SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2021 - 2022 Regular

Bill No:	AB 2247		
Author:	Bloom		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	Jacob O'Connor		

SUBJECT: Perfluoroalkyl and polyfluoroalkyl substances (PFAS) and PFAS products and product components: publicly accessible reporting platform

DIGEST: Requires, on or before July 1, 2025, a manufacturer of per- and polyfluoroalkyl substances (PFAS) or a product or product component containing intentionally added PFAS that is sold, offered for sale, or distributed into the state to register the PFAS or the product or product component containing intentionally added PFAS on the publicly accessible reporting platform created by the Department of Toxic Substances Control (DTSC) and the Interstate Chemicals Clearinghouse (ICC).

ANALYSIS:

Existing law:

1) Requires, under the Safer Consumer Products statutes 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. (Health and Safety Code (HSC) § 25252)

2) Establishes the Safer Consumer Products (SCP) Program and 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. (HSC § 25252 et seq.)

3) Authorizes DTSC to request information from product or chemical manufacturers, importers, assemblers, or retailers that it determines necessary to implement the SCP Program's framework regulations, via an informational call-in. (California Code of Regulations, title 22, section 69501.4(b))

4) Under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), 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 per- and polyfluoroalkyl substances (PFAS) class, as chemicals known to the state to cause developmental toxicity. (HSC § 25249.8)

5) Requires, commencing January 1, 2022, a person that sells firefighter personal protective equipment to provide a written notice to the purchaser if the firefighter personal protective equipment contains intentionally added PFAS chemicals. (HSC § 13029)

6) Prohibits, commencing January 1, 2022, a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use, and a person from using, class B firefighting foam containing intentionally added PFAS chemicals. (HSC § 13061)

7) Prohibits, on and after July 1, 2023, a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state any new, not previously owned, juvenile product that contains regulated PFAS chemicals. (HSC § 108946)

8) Prohibits, commencing on January 1, 2023, a person from distributing, selling, or offering for sale in the state any food packaging that contains regulated PFAS. (HSC § 109000)

9) Authorizes the State Water Resources Control Board (State Water Board) to order a public water system to monitor for PFAS, requires community water systems to report detections, and where a detected level of these substances exceeds the response level, to take a water source out of use or provide a prescribed public notification. (HSC §116378)

This bill:

1) Defines, for the purposes of this legislation:

    a) "Perfluoroalkyl and polyfluoroalkyl substances" od "PFAS" as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom;
    b) "Intentionally added PFAS" as PFAS that a manufacturer has intentionally added to a product, or its components or ingredients that have a functional or technical effect in the product. This includes 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; and

c) "Manufacturer" as:
   i) A person or entity who manufactures PFAS or imports PFAS into the state;
   ii) A person or entity who manufactures or imports a product or product component containing intentionally added PFAS, or whose name appears on the product label;
   iii) A person or entity for whom the PFAS or PFAS-containing product is manufactured or imported, as identified pursuant to the federal Fair Packaging and Labeling Act; and
   iv) Is not a state agency

2) Requires DTSC to work with the Interstate Chemicals Clearinghouse (ICC) to establish by January 1, 2025, a publicly accessible reporting platform to collect information about PFAS and products or product components containing intentionally added PFAS being sold, offered for sale, distributed, offered for promotional purposes, or imported into the state.

3) Requires a manufacturer of PFAS of a product or product component containing intentionally added PFAS to register the product in the registry along with:

   a) The name and type of product or component;
   b) The universal product code of the product or component;
   c) How the PFAS, product, or component, are intended to be used by businesses or consumers;
   d) The specific names of all PFAS compounds in the product or components and the Chemical Abstracts Service Registry Number or total amount of PFAS measured in total organic fluorine per analyte;
   e) The amount or numbers of the product or component sold, delivered, or imported into the state; and
   f) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer.

Background

1) *Perfluoroalkyl and polyfluoroalkyl substances (PFAS).* PFAS are a class of man-made chemical compounds that contain multiple fluorine atoms bonded to a single carbon atom. These carbon-fluorine bonds are extremely stable and chemically unreactive, which makes PFAS very useful in creating long-lasting

and resistant products. As such PFAS have been produced and used in consumer products since the 1940s, often as surface coatings to repel water, dirt, oil, and grease. They have been used in food packaging, stain- and water-repellent fabrics, nonstick products such as Teflon, and in fire-fighting foams.

Unfortunately, PFAS' stability also means that these compounds are resistant to being metabolized by organisms or otherwise degraded and so have slowly built up in the environment. Their chemical properties also make many PFAS highly mobile – able to travel long distances, move through soil, seep into groundwater, or be carried through the air far from their point of production or use. These factors combined with their widespread use have made PFAS so ubiquitous that almost every person on Earth has been exposed to PFAS and scientists have found these toxins in the blood of nearly all people tested.

2) *PFAS, don't you know that you're toxic?* Several PFAS have been shown to bioaccumulate significantly in animals or plants and emerging evidence points to their phytotoxicity, aquatic toxicity, and terrestrial ecotoxicity. The Agency for Toxic Substances and Disease Registry (ATSDR) and the US EPA developed the toxicologic profile of 14 PFAS chemicals. Based on a number of factors, including the consistency of findings across studies, the available epidemiology studies suggest associations between perfluoroalkyl exposure and several adverse health effects, including liver damage, increased risk of thyroid disease, decreased antibody response to vaccines, increased risk of asthma, risk of decreased fertility, and small decreases in birth weight.

3) *PFAS are a diverse class of chemical compounds*. Because PFAS have been so industrially useful, many different types of PFAS have been created. As of September 2020, more than 9,000 PFAS chemicals were included in the United States Environmental Protection Agency's (U.S. EPA's) Master List of PFAS Substances. Each one has variations in their chemical properties, but all share a resistance to chemical reactivity and to environmental and biological degradation. Perfluorooctanesulfonic acid (PFOS), used to create Teflon, and perfluorooctanoic acid (PFOA), previously used in Scotchgarde, have been the most extensively studied.

Because of extensive research demonstrating the health risks of these PFAS have been phased out of production and replaced with new PFAS touted as safer alternatives based on the idea that they linger for a shorter time in human bodies. Unfortunately, further research has shown that many of these alternatives are associated with similar adverse health effects as the original PFAS and can travel even more easily in the environment.

4) *To meaningfully regulate PFAS they must be treated as a chemical class*. Performing a complete assessment of the health impacts of all 9,000 PFAS is impractical. As such, the Department of Toxic Substances Control (DTSC) has adopted a rationale for regulating PFAS chemicals as a class, concluding, "it is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach." This rationale was presented in the February, 2021, Environmental Health Perspectives article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program." The authors of the article state, "The widespread use, large number, and diverse chemical structures of PFAS pose challenges to any sufficiently protective regulation, emissions reduction, and remediation at contaminated sites. Regulating only a subset of PFAS has led to their replacement with other members of the class with similar hazards, that is, regrettable substitutions… Regulating PFAS as a class is thus logical, necessary, and forward-thinking."

5) *The Interstate Chemicals Clearinghouse (ICC).* The ICC is an association of state, local, and tribal governments that promotes a clean environment, healthy communities, and a vital economy through the development and use of safer chemicals and products. The goals of the ICC are to: avoid duplication and enhance efficiency and effectiveness of agency initiatives on chemicals through collaboration and coordination; build governmental capacity to identify and promote safer chemicals and products; and, ensure that agencies, businesses, and the public have ready access to high quality and authoritative chemicals data, information, and assessment methods.

   One of the functions of the ICC is sharing data and information on use, hazard, exposure, and alternatives to chemicals. They maintain a High Priority Chemicals Data System (HPCDS); an online platform that supports reporting of information on the presence of chemicals of concern in children's products required by the Oregon and Washington. They also maintain a searchable online list of candidate chemicals that DTSC uses to identify priority products for regulation in California.

Comments

1) *Purpose of Bill.* According to the author, "PFAS are harmful to the health and wellbeing of all Californians. It's unconscionable that PFAS are polluting our drinking water systems and impacting some of our most vulnerable communities. AB 2247 will help us accurately identify how much PFAS is coming into the State of California and will enable us to explore how best to mitigate its harmful impacts. Without this information, we cannot take

meaningful steps toward protecting the health of Californians and our environment in the long-term."

2) *Who would use the information being disclosed in the bill?* An important question is who would use the database being created by the bill that contains information about manufacturers of products with PFAS in California and which products sold in California contain PFAS. The first group of interested parties is likely to comprise local, state, and federal regulators, as seen in the coalition of local sanitation and water agencies in support of the bill. Businesses could also be interested, as it is possible that some manufacturers either receive parts of their product from a supplier or use a lubricating or other cleaning product that may contain PFAS they are unaware of. The information could help businesses make informed decisions when selecting which products to sell or suppliers to use.

   Opponents of this bill argue it is duplicative with existing US EPA rulemaking to require those who manufacture any identified PFAS to report information regarding PFAS uses, disposal, exposures, hazards, and production volumes. However, the "identified PFAS" only comprise 1,364 compounds of the thousands of potential compounds and exclude pesticides and cosmetics. The EPA's current regulations also primarily target the largest industrial producers of PFAS and require more information than this bill does, information like worker exposure, industrial processing and use, or total volume of released products. AB 2247 seems consistent with the recent US EPA action and if the proposed rule becomes final, it could make it easier for companies to report the information required under AB 2247 since they will have had to provide that information to the US EPA. Additionally, the database envisioned under AB 2247 could also assist US EPA in verifying compliance with their rule, if finalized.

   Opponents also point out that DTSC currently has the authority to request information from a specific manufacturer, but it is important to note that there are no requirements on businesses to actually provide this information to DTSC. In fact, some of DTSC's research related to chemicals in products is through the use of internet search tools. There is current legislation, SB 502 (Allen) that has passed the Senate and has been referred to the Assembly Environmental Safety and Toxic Materials Committee and would enable DTSC to require manufacturers to provide specific information including: information on ingredient chemical identity, concentration, and functional use and data on state product sales. While the opposition to AB 2247 suggests that the authority in SB 502 is preferable to this bill; none of the groups opposed to this bill are supporting SB 502. Furthermore, requesting information takes time and

resources from the agency as well as the knowledge that a company uses chemicals, they are interested in asking about. By requiring companies to provide this information in a database it allows DTSC to focus its data gathering efforts on priority areas.

3) *Will it be possible for all businesses to comply?* Opponents to the bill have raised concerns that as California cannot control out-of-state suppliers of components, they may not be able to obtain this information from members of their supply chain. A provider of a component could refuse, possibly on the basis of trade secrets, and the Californian manufacturer or importer will be in violation with little recourse to access the information. In this case the bill provides an option to instead provide the amount of organic fluorine in the product, which can serve as a very rough auxiliary for the potential for the compound to persist due to the high stability of fluorine-carbon bonds, without revealing proprietary information. However testing a component to determine the total organic fluorine levels can cost thousands of dollars, which may be prohibitively expensive for many smaller businesses. Small businesses also will likely face challenges in dealing with the regulatory burden of tracing the full complicated supply chain for any multi-component products, especially as they will likely have less leverage in contract negotiations to obtain required information from their suppliers. *The author may wish to consider amending the bill to exempt small businesses if they demonstrate a good-faith effort to obtain reporting information from their suppliers but are unable to do so.*

4) *How will this bill be enforced?* Right now there is no set penalty for this provision, leaving it up to DTSC's discretion whether to pursue penalties and at what level. DTSC is required to into consideration such factors as the ability for violate to pay penalty, the prophylactic effect the impositions of a penalty will have on a regulated community, and the gravity of the violation. Given the limited bandwidth for the agency to monitor such a broad swathe of companies and chemicals it seems likely that identifying and prioritizing violators will, at least in part, be enforced by participants in the market who comply with the provisions attempting to ensure that their competitors similarly comply.

5) *Why monitor 'safe' products?* Several groups in opposition to this bill are seeking exemptions under the arguments that their products are already well-regulated or are unlikely to result in direct exposure to humans due to being installed in inaccessible components. However the focus of the reporting in this bill is not to address the potential for direct exposure, it is to understand and trace the source of PFAs that accumulate in the environment. While PFAS in certain products may pose little to no health risk while in use, eventually those products will make their way to landfills or other disposal sites. They will

break down over time and the highly mobile PFAS will make their ways into the broader environment. Being able to track where the PFAS comes from is essential to developing policies to address their spread, such as collection and disposal programs for particularly problematic sources.

Related/Prior Legislation

SB 502 (Allen) clarifies and strengthens enforcement of DTSC's ability to request data on a priority product, among other provisions. This bill has been referred to the Assembly Environmental Safety and Toxic Materials Committee.

AB 1817 (Ting) would prohibit, beginning January 1, 2025 any person from manufacturing, distributing, selling, or offering for sale any textile articles that contain intentionally added per- and polyfluoroalkyl substances, except for textiles used for personal protective equipment or certain other regulated products. This the bill was referred to the Senate Environmental Quality Committee.

AB 2271 (Friedman) would prohibit the manufacturing, selling, delivering or offering in commerce of any cosmetic product that contains intentionally added PFAS. This bill is set to be heard by the Senate Environmental Quality Committee on June 22, 2022.

AB 1200 (Ting, Chapter 503, Statutes of 2021) prohibits, commencing January 1, 2023, the sale of food packaging that contains PFAS; requires, commencing January 1, 2024, cookware manufacturers to label their product if it contains an intentionally added chemical on specified lists; and prohibits, commencing January 1, 2023, for the internet and January 1, 2024, for the cookware package, a cookware manufacturer from making a claim that cookware is free of a chemical, unless no chemical from that chemical class is intentionally added to the cookware.

AB 652 (Freidman, 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 PFAS.

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

SB 1056 (Portantino, 2020) would have required the State Water Board to establish an analytical laboratory method that can be used as a tool to assess the extent of

PFAS contamination in drinking water, surface water, groundwater, and wastewater. This bill was held in the Senate Environmental Quality Committee.

AB 756 (C. Garcia, Chapter 162, Statutes of 2019) authorizes the State Water Board to order one or more public water systems to monitor for PFAS and requires municipalities to notify consumers for PFAS detected above notification levels.

SOURCE: California Association of Sanitation Agencies, Clean Water Action, Environmental Working Group

SUPPORT:

Association of California Water Agencies (ACWA)
Bay Area Biosolids Coalition
California Association of Sanitation Agencies
California Municipal Utilities Association (CMUA)
California Special Districts Association
Camarillo Sanitary District
Central Contra Costa Sanitary District
City of Camarillo
City of Roseville
City of Sacramento Department of Utilities
Clean Water Action (CO-SPONSOR)
Consumer Federation of California
East Bay Municipal Utility District
Eastern Municipal Water District
Elsinore Valley Municipal Water District
Encina Wastewater Authority
Environmental Working Group
League of California Cities
Leucadia Wastewater District
Los Angeles County Sanitation Districts
Metropolitan Water District of Southern California
Mt. View Sanitary District
Novato Sanitary District
Olivenhain Municipal Water District
Orange County Sanitation District
Oro Loma Sanitary District
Republic Services - Western Region
Santa Clara Valley Water District
Sedron Technologies, LLC
Truckee Sanitary District
Union Sanitary District

Upper San Gabriel Valley Municipal Water District
Valley Sanitary District
West County Wastewater District

OPPOSITION:

Advanced Medical Technology Association (ADVAMED)
Air-conditioning Heating and Refrigeration Institute
Alliance for Automotive Innovation
American Apparel & Footwear Association
American Chemistry Council
American Coatings Association
American Forest & Paper Association
Animal Health Institute
Association of Home Appliance Manufacturers
Biocom California
California Chamber of Commerce
California Manufacturers & Technology Association
Chemical Industry Council of California
Consumer Technology Association
Fluid Sealing Association
Household and Commercial Products Association
Industrial Environmental Association
Juvenile Products Manufacturers Association
National Association of Chemical Distributors
National Council of Textile Organizations (NCTO)
National Electrical Manufacturers Association (NEMA)
Pine Chemicals Association International
Plastics Industry Association
Prba - the Rechargeable Battery Association
Rockwell Automation
Semi
The Toy Association
Truck and Engine Manufacturers Association

ARGUMENTS IN SUPPORT: According to the co-sponsors of the bill, "PFAS are among the most persistent toxic compounds in existence, contaminating everything from drinking water to food and, because of their grease and water proof qualities are used widely in consumer products, such as food packaging, personal care products, and textiles, as well as industrial products and processes. They are found in the blood of virtually everyone on earth, including newborn babies. Very low doses of PFAS chemicals in drinking water have been linked to suppression of the immune system, interference with vaccines, and are associated

with an elevated risk of cancer, increased cholesterol, and reproductive and developmental harms, among other serious health concerns.

"While we know that some products contain PFAS, we don't know how PFAS is being used throughout the marketplace or in industrial processes. Such knowledge is key to ensuring that our state and local regulators can manage PFAS pollution, implement meaningful source control, and ensure that the public isn't unnecessarily exposed to the chemicals…

"Therefore, it is critical for the state and the public to understand how PFAS chemicals are used and how much of the chemicals are imported into California. AB 2247 will ensure that manufacturers have to report their PFAS use to the state, and the bill will create a modest, but straightforward, method for the state to manage this information. This is a key first step to understanding and ultimately managing PFAS contamination in California.

ARGUMENTS IN OPPOSITION: According to the coalition of industry groups opposed to this bill, "Collectively, we support the responsible production, use and management of fluorinated substances, including regulatory requirements that are protective of human health and the environment, taking into consideration the diversity of physical and chemical properties and the environmental and health profiles of these substances.

"With respect to AB 2247, we have several concerns including:

- An overly broad definition of PFAS that does not consider differing health/safety profiles, uses or potential for exposure.
- Overlap and redundancy with new PFAS reporting requirements underway at the U.S. Environmental Protection Agency (USEPA).
- Ability for the Dept. of Toxic Substances Control (DTSC) to address these types of issues under existing authority and the potential for expanded authority under legislation currently moving in the Legislature.
- Lack of clarity on how this information will presented to the public to ensure information is presented in an unbiased, scientifically sound manner that does not cause unnecessary concern.
- Lack of any confidential business information/trade secret protections.
- Impractical implementation timelines.

"For these reasons, we must respectfully oppose AB 2247. We look forward to continuing to engage on this important issue."

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