic surfaces.

Existing law, beginning January 1, 2025, prohibits the manufacture, sale, delivery, hold, or offer for sale in commerce of any cosmetic product that contains any intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined. Existing law similarly prohibits, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any new, not previously used, 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, commencing January 1, 2024, require a manufacturer or installer of a covered surface, defined as artificial turf or a synthetic surface that resembles grass, proposing to design or install a field with a covered surface for, or sell a field with a covered surface to, any party to notify the party at the earliest possible date if the covered surface contains regulated PFAS, as defined, of that fact. The bill~~ would also prohibit, *except as provided and* commencing January 1, ~~2024, 2026~~, a public entity, including a charter city, charter county, city, or county, any public or private school serving pupils in kindergarten or any of grades 1 to 12, inclusive, a public

institution of higher education, other than the University of California, or a private institution of higher education from purchasing or installing a covered surface containing regulated PFAS, as ~~provided~~: *defined*.

Commencing January 1, 2026, the bill would prohibit a person or entity from manufacturing, distributing, selling, or offering for sale in the state any covered surface that contains regulated PFAS. The bill would provide that a violation of this prohibition is punishable by a specified civil penalty, upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney. The bill would require a manufacturer of a covered surface to use the least toxic alternative when replacing regulated PFAS in a covered surface in accordance with these provisions.

The hazardous waste control laws require the Department of Toxic Substances Control to regulate the handling and management of hazardous materials and hazardous waste. Existing law, known as the Green Chemistry Program, requires the department to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered as being chemicals of concern. Existing law provides that the Green Chemistry Program does not authorize the department to supersede the regulatory authority of any other department or agency or duplicate or adopt conflicting regulations for product categories already regulated or subject to pending regulation, as provided. The department's Safer Consumer Products Program implements the Green Chemistry Program pursuant to regulations adopted by the department known as the Safer Consumer Products regulations.

This bill would provide that if the Department of Toxic Substances Control adopts regulations pursuant to these provisions, as provided, that conflict with the above-described prohibitions concerning regulated PFAS, enforcement mechanisms, or requirements to replace regulated PFAS with the least toxic alternative, then those regulations adopted by the department shall prevail.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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

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

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

- (a) Perfluoroalkyl and polyfluoroalkyl substances, a class of chemicals known as "PFAS," are highly toxic and highly persistent in the environment.
- (b) PFAS have been linked by scientific, peer-reviewed research to severe health problems, including kidney and liver damage, developmental harm, and immune system disruption.
- (c) PFAS is routinely used in the production and manufacturing of artificial turf and is emitted as part of the dust as the fields age and degrade due to use and exposure to the elements.
- (d) Children are uniquely at risk to exposure to PFAS playing on artificial turf or synthetic grass as their height leads them to more readily inhale, ingest, and come in dermal contact with dust emitted from the fields. Adults are also exposed to PFAS when playing on these fields.

SEC. 2. Chapter 12.6 (commencing with Section 108948) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 12.6. Artificial Fields

108948. For purposes of this chapter, the following definitions apply:

- (a) "Covered surface" means artificial turf or a synthetic surface that resembles grass.
- (b) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- (c) "Regulated PFAS" includes either of the following:
 - (1) PFAS that a manufacturer has intentionally added to a product and that has a functional or technical effect in the product.

(2) The presence of PFAS in a product or product component at or above 20 parts per million, as measured in total organic fluorine. Presence shall be based upon testing after the manufacturing process but before installation.

~~108948.1.(a) Commencing January 1, 2024, a manufacturer or installer of a covered surface proposing to design or install a field with a covered surface for, or sell a field with a covered surface to, any party shall notify the party at the earliest possible date that the covered surface contains regulated PFAS if the covered surface contains regulated PFAS.~~

~~(b)~~

108948.1. (a) (1) Commencing January 1, ~~2024~~, 2026, a covered surface containing regulated PFAS shall not be purchased or installed by any of the following entities:

(A) A public entity, including a charter city, charter county, city, or county.

(B) A public or private school serving pupils in kindergarten or any of grades 1 to 12, inclusive.

(C) A public or private institution of higher education, except as provided in paragraph (2).

(2) Commencing January 1, ~~2024~~, 2026, the University of California is requested to comply with the prohibition described in paragraph (1).

~~(3)~~

~~(b) Paragraph (1) of subdivision (a) shall not apply to those entities listed in subparagraphs (A) to (C), inclusive, of paragraph (1) of subdivision (a) who have concluded have, on or before December 31, 2025, approved the concept design and permitting of a covered surface, of, contracted for the installation of a covered surface, of, or purchased a covered surface on or before December 31, 2023: that contains regulated PFAS.~~

108948.2. (a) Commencing January 1, 2026, no person or entity shall manufacture, distribute, sell, or offer for sale in the state any covered surface that contains regulated PFAS.

(b) (1) Upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney, a person or entity that violates subdivision (a) 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.

(2) (A) If the Department of Toxic Substances Control adopts regulations, pursuant to the Green Chemistry Program (Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20) or any other authority, that conflict with the authority in paragraph (1), the Attorney General, a city attorney, a county counsel, or a district attorney shall no longer be authorized to bring any action pursuant to paragraph (1).

(B) The Attorney General, a city attorney, a county counsel, or a district attorney may resolve any action brought prior to the adoption of the regulations described in subparagraph (A).

(c) Except as provided in paragraph (2) of subdivision (b), this section does not impair or impede any other rights, causes of action, claims, or defenses available under any other law and the remedies provided in this section are cumulative with any other remedies available under any other law.

108948.3. (a) A manufacturer of a covered surface shall use the least toxic alternative when replacing regulated PFAS in a covered surface in accordance with this chapter.

(b) Notwithstanding subdivision (a), if a manufacturer of a covered surface or other responsible entity completes an alternatives analysis for the use of regulated PFAS in a covered surface, pursuant to the authority granted in the Green Chemistry Program (Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20) and related regulations, or any other state law, the conclusions in that alternatives analysis that comply with the Green Chemistry Program (Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20) and related regulations, or any other state law, as applicable, shall govern the choice of alternatives used by the manufacturer in place of PFAS in a covered surface.

108948.4. (a) If the Department of Toxic Substances Control adopts a regulatory response described in the Safer Consumer Products Program (Chapter 55 (commencing with Section 69501) of Division 4.5 of Title 22 of the California Code of Regulations) governing activity prohibited by Section 108948.1 or 108948.2, the prohibitions

of Section 108948.1 or 108948.2 shall not apply upon the date that the department posts a notice on its internet website that it has adopted the regulatory response.

(b) Notwithstanding subdivisions (b) and (c) of Section 25257.1, this chapter shall not be construed to prohibit or restrict the authority of the Department of Toxic Substances Control to prioritize or take action on any products containing PFAS in order to limit exposure to or reduce the level of hazard posed by PFAS.

SEC. 3. The Legislature finds and declares that the potential public health harm due to the presence of PFAS in any public park or public space in California is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 2 of this act adding Section 108948.1 of the Health and Safety Code applies to all cities, including charter cities.