**AB-1989 Menstrual Products Right to Know Act of 2020.** (2019-2020)



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# Assembly Bill No. 1989

## CHAPTER 272

An act to add Chapter 7.5 (commencing with Section 111822) to Part 5 of Division 104 of the Health and Safety Code, relating to menstrual products.

[ Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020. ]

## LEGISLATIVE COUNSEL'S DIGEST

AB 1989, Cristina Garcia. Menstrual Products Right to Know Act of 2020.

Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the manufacturing, distribution, and labeling of various drugs and cosmetics, including requiring that cosmetics manufacturers provide the Division of Environmental and Occupational Disease Control within the State Department of Public Health with a complete and accurate list of its cosmetic products that, as of the date of submission, are sold in the state and that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity. Violation of these provisions is a misdemeanor.

This bill would require a package or box containing menstrual products that was manufactured on or after January 1, 2023, for sale or distribution in this state to have printed on the label a plain and conspicuous list of all ingredients, as defined, in the product, by weight. The bill would require the same information to be posted on an internet website, as specified. The bill would prohibit the sale of a menstrual product in the state unless the menstrual product and the manufacturer of the menstrual product comply with the specified labeling requirements. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

**SECTION 1.** Chapter 7.5 (commencing with Section 111822) is added to Part 5 of Division 104 of the Health and Safety Code, to read:

**CHAPTER 7.5. Menstrual Products**

**111822.** For purposes of this chapter, the following definitions apply:

(a) “Confidential business information” means an intentionally added ingredient or combination of ingredients for which a claim has been approved by the federal Environmental Protection Agency for inclusion on the Toxic Substances Control Act (TSCA)

Confidential Inventory or for which the manufacturer or its supplier claim protection under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code). “Confidential business information” shall not include any of the following:

(1) An intentionally added ingredient or combination of ingredients that is on a designated list, as defined in subdivision (b).

(2) A fragrance allergen included on Annex III of the European Union (EU) Cosmetics Regulation No. 1223/2009 or subsequent updates to those regulations, when present in the product at a concentration at or above 0.001 percent (10 parts per million).

(b) “Designated list” means any of the following, including subsequent revisions when adopted by the authoritative body:

(1) Chemicals known to the State of California to cause cancer or reproductive toxicity that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of Division 20).

(2) Chemicals classified by the EU as carcinogens, mutagens, or reproductive toxicants pursuant to Category 1A or 1B in Annex VI to Regulation (EC) 1272/2008.

(3) Chemicals included in the EU Candidate List of Substances of Very High Concern in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(f) for endocrine disrupting properties.

(4) Chemicals for which a reference dose or reference concentration has been developed based on neurotoxicity in the federal Environmental Protection Agency’s Integrated Risk Information System.

(5) Chemicals that are identified as carcinogenic to humans, likely to be carcinogenic to humans, or as Group A, B1, or B2 carcinogens in the federal Environmental Protection Agency’s Integrated Risk Information System.

(6) Chemicals included in the EU Candidate List of Substances of Very High Concern in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(d), Article 57(e), or Article 57(f) for persistent, bioaccumulative and toxic, or very persistent and very bioaccumulative, properties.

(7) Chemicals that are identified as persistent, bioaccumulative, and inherently toxic to the environment by the Canadian Environmental Protection Act Environmental Registry Domestic Substances List.

(8) Chemicals classified by the EU in Annex VI to Regulation (EC) 1272/2008 as respiratory sensitizer category 1.

(9) Group 1, 2A, or 2B carcinogens identified by the International Agency for Research on Cancer.

(10) Neurotoxicants that are identified in the federal Agency for Toxic Substances and Disease Registry’s Toxic Substances Portal, Health Effects of Toxic Substances and Carcinogens, Nervous System.

(11) Persistent bioaccumulative and toxic priority chemicals that are identified by the federal Environmental Protection Agency National Waste Minimization Program.

(12) Reproductive or developmental toxicants identified in Monographs on the Potential Human Reproductive and Developmental Effects published by the federal National Toxicology Program, Office of Health Assessment and Translation.

(13) Chemicals identified by the federal Environmental Protection Agency’s Toxics Release Inventory as Persistent, Bioaccumulative and Toxic Chemicals that are subject to reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001, et seq.).

(14) The Washington Department of Ecology’s Persistent, Bioaccumulative, Toxic (PBT) Chemicals identified in Chapter 173-333 of Title 173 of the Washington Administrative Code.

(15) Chemicals that are identified as known to be, or reasonably anticipated to be, human carcinogens by the 13th Report on Carcinogens prepared by the federal National Toxicology Program.

(16) Chemicals for which notification levels, as defined in Section 116455, have been established by the State Department of Public Health or the State Water Resources Control Board.

(17) Chemicals for which primary maximum contaminant levels have been established and adopted under Section 64431 or 64444 of Title 22 of the California Code of Regulations.

(18) Chemicals identified as toxic air contaminants under Section 93000 or 93001 of Title 17 of the California Code of Regulations.

(19) Chemicals that are identified as priority pollutants in the California water quality control plans pursuant to subdivision (c) of Section 303 of the federal Clean Water Act (33 U.S.C. Sec. 1341) and in Section 131.38 of Title 40 of the Code of Federal Regulations, or identified as pollutants by the state or the federal Environmental Protection Agency for one or more water bodies in the state under subdivision (d) of Section 303 of the federal Clean Water Act (33 U.S.C. Sec. 1341) and Section 130.7 of Title 40 of the Code of Federal Regulations.

(20) Chemicals that are identified with noncancer endpoints and listed with an inhalation or oral reference exposure level by the Office of Environmental Health Hazard Assessment pursuant to paragraph (2) of subdivision (b) of Section 44360.

(21) Chemicals identified as priority chemicals by the California Environmental Contaminant Biomonitoring Program pursuant to Section 105449.

(22) Chemicals that are identified on Part A of the list of Chemicals for Priority Action prepared by the Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East Atlantic.

(c) (1) “Fragrance ingredient” means an intentionally added substance or complex mixture of aroma chemicals, natural essential oils, and other functional ingredient present in a menstrual product for which the sole purpose is to impart an odor or scent, or to counteract odor, and that is any of the following:

(A) Present in a menstrual product at a concentration at or above 0.01 percent (100 parts per million), unless the substance is confidential business information, in which case the manufacturer may identify the ingredient by its common name to protect its confidential identity pursuant to subdivision (b) of Section 111822.2.

(B) Included on a designated list.

(C) A fragrance allergen included in Annex III of the EU Cosmetics Regulation No. 1223/2009 or subsequent updates to that regulation when present in the menstrual product in a concentration at or above 0.001 percent (10 parts per million).

(2) The manufacturer shall determine the total concentration of each fragrance ingredient by calculating the total amount of fragrance ingredient as a percentage of the total weight of the menstrual product.

(d) “Ingredient” means a fragrance ingredient or other intentionally added substance or combination of substances present in the menstrual product, unless the intentionally added substance or combination of substances is confidential business information, in which case the manufacturer may identify the ingredient by its common name to protect its confidential identity pursuant to subdivision (b) of Section 111822.2.

(e) “Intentionally added” means a substance that serves a technical or functional purpose in the finished menstrual product.

(f) “Manufacturer” means either of the following:

(1) A person or entity that manufactures the menstrual product and whose name appears on the product label.

(2) A person or entity for whom the product is manufactured or distributed, as identified on the product label pursuant to the federal Fair Packaging and Labeling Act.

(g) “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.

**111822.2.** (a) A package or box containing menstrual products that was manufactured on or after January 1, 2023, for sale or distribution in this state shall have printed on the label a plain and conspicuous list of all ingredients in the product.

(b) The ingredients shall be listed in order of predominance by weight in the menstrual product, except that ingredients present at a weight below one percent may be listed in any order following the other ingredients. Ingredients shall be identified using a standardized nomenclature, including, but not limited to, the International Nomenclature of Cosmetic Ingredients (INCI), the Household Commercial Products Association’s Consumer Product Ingredient Dictionary (HCPA Dictionary), or common chemical name. If a standardized nomenclature does not otherwise exist for an ingredient, a name established by the Center for Baby and Adult Hygiene Products (BAHP) shall be used by all menstrual product manufacturers. A manufacturer may identify any ingredient that is confidential business information by its common name to protect its confidential identity.

(c) Commencing January 1, 2023, a manufacturer of a menstrual product that is manufactured for sale or distribution in the state shall post on an internet website, in an electronically readable format, the ingredient information that is required to be disclosed on a package or box containing menstrual products pursuant to subdivision (a).

(d) This section does not prohibit a manufacturer from using technologies, including, but not limited to, digital link, to communicate the information required by this section.

**111822.4.** (a) When a manufacturer is required to make a revision to information disclosed online due to a change in a designated list or a change in an ingredient or addition of a new ingredient, the manufacturer shall make the revision no later than six months after the change or addition of the ingredient, or after the adoption of the revised designated list by its authoritative body, unless a later effective date for changes to a designated list is imposed by the relevant authoritative body.

(b) When a manufacturer is required to change the label on a menstrual product because of a change in a designated list or a change to an ingredient or addition of a new ingredient, the manufacturer shall make the change within 18 months of the change or addition of the ingredient, or after the adoption of the revised designated list by its authoritative body, unless a later effective date is imposed by the relevant authoritative body.

**111822.5.** A manufacturer that protects an intentionally added ingredient, including a fragrance ingredient, or combination of intentionally added ingredients pursuant to the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code) shall maintain justification for protecting confidential business information consistent with the requirements of the act and provide that justification on request for audit by the Attorney General.

**111822.6.** The requirements of this chapter apply in addition to other labeling requirements established in law.

**111822.8.** A menstrual product shall not be sold in the state unless the menstrual product and the manufacturer of the menstrual product comply with this chapter.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.