

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2515 (Papan)  
Version: June 24, 2024  
Hearing Date: July 2, 2024  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Menstrual products: perfluoroalkyl and polyfluoroalkyl substances (PFAS)

**DIGEST**

This bill prohibits, beginning 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). The bill also prohibits, beginning January 1, 2027, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contains, whether intentionally or unintentionally, concentrations of PFAS at or above 10 parts per million (ppm) as measured in total organic fluorine. The bill makes a violation of these provisions punishable by a civil penalty not to exceed \$125,000 for a first violation, and \$250,000 per day for a second and any other subsequent violation.

**EXECUTIVE SUMMARY**

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. They are often referred to as “forever chemicals” due to the long time they take to break down. These chemicals are pervasive and have been found almost everywhere – indoor and outdoor environments, plants, food, soil, drinking water, wildlife, domestic animals, and in humans. Studies have shown that exposure to PFAS may be linked to hazardous health effects and that PFAS can be transferred through ingestion or touch. California has enacted several laws banning PFAS in various products, such as textiles and children’s products. This bill seeks to ban PFAS in menstrual products given the elevated exposure pathway of the products. This bill is substantially similar to AB 246 (Papan, 2023), which passed this Committee on a vote of 10 to 0, but was ultimately vetoed by Governor Newsom (*see* veto message below).

The bill is author sponsored and supported by numerous organizations, including local governments, water districts, and organizations that advocate for reproductive health

and environmental protections. The bill is opposed unless amended by several associations representing manufacturers of menstrual products. The bill passed the Senate Environmental Quality Committee on a vote of 5 to 0.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires, pursuant to the Menstrual Products Right to Know Act of 2020, that 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 is to be posted on the internet. (Health & Saf. Code § 111822 et. seq.)
- 2) Prohibits, beginning 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. (Health & Saf. Code § 13061(b)(1).)
- 3) Prohibits, beginning on 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 intentionally added PFAS, or PFAS at or above 100 PPM, and on or after January 1, 2027, 50 PPM, as measured in total organic fluorine. (Health & Saf. Code § 108971.)
- 4) Prohibits, commencing on January 1, 2023, a person from distributing, selling, or offering for sale in the state any food packaging that contains intentionally added PFAS or PFAS at or above 100 ppm, as measured in total organic fluorine. (Health & Saf. Code §109000.)
- 5) 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. (Health & Saf. Code § 116378.)
- 6) Requires 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 & Saf. Code §25252.)
- 7) 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. (Health & Saf. Code §25253(a).)

- 8) Specifies, but does not limit, regulatory responses that DTSC can take following the completion of an alternatives analysis, ranging from no action, to a prohibition of the chemical in the product. (Health & Saf. Code § 25253.)

This bill:

- 1) Prohibits, beginning January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual product that contains regulated PFAS, as defined.
- 2) Prohibits, beginning January 1, 2027, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual product that contains, whether intentionally or unintentionally, concentrations of PFAS at or above 10 parts per million (ppm).
- 3) Authorizes DTSC to issue a notice of violation after all of the following occur:
  - a) DTSC has tested a sufficient sample size, as determined by the department, of the menstrual product alleged to be in violation of this article and found the presence of regulated PFAS.
  - b) The department has provided the manufacturer, via certified mail, written notice that does all of the following: (i) describes of the alleged violation, including the data suggesting the presence of regulated PFAS; and (ii) requires corrective action by the manufacturer to bring the subject menstrual product into compliance, if applicable.
  - c) The department determines a violation of this article has occurred and the manufacturer has failed to respond to the notice provided pursuant to subdivision (a) and, if mandated by the department, has failed to take corrective or mitigating actions to bring the subject menstrual product into compliance.
- 4) Provides that an initial violation is deemed to have occurred upon the issuance of an initial notice of violation, as described above, if DTSC finds that a person has manufactured, distributed, sold, or offered for sale a menstrual product in a single product line of the same brand, product type, size, and absorbency.
  - a) A subsequent violation is deemed to have occurred upon the continued manufacture, distribution, sale, or offer for sale, as applicable, of the menstrual product in violation of these provisions.
- 5) Requires a manufacturer, upon the issuance of a notice of violation by DTSC, to publish the notice on its website and social media accounts, as specified.

- 6) Authorizes the department to adopt regulations or guidance as necessary for the purpose of implementing, administering, and enforcing these provisions.
  - a) Requires DTSC to issue guidance as it relates to testing for the presence of regulated PFAS in menstrual products.
  
- 7) Provides that a person or entity that violates any of these provisions is liable for a civil penalty not to exceed \$125,000. A second and subsequent violation is punishable by a civil penalty not to exceed \$125,000 per day for each subsequent violation.
  - a) An action may be brought by the Attorney General at the request of the Department of Toxic Substances Control (DTSC), a city attorney, a county counsel, or a city prosecutor in a city or city and county having a full-time city prosecutor.
  - b) Requires a prevailing plaintiff bringing an action to be awarded attorney's fees and costs by the court.
  - c) Specifies that penalties collected above are to be deposited in the T.A.M.P.O.N. Act Fund, which is hereby created in the State Treasury.
  
- 8) Authorizes the court to grant injunctive relief in any action brought pursuant to these provisions.
  
- 9) Defines various terms for these purposes.
  - a) "Department" means the Department of Toxic Substances Control.
  - 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 "regulated PFAS" means either of the following:
    - i. 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; or
    - ii. 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.

## COMMENTS

### 1. Stated need for the bill

The author writes:

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 are found in tap water.

AB 2515 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. This bill is substantially similar to AB 246 (Papan, 2023)

This bill is substantially similar to AB 246 (Papan, 2023). The main differences are that this bill: (1) provides for oversight of these provisions by DTSC and authorizes DTSC to issue a notice of violation; (2) modifies the civil penalty amounts; (3) specifies when an initial violation is deemed to have occurred; (4) authorizes a court to grant injunctive relief; (5) does not contain language regarding a retailer not being liable if they have a certificate of compliance from the manufacturer and relied upon it in good faith; and (6) authorizes a prevailing plaintiff to be awarded attorney's fees and costs by the court.

AB 246 was vetoed by Governor Newsom, along with two other single-product chemical ban bills:

This is one of three single-product chemical bans passed by the Legislature this year that attempt to address serious concerns with the presence of PFAS in consumer products. These bills do not identify or require any regulatory agency to determine compliance with, or enforce, the proposed statute.

While I strongly support the author's intent and have signed similar legislation in the past, I am concerned that this bill falls short of providing enhanced protection to

California consumers due to lack of regulatory oversight. Previously enacted single-product chemical bans, which also lack oversight, are proving challenging to implement, with inconsistent interpretations and confusion among manufacturers about how to comply with the restrictions.

In order to instill consumer confidence and effectively address public health and environmental concerns, I am directing the Department of Toxic Substances Control to engage with the author and the Legislature and consider alternative approaches to regulating the use of these harmful chemicals in consumer products.

### 3. Bill bans PFAS in menstrual products

This bill was first heard by the Senate Environmental Quality Committee, which has primary jurisdiction over a majority of the provisions in this bill, including, but not limited to, the effects of PFAS on the environment and human health, the level of PFAS that is acceptable in menstrual products, how PFAS should be measured under the bill's provisions, and the existing and future testing capabilities for PFAS. As such this analysis will focus on the provisions of this bill in the primary jurisdiction of this Committee, mainly the enforcement mechanism of the bill through the imposition of civil penalties. For a detailed analysis of PFAS and the environmental effects see the Senate Environmental Quality Committee analysis of this bill.<sup>1</sup>

This bill intends to address the issue of PFAS in menstrual products in two ways. First, it prohibits a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain intentionally added PFAS beginning January 1, 2025. Second, the bill prohibits, beginning January 1, 2027, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain concentrations of PFAS at or above 10 parts per million (ppm), regardless if intentionally or unintentionally added.

#### *a. PFAS in menstrual products*

The Senate Environmental Quality Committee explains that “[e]xposure to PFAS through menstrual products is particularly concerning because the vagina is an extremely vascular area and dermal exposure in the vaginal area is often higher than other places of the body” and “people using menstrual products are of reproductive age, thus exposure could potentially impact unborn children, as well as the person using the product.”<sup>2</sup> That Committee states that according to DTSC, “all PFAS display at least one of the hazard traits identified in California's Safer Consumer Products

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<sup>1</sup> Sen. Environmental Quality Comm. analysis of AB 2515 (2023-24 reg. sess.) as amended June 17, 2024.

<sup>2</sup> *Id.* at 5.

(Green Chemistry) Hazard Traits Regulations.<sup>3</sup> The Committee analysis further noted that:

According to the 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 women; 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.<sup>4</sup>

In regards the evidence provided about the existence of PFAS in menstrual products, the Senate Environmental Quality Committee stated:

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 2023.<sup>5</sup>

- a. *California has a long history of regulating PFAS in consumer products and is not alone in regulating these "forever chemicals"*

The Legislature has enacted numerous bills addressing the issue of PFAS at different levels across various products – see the Prior Legislation section, below. AB 1817 (Ting, Ch. 762, Stat. 2022) has a threshold of 50 PPM for unintentionally added PFAS in textiles. This bill would be the first in this state, and possibly the country to bans on unintentionally added PFAS in a product at the level of 10 PPM. California is not the only state concerned with PFAS, as 195 new bills have been over the past two years introduced in dozens of state legislatures across the country seeking to ban PFAS in an

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

expanding list of products.<sup>6</sup> Last year, the European Union (EU), proposed an across-the-board ban on the use of PFAS that, if adopted, would likely become effective in 2027 – the same year that the ban on the unintentional level of PFAS at 10 ppm would go into effect under this bill. However, the proposal is in preliminary stages and received more than 5,600 comments from over 4,400 organizations, companies, and individuals during the public comment period.<sup>7</sup> These comments are being reviewed by European Chemical Agency’s (ECHA)’s committees for Risk Assessment and Socio-Economic Analysis, with an opinion on the comments and proposal expected to be published sometime this year.<sup>8</sup> A final decision will then be shared by the European Commission in 2025. If the proposal of an across-the-board PFAS ban is accepted by the EU, there will be an 18-month transition period; however, five and 12-year derogations could be granted for specific products or industries where there is significant evidence to prove viable alternatives do not exist.<sup>9</sup>

#### 4. Enforcement mechanism under the bill

This bill provides for enforcement through civil liability. A violation of these provisions makes a person liable for a civil penalty not to exceed \$125,000 for a first violation, and not to exceed \$250,000 for each subsequent violation. The bill provides that an initial violation is deemed to have occurred upon the issuance of an initial notice of violation, by DTSC and where DTSC finds that a menstrual product contains regulated PFAS using a sufficient sample size, as determined by DTSC, of a single product line of the same brand, product type, size, and absorbency, as applicable. A subsequent violation is deemed to have occurred upon the continued manufacture, distribution, sale, or offer for sale, as applicable, of the menstrual product in violation of these provisions after an initial violation has occurred. The bill authorizes an action to be brought by the Attorney General at the request of DTSC, a city attorney, a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

The bill also provides that DTSC may issue a notice of violation after all of the following occur:

- DTSC has tested a sufficient sample size, as determined by the department, of the menstrual product alleged to be in violation of this article and found the presence of regulated PFAS.

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<sup>6</sup> Kimberly Kindy, *States take matters into their own hands to ban ‘forever chemicals’*, Washington Post (Jun 5, 2023), available at <https://www.washingtonpost.com/politics/2023/06/05/forever-chemicals-state-bans-pfas/>.

<sup>7</sup> ECHA receives more than 5 600 comments on PFAS restriction proposal, ECHA/NR/23/24, available at <https://echa.europa.eu/-/echa-receives-5-600-comments-on-pfas-restriction-proposal>.

<sup>8</sup> Miranda McLaren, *Europe’s proposed PFAS ban: The next big thing in medical device design and supply*, Medical Device Network, (Mar. 5, 2024), available at <https://www.medicaldevice-network.com/sponsored/europes-proposed-pfas-ban-the-next-big-thing-in-medical-device-design-and-supply/>.

<sup>9</sup> *Ibid.*

- DTSC has provided the manufacturer, via certified mail, written notice that does all of the following: (i) describes of the alleged violation, including the data suggesting the presence of regulated PEAS; and (ii) requires corrective action by the manufacturer to bring the subject menstrual product into compliance, if applicable.
- DTSC provides the manufacturer with a 45-day period to respond in writing to provide information regarding the alleged violation, including, but not limited to, whether an exception applies and any mitigating or corrective action that the manufacturer has taken.
- DTSC determines a violation of this article has occurred and the manufacturer has failed to respond to the notice provided and, if mandated by DTSC, has failed to take corrective or mitigating actions to bring the subject menstrual product into compliance.

Under the bill, a manufacturer, upon the issuance of a notice of violation by DTSC, is required to publish the notice on its website and social media accounts, including the product testing level, the brand, the product type, and any relevant lot or stock-keeping unit numbers. The 45-day period to respond in writing to DTSC under this bill states that the manufacturer can provide information regarding mitigating and corrective action and whether any *exceptions* apply. It is unclear what the purpose of this provision is, as the bill does not include any exceptions to the 10 PPM limit for PFAS. The opposition has asked that an exception to the 10 PPM limit be included in the bill for technically unavoidable trace quantities of PFAS that occur from impurities of natural or synthetic ingredients, the manufacturing process, storage, or mitigation from packaging. Some notice of violation provisions provide an opportunity for the violating entity to come into compliance before liability is incurred. (*see* Pub. Res. Code §§ 2774.1, 44104 & 45010.) It is unclear from the face of the bill if it is the intent of the author to provide an opportunity for the manufacturer to avoid liability by complying with corrective or mitigating actions as required by DTSC. The author may wish to clarify this as the bill moves through the Legislative process.

##### 5. Notice provision implicates the First Amendment

The notice prescribed by this bill implicates the First Amendment because whenever government requires a business to make disclosures, it raises *potential* First Amendment concerns as a form of “compelled speech.” The First Amendment prevents the government from compelling speech, just as it prevents the government from restraining speech. However, courts have held that certain types of commercial speech—including state and federal statutes requiring disclosure of information that is useful to the consumer (food labeling requirements and prescription drug warnings)—have to meet a less exacting standard than efforts to regulate political or expressive speech. (*Zauderer v. Office of Disciplinary Counsel of Supreme Court* (1985) 471 U.S. 626, 651.) In *Zauderer* the court stated “because disclosure requirements trench much more narrowly on an advertiser’s interests than do flat prohibitions on speech, [warnings] or

[disclaimers] might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception.” (*Ibid.*) Generally, courts have struck down statutes as compelled speech only those disclosure requirements that force a person or entity to directly or indirectly endorse positions or ideas to which the person or business objects; create a false or unwanted association with a group, movement, or set of ideas; or force the person or entity to support a group or position with which it disagrees. (*See, e.g., West Virginia Board of Education v. Barnette* (1943) 319 U.S. 624; *Woolley v. Maryland* (1977) 430 U.S. 795; *United States v. United Foods* (2001) 533 U.S. 405; *Boy Scouts of American v. Dale* (2000) 530 U.S. 533; *National Institute of Family and Life Advocates v. Becerra* (2018) 138 S. Ct. 2361.)

However, states do not have unconstrained authority to prescribe commercial speech, unrestrained by the First Amendment. Two requirements in particular are relevant to this bill. First, the U.S. Supreme Court has held that the content of any compelled disclosure must be limited to “purely factual and uncontroversial information...” (*Zauderer, supra*, 471 U.S. at 651.) The second requirement is that the speech not be “unjustified or unduly burdensome.” (*Am. Bev. Ass'n v. City & Cty. of San Francisco* (9th Cir. 2019) 916 F.3d 749, 756-7 [striking down San Francisco’s Sugar-Sweetened Beverage Warning Ordinance].) It is unclear if the notice requirement in the bill would run afoul of these principles. Posting that they have received a notice of violation from DTSC is arguably a purely factual statement. Whether requiring the posting on the manufacturer’s website and social media is unjustified or unduly burdensome is unclear.

## 6. Opposition concerns

The bill’s opposition, made up of a coalition of associations representing manufacturers and retailers of menstrual products, is opposed unless amended to address their concerns with the bill. The opposition has no issue with the ban on intentionally added PFAS and have stated that none of their members intentionally add PFAS to the menstrual products they manufacture. They claim that PFAS chemicals are ubiquitous in the environment and can be present in natural or synthetic ingredients, recycled content, manufacturing processes and equipment, and potentially through the storage of the product and, therefore, unintentional PFAS contamination may extend beyond what a manufacturer can control – especially at the 10 PPM level. They argue that it is inequitable to be held liable for technically unavoidable trace quantities of PFAS that occur from impurities of natural or synthetic ingredients, the manufacturing process, storage, or mitigation from packaging. They also note that the bill specifically prohibits the sale, manufacturing, distribution, selling, or offering for sale in this state any menstrual product that contains regulated PFAS, and that if they cannot eliminate technically unavoidable trace quantities of PFAS in a product they will be forced to stop selling them in the state. They say this could greatly impact the availability of menstrual products in the state.

They also state that requiring manufacturers to post a notice of violation on their website and social media is deeply problematic and they want this language stricken from the bill. They argue this is unprecedented and could potentially run afoul of the First Amendment as compelled speech (*see* Comment 5), above. They are also concerned about any public notice being fodder for litigation pointing to a class action lawsuit filed against BIC after it disclosed its intentional use of PFAS in razors it manufactures to the Maine Department of Environmental Protection pursuant to a Maine law. (*Butler & Pai v. BIC USA, INC.*, No. 4:24-cv-02955 (N.D. Cal.)). Another example is a class action lawsuit that was filed in March 2022 against Clorox’s Burt Bees brands for falsely advertising their products as “natural” when they contained PFAS. (*Spindel v. Burt Bees, Inc. et. al*, No. 3:22-cv-01928 (N.D. Cal.)).

They also express issue with the amount of the civil penalties in relation to the way a violation is defined – single product line of the same brand, product type, size, and absorbency that contains regulated PFAS. They either want the penalties lowered to what they were previously in the bill before recent amendments, which were \$5,000 a day for a first violation and \$10,000 per day for a second and any subsequent violation, or would like the scope of the violation changed to not be so broad.

## 7. Statements in support

The California Water Association writes in support, stating:

US EPA has determined that exposure to PFAS/PFOS can lead to adverse human health effects. CWA’s members are actively working to remove PFAS in the drinking water of communities throughout California. This bill will eliminate PFAS containing products, thereby reducing the opportunity for drinking water and ground water contamination.

The American College of Obstetricians and Gynecologists District IX writes in support, stating:

Exposure to toxic chemicals can have many harmful effects on health. These chemicals disrupt the body’s endocrine system, which makes hormones and sends them throughout your body. This means chemicals can affect many parts of your body, including your thyroid gland, brain, reproductive organs, and immune system. Chemicals can disrupt cells and contribute to cancer.

Since the 1990s, we’ve called substances that have these harmful effects on the body “endocrine disruptors.” There are many different types of endocrine disruptors, including lead and chemicals called parabens, phthalates, and PFAS, which are addressed in this bill. PFAS are widely used substances that break down very slowly,

earning them the name “forever chemicals.” This makes them especially harmful to our health.

Given the harmful effects of PFAS, California has been focused on removing or limiting PFAS from our products. AB 2515 makes another logical step to remove and limit PFAS from menstrual products.

#### 8. Statements in opposition

The bill is opposed by a coalition of various associations representing manufacturers and retailers of menstrual products, including the California Manufacturers and Technology Association and the California Chamber of Commerce write:

Our manufacturers do not intentionally add PFAS to serve any functional or technical effect in menstrual products. Our coalition supports the responsible production, use, and management of fluorinated substances, including regulatory requirements that protect human health and the environment. Given menstrual products are an essential product for women’s health, our coalition is supportive of the policy direction in AB 2515.

Unfortunately, AB 2515 creates a framework that punishes manufacturers that are NOT intentionally adding PFAS to menstrual products by extending expansive liabilities for the unintentional presence of PFAS chemicals, at or above 10 PPM. The challenge of unintentional PFAS contamination is that it may exist 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 apparent source. As a result, contamination can occur at any point during the product’s life cycle – at the point of manufacturing and packaging, shipping and receiving, even the handling or use of the product by a consumer.

Manufacturers fully intend to comply with these prohibitions on intentionally added PFAS and understand the need for practical regulation in this space, however, unavoidable trace quantities of a chemical may be present and beyond the manufacturer’s control. Any enforcement must take into consideration the pervasiveness of PFAS and that manufacturers are not intentionally adding the chemical to these products. Enforcement should not act as a mechanism that limits product availability or drives consumer uncertainty as to product safety, but instead be justly focused on any bad actors who are intentionally adding PFAS chemicals to their respective products.

To this end, the reason AB 2515 has presented such a challenge for our coalition is because it requires the Legislature to determine how to impose a reasonable liability and enforcement structure on entities that are not adding the chemical in question into their products. Indeed, this is a novel challenge, as AB 2515 is the first bill in the

country – and perhaps the world – seeking to impose liability on entities that are not adding the chemical in question in their products and that can do very little, if anything, to avoid its presence.

### **SUPPORT**

American Association of University Women - California  
American College of Obstetricians and Gynecologists District IX  
Breast Cancer Prevention Partners  
California Association of Sanitation Agencies  
California Environmental Voters  
California Health Coalition Advocacy  
California Professional Firefighters  
California Water Association  
California Women’s Law Center  
City of Roseville  
City of Santa Rosa  
Cleaneearth4kids.org  
Educate. Advocate.  
Irvine Ranch Water District  
Los Angeles County Sanitation Districts  
Planned Parenthood Affiliates of California  
Women’s Voices for the Earth  
64 individuals

### **OPPOSITION**

American Chemistry Council  
American Forest and Paper Association  
California Chamber of Commerce  
California Manufacturers and Technology Association  
Center for Baby and Adult Hygiene Products  
Civil Justice Association of California  
Consumer Brands Association  
Consumer Healthcare Products Association

### **RELATED LEGISLATION**

Pending Legislation: AB 347 (Ting, 2023) requires DTSC to adopt regulations for the enforcement of existing prohibitions on the use of PFAS and the use of specified chemicals in cookware and cosmetic products, as provided. AB 347 is currently pending in the Senate Health Committee.

Prior Legislation:

AB 246 (Papan, 2023) was substantially similar to this bill. AB 246 was vetoed by Governor Newsom. (*see* Comment 2), above, for veto message).

AB 727 (Weber, 2023) would have prohibited, 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 above a threshold. AB 727 was vetoed by the Governor for similar reasons as this bill.

AB 1423 (Schiavo) would have prohibited, commencing January 1, 2024, a public entity and certain educational institutions from purchasing or installing a covered surface that contains intentionally added PFAS or PFAS at a concentration at or above 1 ppm. AB 1423 was vetoed by the Governor for similar reasons as this bill.

AB 1817 (Ting, Ch. 762, Stat. 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 regulated PFAS, and requires a manufacturer to use the least toxic alternative when removing regulated PFAS in textile articles to comply with the provisions of the bill.

AB 2771 (Friedman, Ch. 804, Stats. 2022) prohibited, commencing 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 PFAS.

AB 1200 (Ting, Ch. 503, Stats. 2021) prohibited, 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.

AB 652 (Freidman, Ch. 500, Stats. 2021) prohibited, on or after July 1, 2023, a person from selling or distributing in commerce any new juvenile products that contain PFAS.

SB 1044 (Allen, Ch. 308, Stats. 2020) prohibited the manufacture, sale, distribution, and use of firefighting foam containing intentionally added PFAS chemicals by January 1, 2022, with some exceptions, and required 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 1989 (C. Garcia, Ch. 272, Stats. 2020) required menstrual product manufacturers to disclose intentionally added chemicals included on a set of designated lists, as specified, on-label and online.

AB 756 (Cristina Garcia, Ch. 162, Stats. 2019) authorized the State Water Board to order one or more public water systems to monitor for PFAS and required municipalities to notify consumers for PFAS detected above notification levels.

AB 958 (Ting, 2018) would have required a manufacturer of food packaging or cookware sold in the state to visibly disclose on an exterior location of the food packaging or cookware packaging a specified statement relating to the presence of PFAS in the product. This bill was held on the Senate Floor.

SB 1313 (Corbett, 2008) would have prohibited the manufacture, sale, or distribution of any food contact substance, as defined, which contains perfluorinated compounds, as defined, in any concentration exceeding 10 parts per billion. This bill was vetoed by then Governor Arnold Schwarzenegger whose veto message said, "I have signed AB 1879 (Feuer) and SB 509 (Simitian) which mark the beginning of California's historic Green Chemistry Initiative. It is within this process that chemicals like PFCs should be addressed."

**PRIOR VOTES**

Senate Environmental Quality Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 61, Noes 1)

Assembly Appropriations Committee (Ayes 11, Noes 1)

Assembly Judiciary Committee (Ayes 10, Noes 1)

Assembly Environmental Safety and Toxic Materials Committee (Ayes 5, Noes 0)

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