
THIRD READING

Bill No: AB 1200
Author: Ting (D), et al.
Amended: 8/23/21 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 9-2, 6/23/21

AYES: Pan, Eggman, Gonzalez, Hurtado, Leyva, Limón, Roth, Rubio, Wiener

NOES: Melendez, Grove

SENATE ENVIRONMENTAL QUAL. COMMITTEE: 5-0, 7/7/21

AYES: Allen, Gonzalez, Skinner, Stern, Wieckowski

NO VOTE RECORDED: Bates, Dahle

ASSEMBLY FLOOR: 48-14, 4/22/21 - See last page for vote

SUBJECT: Plant-based food packaging: cookware: hazardous chemicals

SOURCE: Breast Cancer Prevention Partners
Center for Environmental Health
Clean Water Action
Environmental Working Group
Natural Resource Defense Council

DIGEST: This bill prohibits food packaging comprised in substantial part of paper or other materials originally derived from plant fibers from containing intentionally added perfluoroalkyl substances (PFAS), requires cookware that contains chemicals designated on the Green Chemistry list of chemicals of concern to list those chemicals on the product label, and prohibits cookware manufacturers from claiming that cookware is free of any specific chemical on the list if the chemical belongs to the same chemical group or class.

Senate Floor Amendments of 8/23/21 clarified the definition of cookware by removing “but is not limited to” language so that cookware is only the items listed in the bill, removed “but not limited to” language in provisions defining what is meant by “intentionally added,” and changed the terminology from “prohibited” PFAS to “regulated” PFAS.

ANALYSIS:

Existing law:

- 1) Establishes the Green Chemistry program, which requires the California Department of Toxic Substances Control (DTSC) to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern. Requires these regulations to consider the volume of the chemical in commerce in this state, the potential for exposure to the chemical in a consumer product, and the potential effects on sensitive subpopulations, including infants and children. [HSC §25252]
- 2) Requires DTSC, in adopting the regulations pursuant to 1) above, to reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities. [HSC §25252 (b)]
- 3) Identifies, in regulations adopted pursuant to 1) above, chemicals that are candidates for prioritization that exhibit a hazard trait and/or an environmental or toxicological end-point, as is included on one of many specified authoritative lists (often referred to as the “list of lists”). [CCR Title 22 §69502.2]
- 4) 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. Requires these regulations to specify the range of regulatory responses that DTSC can take following the completion of the alternatives analysis, including imposing requirements on labeling or prohibiting the use of the chemical of concern, among other listed actions. [HSC §25253]

This bill:

- 1) Prohibits, commencing January 1, 2023, any person from distributing, selling, or offering for sale any food packaging, as defined, containing regulated PFAS.
- 2) Requires a manufacturer to use the least toxic alternative when replacing PFAS chemicals in food packaging.
- 3) Defines the following terms for purposes of 1) above:
 - a) “Food packaging” means a nondurable package, packaging component, or food service ware that is intended to contain, serve, store, handle, protect, or market food, foodstuffs, or beverages, and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers. Specifies that food packaging includes food or beverage containers, take-out food containers, unit product boxes, liners, wrappers, serving vessels, eating utensils, food boxes, and disposable plates, bowls, or trays;
 - b) “Regulated PFAS” means either of the following:
 - i) 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; or,
 - ii) The presence of PFAS in a product or product component at or above 100 parts per million, as measure in total organic fluorine.
 - c) “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- 4) Requires, commencing on January 1, 2023, a manufacturer of cookware sold in California that contains one or more intentionally added chemicals present on a designated list developed pursuant to Green Chemistry regulations, as defined, in the handle of the product or in any cookware surface that comes into contact with food, foodstuffs, or beverages, to post on the internet website for the cookware all of the following:
 - a) A list of all chemicals in the cookware that are also present on the designated list;

- b) The names of the authoritative list or lists referenced by DTSC in compiling the designated list on which each chemical in the cookware is present; and,
 - c) A link to the internet website for the authoritative list or lists identified in b) above.
- 5) Requires, commencing on January 1, 2024, a manufacturer of cookware sold in California that contains one or more intentionally added chemicals present on a designated list, as defined, in the handle of the product or in any product surface that comes into contact with food, foodstuffs, or beverages, to list the presence of those chemicals on the product label. Requires the list of chemicals to be introduced by the phrase, “This product contains:” and to include on the product label a statement, in both English and Spanish, that reads: “For more information about chemicals in this product, visit” followed by an internet website address, as well as a quick response (QR) code used for storing an internet website, that provides all of the information required in 4) above.
- 6) Exempts cookware that meets both of the following requirements from the requirement in 5) above, with the exception of product listings for online sales:
- a) The surface area of the cookware cannot fit a product label of at least two square inches; and,
 - b) The cookware does not have either an exterior container or wrapper on which a product label can appear, or a tag or other attachment with information about the product attached to the cookware.
- 7) Defines the following terms, for purposes of 4) and 5) above:
- a) “Cookware” means durable houseware items that are used in homes and restaurants to prepare, dispense, or store foodstuffs, or beverages. Specifies that “cookware” includes pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and cooking utensils;
 - b) “Designated list” means the list of chemicals identified as candidate chemicals that exhibit a hazard trait or an environmental or toxicological endpoint that meets the criteria in specified Green Chemistry regulations adopted by DTSC and published on DTSC’s internet website;
 - c) “Intentionally added chemical” means a chemical that a manufacturer has intentionally added to a product and that has a functional or technical effect in the product, including the components of intentionally added chemicals

and intentional breakdown products of an added chemical that also have a functional or technical effect in the product.

- d) “Manufacturer” means either a person or entity who manufactures the cookware and whose name appears on the product label, or a person or entity who the cookware is manufactured for or distributed by, identified by the product label.
 - e) “Product label” means a display of written, printed, or graphic material that appears on, or is affixed to, the exterior of a product, or its exterior container or wrapper that is visible to a consumer, if the product has an exterior container or wrapper.
- 8) Prohibits, commencing on January 1, 2023 for the internet websites for cookware, and commencing on January 1, 2024 for cookware packaging, a manufacturer of cookware sold in the state from making a claim, either on the cookware package or on the internet website for the cookware, that the cookware is free of any specific chemical if the chemical belongs to a chemical group or class identified on the designated list, unless no individual chemical from that chemical group or class is intentionally added to the cookware.
- 9) Prohibits a person from selling, offering for sale, or distributing cookware that does not comply with the provisions in 4) through 8) above.

Comments

- 1) *Author’s statement.* According to the author, this bill would ban the use of intentionally added PFAS from plant-based food packaging, require cookware manufacturers to attach a disclosure label if certain chemicals are found in their cookware, and require truth in advertising when marketing cookware to be free of certain chemicals. Dangerous chemicals should not be wrapped around our food or leaching into our food from our pots and pans at home. By passing this bill, California can assess chemicals that our families are ingesting so that they cannot further damage our health and the environment.
- 2) *Background on PFAS.* According to the United State Environmental Protection Agency (EPA), PFAS are a group of man-made chemicals that include perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), GenX, and many other chemicals. GenX is a trade name for a technology that is used to make high performance fluoropolymers (e.g., some nonstick coatings) without the use of PFOA. PFAS have been manufactured and used in a variety

of industries around the world since the 1940s. PFOA and PFOS have been the most extensively produced and studied of these chemicals, and both are very persistent in the environment and in the human body – meaning they don't break down and they can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects. PFAS can be found in the following: food packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in PFAS-contaminated soil or water; commercial household products, including stain- and water-repellent fabrics, nonstick products like Teflon, polishes, waxes, paints, cleaning products, and fire-fighting foams (which is a major source of groundwater contamination at airports and military bases where firefighting training occurs); drinking water, typically localized and associated with a specific facility, such as a manufacturer, landfill, wastewater treatment plant, or firefighting training facility; and living organisms, including fish, animals and humans where PFAS have the ability to build up and persist over time. Studies indicate that PFOA and PFOS can cause reproductive and developmental, liver and kidney, and immunological effects in laboratory animals. Both chemicals have caused tumors in animal studies. The most consistent findings from human epidemiological studies are increased cholesterol levels among exposed populations, with more limited findings related to infant birth weights, effects on the immune system, cancer (for PFOA), and thyroid disruption (for PFOS).

- 3) *Voluntary phase-out of PFAS in food packaging products.* On July 31, 2020, the U.S. Food and Drug Administration (FDA) announced that manufacturers of certain PFAS used for grease-proofing in paper and paperboard for packaging (such as coatings on some fast food wrappers, to-go boxes, and pizza boxes) have voluntarily agreed to phase-out their sales of these substances for use as food contact substances in the United States. The three-year phase-out began in January 2021, and after the phase-out period ends on January 1, 2024, it may take up to 18 months to exhaust existing stocks of paper and paperboard products containing these food contact substances from the market.
- 4) *Green Chemistry and the “list of lists.”* In 2008, the Legislature passed AB 1879 (Feuer, Chapter 559, Statutes of 2008) to establish a regulatory process for identifying and prioritizing chemicals of concern in consumer products, to create methods for analyzing alternatives to existing hazardous chemicals, and to ultimately take regulatory action to reduce the level of harm from the chemicals in those products. This body of law is known as the Green Chemistry program, and the subsequent regulations adopted by DTSC are called the Safer Consumer Products (SCP) Program, which took effect in 2013. The idea was to

establish a robust and thorough regulatory process rooted in science, rather than the chemical-by-chemical bans proposed in the legislative process, but the permutations of product and chemical combinations are virtually limitless, and DTSC does not have the resources to evaluate all chemicals in every consumer product application. The regulation establishing a “Candidate Chemicals List,” from which DTSC would review and prioritize for action, included all chemicals on one of 23 lists, including chemicals classified by the European Union as carcinogens or reproductive toxicants; chemicals that are identified as Persistent, Bioaccumulative, and Inherently Toxic to the environment by the Canadian Environmental Protection Act; Persistent Bioaccumulative and Toxic Priority Chemicals identified by the EPA’s National Waste Minimization Program; chemicals for which notification levels, as defined, have been established by the California Department of Public Health; and various other lists identified by federal, state, or international agencies or organizations.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/24/21)

Breast Cancer Prevention Partners (co-source)
Center for Environmental Health (co-source)
Clean Water Action (co-source)
Environmental Working Group (co-source)
Natural Resource Defense Council (co-source)
Alliance of Nurses for Healthy Environments
American Academy of Pediatrics, California
American College of Obstetricians and Gynecologists District IX
Association of California Water Agencies
Ban Single Use Plastics
Black Women for Wellness Action Project
Breast Cancer Action
Breast Cancer Over Time
California Alliance of Nurses for Healthy Environments
California Association of Sanitation Agencies
California Compost Coalition
California Health Coalition Advocacy
California Healthy Nail Salon Collaborative
California Municipal Utilities Association
California Product Stewardship Council
Californians Against Waste
CALPIRG

Center for Community Action & Environmental Justice
Center for Food Safety
Center for Oceanic Awareness, Research, and Education
Center for Public Environmental Oversight
City/County Association of Governments of San Mateo County
Clean Production Action
Compost Manufacturing Alliance
Consumer Attorneys of California
Consumer Federation of California
Consumer Reports Advocacy
Courage California
Defend Our Health
East Bay Municipal Utility District
Educate. Advocate.
Erin Brockovich Foundation
FACTS: Families Advocating for Chemical & Toxins Safety
Friends Committee on Legislation of California
Friends of the Earth
Heal the Bay
Integrated Resource Management, LLC
Just Transition Alliance
Keep a Breast Foundation
Los Angeles County Sanitation Districts
MADE SAFE/ Nontoxic Certified
Marin Sanitary Service
Michael J Fox Foundation
National Stewardship Action Council
Northern California Recycling Association
Orange County Water District
Pacoima Beautiful
Plastic Oceans International
Plastic Pollution Coalition
Recology
Repurpose, Inc.
Resource Recovery Coalition of California
Re-Think Disposable
Safer States
San Francisco Bay Physicians for Social Responsibility
San Francisco Baykeeper
Save Our Shores

Save the Albatross Coalition
Science and Environmental Health Network
Seventh Generation Advisors
Sierra Club California
Social Compassion in Legislation
The Five Gyres Institute
UPSTREAM
Wishtoyo Chumash Foundation
Women's Voices for the Earth
Woodland Coalition for Green Schools
WorkSafe
Zero Waste USA

OPPOSITION: (Verified 8/24/21)

Association of Home Appliance Manufacturers

ARGUMENTS IN SUPPORT: This bill is co-sponsored by Breast Cancer Prevention Partners, Center for Environmental Health, Clean Water Action, Environmental Working Group, and the Natural Resources Defense Council (sponsors), to ban plant-based food packaging containing intentionally added PFAS, require the disclosure of chemicals of concern in cookware, and prohibit companies from making misleading marketing claims. According to the sponsors, the entire class of PFAS chemicals has been recognized as a chemical of concern by a wide array of scientific experts, and the California legislature recognized PFAS as a class when it passed SB 1044 (Allen) to prohibit their use in firefighting foam. Individual food companies, such as fast-food giant McDonalds, and states such as New York, have been phasing out or banning PFAS from paper-based food packaging. With regard to the requirement that manufacturers of cookware disclose listed chemicals of concern that they use in their product, the sponsors note that this list already serves as the basis for the disclosure of chemicals of concern in several other product sectors, including cleaning, personal care and beauty, and menstrual products. Although the list has thousands of chemicals, manufacturers only need to disclose the chemicals that they use that are on the list. The chemicals on this list are linked to cancer, reproductive or developmental harm, neurotoxicity, hormone disruption, and allergies— and many are also air and water contaminants. The current lack of transparency in what chemicals are used in cookware leaves the public to potentially and unwittingly expose themselves to hazardous chemicals. Finally, with regard to the prohibition on making misleading claims, the sponsors state that many cookware brands are marketing their products as “PFOA-free,” which can mislead consumers to believe that a product is safe.

Just because a piece of cookware doesn't have one specific PFAS, doesn't mean it is void of other PFAS chemicals.

ARGUMENTS IN OPPOSITION: An oppose unless amended letter was submitted to the prior version of this bill by a coalition of organizations. However, recent amendments addressed the concerns of most of the organizations in the coalition. The Association of Home Appliance Manufacturers was the only organization that had not yet removed their opposition, as they were still reviewing the amendments. The letter of opposition to the prior version identified a number of concerns with this bill, including the scope of potentially impacted products and compliance date alignment, among other concerns.

ASSEMBLY FLOOR: 48-14, 4/22/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Cooley, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Ramos, Luz Rivas, Robert Rivas, Rodriguez, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Cunningham, Megan Dahle, Davies, Fong, Gallagher, Kiley, Lackey, Nguyen, Patterson, Seyarto, Smith, Voepel, Waldron

NO VOTE RECORDED: Cervantes, Chen, Choi, Cooper, Daly, Flora, Frazier, Gray, Grayson, Holden, Mathis, Mayes, Quirk-Silva, Reyes, Blanca Rubio, Salas, Valladares

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
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