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SB-502 Hazardous materials: green chemistry: consumer products. (2021-2022)

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Senate Bill No. 502

CHAPTER 701

An act to amend Sections 25251, 25252, and 25253 of, and to add Sections 25253.6, 25253.7, and 25253.9 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 502, Allen. Hazardous materials: green chemistry: consumer products.

(1) The hazardous waste control laws require the Department of Toxic Substances Control to regulate the handling and management of hazardous materials and hazardous waste. Existing law, known as the Green Chemistry program, requires the department to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered as being chemicals of concern. Regulations adopted by the department refer to a chemical-product combination that has been identified and prioritized pursuant to that provision as a "priority product." Existing law requires the department to adopt regulations that establish a process for evaluating chemicals of concern in priority products, and their potential alternatives, to determine how best to limit exposure to or to reduce the level of hazard posed by chemicals of concern, as specified. Regulations adopted by the department require a responsible entity, defined to mean a manufacturer, importer, assembler, or retailer, for a priority product to conduct an analysis of alternatives for the priority product. Existing law requires the department's regulations to specify the range of regulatory responses that the department may take following the completion of the analysis of alternatives. A violation of the hazardous waste control laws, including the Green Chemistry program, is a crime.

This bill would authorize the department, in lieu of requiring the analysis of alternatives, following public notice and an opportunity for public comment, to instead rely on all or part of one or more applicable publicly available studies or evaluations of alternatives to the chemical of concern under consideration in a consumer product, in existence at the time of consideration, and to proceed directly to a regulatory response, as provided. The bill would require the department to amend specified regulations to conform to these provisions.

The bill would authorize the department to issue a formal request for information from product manufacturers, as defined, and would require a product manufacturer to provide to the department data and information on the ingredients and use of a consumer product upon the department's request within a specified timeframe, including, among other specified data and information, information on ingredient chemical identity, concentration, and functional use. The bill would require a product manufacturer, if the product manufacturer certifies in writing that it does not have access to information requested, in whole or in part, and has attempted to, but cannot, obtain that information from the supplier or chemical manufacturer, as defined, to provide the identity and contact information of the supplier or chemical manufacturer to the department. The bill would authorize the department to issue an independent information request to the supplier or chemical manufacturer for the unknown information that the product manufacturer certifies it does not have access to and for the identity and contact information of other suppliers or chemical manufacturers, as necessary to access the information requested. The bill would require the chemical manufacturer or

supplier to provide that information to the department. The bill would impose, except as provided, a civil penalty of no more than \$50,000 on a person who violates any of these provisions for each separate violation or, for continuing violations, for each day that violation continues, and would require that any penalties collected be deposited in the Toxic Substances Control Account. Because a violation of these requirements would also be a crime, the bill would impose a state-mandated local program.

The bill would declare that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on sensitive populations.

(2) Regulations adopted by the department require the department to issue a "Priority Product Work Plan" every 3 years that identifies and describes the product categories that the department will evaluate to identify product-chemical combinations to be added to the priority products list during the 3 years following the issuance of the work plan.

This bill would require, subject to an appropriation by the Legislature for this purpose, the department to include in each work plan, commencing with the 2024–26 work plan, in addition to any other information that the department is required to include pursuant to the regulations, a brief description of specified information, including any additional ingredient information that is needed for the department to evaluate the safety of the consumer products, as provided.

(3) Regulations adopted by the department provide for an informal dispute resolution procedure that authorizes a responsible entity to request that the department informally resolve a dispute regarding a decision made by the department and requires the department to provide the responsible entity with an opportunity to resolve the dispute informally. The regulations also provide for an appeal process, following completion of the informal dispute resolution process, as provided.

This bill would provide that, if the department provides public notice of a proposed regulation pursuant to the Green Chemistry program, and an opportunity to comment prior to the adoption of the regulation, that dispute resolution procedure and appeal process is not available to a person who seeks to dispute the regulation.

(4) 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. Section 25251 of the Health and Safety Code is amended to read:

25251. For purposes of this article, the following definitions apply:

(a) "Chemical manufacturer" means a person who manufactures a chemical or chemical ingredient that is used in a consumer product.

(b) "Consumer product" means a product or part of the product that is used, brought, or leased for use by a person for any purposes. "Consumer product" does not include any of the following:

(1) A dangerous drug or dangerous device as defined in Section 4022 of the Business and Professions Code.

(2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A device as defined in Section 4023 of the Business and Professions Code.

(4) A food as defined in subdivision (a) of Section 109935.

(5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

(6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(c) "Council" means the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(d) "Office" means the Office of Environmental Health Hazard Assessment.

(e) "Panel" means the Green Ribbon Science Panel established pursuant to Section 25254.

(f) "Product manufacturer" means a person who manufactures a consumer product or a person who controls the manufacturing process for, or specifies the use of a chemical to be included in, a consumer product.

SEC. 2. Section 25252 of the Health and Safety Code is amended to read:

25252. (a) On or before January 1, 2011, the department shall 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, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with the office and all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment. The regulations adopted pursuant to this section shall establish an identification and prioritization process that includes, but is not limited to, all of the following considerations:

- (1) The volume of the chemical in commerce in this state.
- (2) The potential for exposure to the chemical in a consumer product.
- (3) Potential effects on sensitive subpopulations, including infants and children.

(b) (1) In adopting regulations pursuant to this section, the department shall develop criteria by which chemicals and their alternatives may be evaluated. These criteria shall include, but not be limited to, the traits, characteristics, and endpoints that are referenced in Section 25256.

(2) In adopting regulations pursuant to this section, the department shall 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 and to minimize costs and maximize benefits for the state's economy.

(3) Paragraph (2) does not require the department, when adopting regulations pursuant to this section, to reference and use only the available information specified in paragraph (2).

SEC. 3. Section 25253 of the Health and Safety Code is amended to read:

25253. (a) (1) On or before January 1, 2011, the department shall adopt regulations pursuant to this section that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment.

(2) The regulations adopted pursuant to this section shall establish a process that includes an evaluation of the availability of potential alternatives and potential hazards posed by those alternatives, as well as an evaluation of critical exposure pathways. This process shall include life cycle assessment tools that take into consideration, but shall not be limited to, all of the following:

- (A) Product function or performance.
- (B) Useful life.
- (C) Materials and resource consumption.
- (D) Water conservation.
- (E) Water quality impacts.
- (F) Air emissions.
- (G) Production, in-use, and transportation energy inputs.
- (H) Energy efficiency.
- (I) Greenhouse gas emissions.
- (J) Waste and end-of-life disposal.
- (K) Public health impacts, including potential impacts to sensitive subpopulations, including infants and children.

(L) Environmental impacts.

(M) Economic impacts.

(b) The regulations adopted pursuant to this section shall specify the range of regulatory responses that the department may take following the completion of the alternatives analysis, including, but not limited to, any of the following actions:

(1) Not requiring any action.

(2) Imposing requirements to provide additional information needed to assess a chemical of concern and its potential alternatives.

(3) Imposing requirements on the labeling or other type of consumer product information.

(4) Imposing a restriction on the use of the chemical of concern in the consumer product.

(5) Prohibiting the use of the chemical of concern in the consumer product.

(6) Imposing requirements that control access to or limit exposure to the chemical of concern in the consumer product.

(7) Imposing requirements for the manufacturer to manage the product at the end of its useful life, including recycling or responsible disposal of the consumer product.

(8) Imposing a requirement to fund green chemistry challenge grants where no feasible safer alternative exists.

(9) Any other outcome the department determines accomplishes the requirements of this article.

(c) The department, in developing the processes and regulations pursuant to this section, shall ensure that the tools available are in a form that allows for ease of use and transparency of application. The department shall also make every feasible effort to devise simplified and accessible tools that consumer product manufacturers, consumer product distributors, product retailers, and consumers can use to make consumer product manufacturing, sales, and purchase decisions.

(d) (1) In lieu of requiring an analysis of alternatives, as specified in subdivisions (a) and (b), the department may instead rely on all or part of one or more applicable publicly available studies or evaluations of alternatives to the chemical of concern under consideration in a consumer product, in existence at the time of consideration, and may proceed directly to a regulatory response.

(2) Any study or evaluation that the department proposes to rely on pursuant to this subdivision shall satisfy one of the reliability criteria in paragraphs (1) to (3), inclusive, of subparagraph (A) of paragraph (57) of subdivision (a) of, and also meet the requirements of subparagraph (B) of paragraph (57) of subdivision (a) of, Section 69501.1 of Title 22 of the California Code of Regulations.

(3) The department shall provide public notice and an opportunity for comment from the public, including responsible entities, on the proposal to rely on the studies or evaluations. The proposal may be combined with the proposal to list a chemical-product combination as a priority product.

(4) The proposal shall address any relevant factors listed in subdivision (c) of Section 69506 of Title 22 of the California Code of Regulations, as that section may be amended, that product manufacturers would be required to address as part of the regulatory response. If the department determines that a study or evaluation upon which it is relying pursuant to this subdivision does not address one or more relevant factors, the department may augment the study or evaluation with additional information that addresses the relevant factors as part of the proposal to rely on the studies or evaluations.

(5) Following public notice and comment, the department shall make a formal determination of whether the studies or evaluations are applicable and meet the reliability criteria and requirements specified in paragraph (2), and whether all relevant factors have been addressed. The department shall publish a summary of its determination, including whether the department plans to proceed to regulatory responses. If regulatory responses are planned, the summary shall not be judicially reviewable until regulatory responses are finalized.

(6) Following a formal determination pursuant to paragraph (5), the department may issue regulatory responses based on the studies or evaluations, after providing public notice and an opportunity for comment from the public, including responsible entities, on the regulatory responses. The department shall respond to all comments it receives.

(e) (1) The department shall amend Sections 69504 and 69504.1 of Title 22 of the California Code of Regulations to allow a person to petition the department for a regulatory response pursuant to subdivision (d).

(2) The revision of regulations pursuant to paragraph (1) shall be deemed to be a change without regulatory effect.

(f) If the department provides public notice of a proposed regulation pursuant to this article and an opportunity to comment prior to the adoption of the regulation, the dispute resolution procedures specified in Sections 69507.1 and 69507.2 of Title 22 of the California Code of Regulations, as those sections read on January 1, 2021, shall not be available to a person who seeks to dispute the regulation and the requirement to exhaust administrative remedies in subdivision (b) of Section 69507 of Title 22 of the California Code of Regulations does not apply.

SEC. 4. Section 25253.6 is added to the Health and Safety Code, to read:

25253.6. The Legislature hereby declares that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on sensitive populations.

SEC. 5. Section 25253.7 is added to the Health and Safety Code, to read:

25253.7. (a) (1) The department may issue a formal request for information from product manufacturers. The request shall be accompanied by a brief statement on why the department is requesting the information. A product manufacturer shall provide to the department data and information on the ingredients and use of a consumer product upon the department's request within the time specified in paragraph (4). The department's request may include, but is not limited to, all of the following:

(A) Information on ingredient chemical identity, concentration, and functional use.

(B) Existing information, if any, related to the use of the products by children, pregnant women, or other sensitive populations.

(C) Data on state product sales, or national product sales in the absence of state product sales data.

(2) (A) If the product manufacturer certifies in writing that it does not have access to information requested pursuant to paragraph (1), in whole or in part, and that it has attempted to, but cannot, obtain that information from one or more suppliers or chemical manufacturers, the product manufacturer shall provide the identity and contact information of those suppliers or chemical manufacturers to the department.

(B) To the extent that the product manufacturer satisfies the requirements of subparagraph (A), the product manufacturer shall be considered to be in compliance with the requirement to provide the data and information specified in paragraph (1), with respect to the information that the product manufacturer has attempted to obtain from the supplier or chemical manufacturer, and shall be absolved of liability for violating this section as it pertains to the provision of that information.

(C) The department may issue an independent information request to a supplier or chemical manufacturer identified by the product manufacturer pursuant to subparagraph (A) for the unknown information that the product manufacturer certifies it does not have access to, as well as for the identity and contact information of other suppliers or chemical manufacturers, as necessary to access the information requested pursuant to paragraph (1). Upon the department's request, a supplier or chemical manufacturer shall provide the information requested pursuant to this subparagraph to the department. The supplier or chemical manufacturer shall be considered to be in violation of this section, and is liable for civil penalties pursuant to subdivision (b), to the extent that it fails to comply with an information request, pursuant to subparagraph (A) or (B), in its entirety.

(3) The department may seek data and information pursuant to paragraphs (1) and (2) for any product category or subcategory published in a previous Priority Product Work Plan or being considered for inclusion in an upcoming Priority Product Work Plan.

(4) The department shall provide 30 days for a response to a request for data or information, unless the department concludes additional time is necessary for the entity to obtain the necessary information. If the department determines that a longer time is required, it shall identify the deadline for response, which shall not exceed 120 days. If the entity is in communication with the department and is working in good faith to fulfill the department's request, the department may exceed 120 days by granting additional time in an amount not to exceed 60 days.

(5) In providing data or information in response to a request from the department, a product manufacturer, chemical manufacturer, or supplier may raise trade secret claims in accordance with Section 25257.

(b) (1) A person who violates this section shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each separate violation or, for continuing violations, for each day that violation continues. Liability under this section may be imposed in a civil action or may be imposed administratively.

(2) A penalty collected pursuant to this subdivision shall be deposited in the Toxic Substances Control Account in the General Fund.

(3) In imposing an administrative penalty pursuant to this subdivision, the department shall take into consideration the nature, circumstances, extent, and gravity of the violation, the history of previous violations, the violator's ability to pay the penalty, and the deterrent effect of the penalty.

(4) Nothing in this section shall be construed to impose liability for a civil penalty pursuant to paragraph (1) for a violation of this section resulting from another party's failure to comply with an independent information request issued by the department pursuant to subparagraph (C) of paragraph (2) of subdivision (a).

SEC. 6. Section 25253.9 is added to the Health and Safety Code, to read:

25253.9. Subject to an appropriation by the Legislature for purposes of this section, the department shall include in each Priority Product Work Plan, commencing with the 2024–26 Priority Product Work Plan, in addition to any other information that the department is required to include pursuant to Section 69503.4 of Title 22 of the California Code of Regulations, or any successor regulation, a brief description of all of the following information:

(a) Information that the department has at the time the work plan is issued on the chemicals or chemical ingredients that may be chemicals of concern that are contained in consumer products within each product category or subcategory.

(b) Any additional ingredient information that is needed for the department to evaluate the safety of those consumer products, including, but not limited to, the information specified in Section 25253.7.

(c) Information specifying how the department plans to collect the additional information, if any, described in subdivision (b).

(d) (1) Timelines for completion of all of the following with regard to at least five product categories or subcategories in each work plan:

(A) The collection of information described in subdivision (b).

(B) All actions required pursuant to this article for a consumer product that contains a chemical of concern, including, but not limited to, the listing of that product as a priority product, the completion of an alternatives analysis for the product, and the finalization of regulatory response determinations.

(2) The length of a timeline pursuant to paragraph (1) shall not exceed seven years from the date of issuance of the work plan.

(3) In determining the data needed and actions required pursuant to paragraph (1), the department shall take into account all chemicals that are known to serve or can potentially serve the same function in the product categories or subcategories, such as surfactants, preservatives, or plasticizers, in order to avoid the substitution of one chemical with another chemical on the candidate chemical list.

(4) An action to enforce the timelines shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

SEC. 7. 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.