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**AB-347 Household product safety: toxic substances: testing and enforcement.** (2023-2024)

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**Assembly Bill No. 347**

**CHAPTER 932**

An act to amend Section 108945 of, to add Chapter 3 (commencing with Section 108075) to Part 3 of Division 104 of, to repeal the heading of Chapter 3 of Part 3 of Division 104 of, and to repeal Article 7 (commencing with Section 108087) of Chapter 3 of Part 3 of Division 104 of, the Health and Safety Code, relating to consumer protection.

[ Approved by Governor September 29, 2024. Filed with Secretary of State September 29, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 347, Ting. Household product safety: toxic substances: testing and enforcement.

(1) Existing law prohibits juvenile products, textile articles, and food packaging that contain specified levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) from being distributed, sold, or offered for sale in the state, as provided.

This bill would require the Department of Toxic Substances Control, on or before January 1, 2029, to adopt regulations for the enforcement of those prohibitions on the use of PFAS, and, on and after July 1, 2030, to enforce and ensure compliance with those provisions and regulations, as provided. The bill would require manufacturers of these products, on or before July 1, 2029, to register with the department, to pay a registration fee to the department, and to provide a statement of compliance certifying compliance with the applicable prohibitions on the use of PFAS to the department, as specified. The bill would authorize the department to test products and to rely on third-party testing to determine compliance with prohibitions on the use of PFAS, as specified. The bill would require the department to issue a notice of violation for a product in violation of the prohibitions on the use of PFAS, as provided. The bill would authorize the department to assess an administrative penalty for a violation of these prohibitions and would authorize the department to seek an injunction to restrain a person or entity from violating these prohibitions, as specified. The bill would require the department, on or before July 1, 2033, to submit a report to the Legislature regarding its compliance and enforcement activities performed pursuant to these provisions, as specified.

The bill would require the department to deposit the registration fees and administrative penalties into the PFAS Enforcement Fund, which the bill would create in the State Treasury, to be used to implement these provisions, upon appropriation by the Legislature.

(2) For purposes of restricting the use of PFAS, existing law defines "juvenile product" to mean a product designed for use by infants and children under 12 years of age, including, but not limited to, specified products.

This bill would limit the definition of this term to the list of specified products.

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

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

**SECTION 1.** The heading of Chapter 3 of Part 3 of Division 104 of the Health and Safety Code is repealed.

**SEC. 2.** Chapter 3 (commencing with Section 108075) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

**CHAPTER 3. Enforcement and Penalties**

**Article 1. Intent**

**108075.** (a) It is the intent of the Legislature that this chapter provide enforcement mechanisms for existing and future perfluoroalkyl and polyfluoroalkyl substance (PFAS) bans and labeling requirements enacted by the Legislature.

(b) It is the intent of the Legislature that all persons and entities subject to enforcement pursuant to this chapter remain subject to any other modes of enforcement or legal action otherwise authorized by law.

**Article 2. Definitions and General Provisions**

**108076.** For purposes of this chapter, all of the following definitions apply:

(a) "Covered PFAS restriction" means a restriction imposed by any of the following:

- (1) Chapter 12.5 (commencing with Section 108945).
- (2) Chapter 13.5 (commencing with Section 108970).
- (3) Article 1 (commencing with Section 109000) of Chapter 15.

(b) "Covered product" means any of the following:

- (1) A juvenile product, as defined in Section 108945.
- (2) Textile articles, as defined in Section 108970.
- (3) Food packaging, as defined in Section 109000.

(c) "Department" means the Department of Toxic Substances Control.

**108077.** On or before January 1, 2029, the department shall adopt regulations to implement, interpret, enforce, or make specific this chapter and the covered PFAS restrictions.

**108078.** This chapter does not limit or restrict existing mandates, prohibitions, deadlines, enforcement authorities, or rights of action.

**Article 3. Registration and Testing**

**108079.** (a) On or before July 1, 2029, a manufacturer of a covered product shall register with the department and provide to the department all of the following in the manner prescribed by the department in regulation:

- (1) The name and a description of each covered product it manufactures.
- (2) The applicable registration fee.
- (3) (A) A statement of compliance certifying that each covered product is in compliance with the applicable covered PFAS restriction.  
  
(B) The department may request, and a manufacturer shall provide, technical documentation, including analytical test results, to demonstrate compliance with the applicable covered PFAS restriction. The certification and analytical tests shall comply with those published on the department's internet website pursuant to subdivision (b).

(b) On or before January 1, 2029, the department shall publish on its internet website a list of accepted methods for testing whether a covered product complies with the covered PFAS restrictions and appropriate third-party accreditations for laboratories. The department may update the list of accepted testing methods and appropriate third-party accreditations for laboratories as necessary.

(c) The department shall specify in regulation the manner for registering and the registration fee. The registration fee shall not exceed the department's reasonable costs of implementing this chapter.

(d) On and after July 1, 2030, the department shall enforce and ensure compliance with this chapter.

**108080.** The department may procure and test any covered product for compliance with the applicable covered PFAS restrictions. Tests may be done by selecting and testing randomized samples of covered products from a cross section of retailers or by any other process specified by the department in regulation.

#### **Article 4. Notice of Violation**

**108081.** (a) The department shall issue a notice of violation to a person or entity in violation if any of the following occurs:

- (1) The department's testing or test results submitted as a part of the registration process pursuant to subdivision (a) of Section 108079 indicates that a covered product violates one or more applicable covered PFAS restrictions.
- (2) The department determines that a covered product violates a covered PFAS restriction after finding PFAS as an ingredient identified on a covered product's label.
- (3) The department finds a violation of this chapter or any rule, regulation, standard, or requirement issued or adopted pursuant to this chapter.

(b) A notice of violation shall indicate the nature of the violation and may do any of the following:

- (1) Assess an administrative penalty against a person or entity in violation.
- (2) Require compliance with the applicable covered PFAS restrictions, including requiring the person or entity to cease the sale or distribution of a covered product in this state.

(c) The department may issue a notice of violation pursuant to Section 108083.

(d) (1) The department shall publish on its internet website information about each notice of violation, including, but not limited to, the relevant product information for each covered product subject to a notice of violation.

- (2) The department shall develop a process for keeping interested persons or entities informed about updates to notices of violation published on the department's internet website.

#### **Article 5. Enforcement**

**108082.** (a) The department shall determine, on a case-by-case basis, the enforcement mechanism and the amount of any administrative penalty assessed pursuant to this chapter. A penalty assessed shall not be less than ten thousand dollars (\$10,000) for the first violation. A penalty may be assessed for each violation of a separate provision. For a continuing violation, a penalty may be assessed for each day that the violation continues. In determining the amount of an administrative penalty, the department shall consider all of the following factors:

- (1) The nature and severity of the violation.
- (2) The good or bad faith of the person or entity in violation.
- (3) The history of prior violations, if any.
- (4) Evidence that the violation was willful.
- (5) The extent that the person or entity has cooperated with the department.

(b) In addition to the remedies provided in this chapter, the Attorney General may bring an action in superior court on behalf of the department, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person or entity from violating any provision of this chapter. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the department shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or to show or tending to show irreparable damage or loss.

**108083.** (a) The department may receive reports of alleged violations of covered PFAS restrictions, including analytical test results, from consumers, businesses, research institutions, persons, entities, and not-for-profit entities, and shall verify those alleged reports through its own independent testing, verification, or inspection.

(b) If the violation concerns a failure to disclose information that is required by law, the department may issue a notice of violation and assess an administrative penalty.

#### **Article 6. Finance**

**108084.** The department shall deposit all moneys from the registration fee described in Section 108079 and all administrative penalties collected pursuant to this chapter into the PFAS Enforcement Fund, which is hereby created in the State Treasury. Moneys in the fund shall, upon appropriation by the Legislature, be used to fund the department's reasonable costs of implementing this chapter. The department's duties to initiate, implement, or enforce any requirement of this chapter are contingent upon sufficient funds in the Toxic Substances Control Account, as determined by the Department of Finance, and upon an appropriation by the Legislature for the purposes of implementing and enforcing the requirements of this chapter.

**108085.** Upon appropriation by the Legislature and subject to Section 108084, if funds in the Toxic Substances Control Account are sufficient to finance the development of the regulations and the startup costs of the department's activities pursuant to this chapter, funds may be used as a loan by the department, for the department to carry out this chapter until the PFAS Enforcement Fund generates revenues sufficient to fund the department's reasonable costs of implementing this chapter and to reimburse any outstanding loans made from the Toxic Substances Control Account used to finance the development of the regulations and the startup costs of the department's activities pursuant to this chapter.

#### **Article 7. Reporting**

**108087.** On or before July 1, 2033, the department shall submit a report to the Legislature regarding its compliance and enforcement activities performed pursuant to this chapter, including, but not limited to, all of the following:

(a) A summary of the covered products manufactured by the manufacturers registered with the department, the type and number of products tested, and product testing results.

(b) A description of the types of the compliance activities undertaken by the department.

(c) A description of each administrative penalty or any other enforcement activity taken by the department against persons or entities pursuant to this chapter, including the names and descriptions of the covered products.

(d) (1) A report to be submitted pursuant to this article shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this article is repealed on January 1, 2037.

**SEC. 3.** Section 108945 of the Health and Safety Code is amended to read:

**108945.** For purposes of this chapter, the following definitions apply:

(a) "Adult mattress" means a mattress other than a crib mattress or toddler mattress.

(b) "Regulated perfluoroalkyl and polyfluoroalkyl substances" or "regulated PFAS" means either of the following:

(1) PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product, including, but not limited to, 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.

(2) The presence of PFAS in a product or product component at or above 100 parts per million, as measured in total organic fluorine.

(c) (1) "Juvenile product" means the following products designed for use by infants and children under 12 years of age: a baby or toddler foam pillow, bassinet, bedside sleeper, booster seat, changing pad, child restraint system for use in motor vehicles and aircraft, co-sleeper, crib mattress, floor playmat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant sleep positioner, infant swing, infant travel bed, infant walker, nap cot, nursing pad, nursing pillow, playmat, playpen, play yard, polyurethane foam mat, pad, or pillow, portable foam nap mat, portable infant sleeper, portable hook-on chair, soft-sided portable crib, stroller, and toddler mattress.

(2) "Juvenile product" does not include any of the following:

(A) A children's electronic product, including, but not limited to, a personal computer, audio and video equipment, calculator, wireless phone, game console, handheld device incorporating a video screen, or any associated peripheral such as a mouse, keyboard, power supply unit, or power cord.

(B) A medical device.

(C) An internal component of a juvenile product that would not come into direct contact with a child's skin or mouth during reasonably foreseeable use and abuse of the product.

(D) An adult mattress.

(d) "Medical device" means "device" as defined in subsection (h) of Section 321 of Title 21 of the United States Code.

(e) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.