
OLR Bill Analysis

sSB 926

AN ACT CONCERNING THE PRESENCE OF PFAS IN CERTAIN CONSUMER PACKAGING.

SUMMARY

This bill prohibits, beginning October 1, 2023, manufacturers, suppliers, and distributors from offering for sale or promotional purposes packages or packaging components with (1) any detectable amount of perfluoroalkyl and polyfluoroalkyl substances (PFAS) or (2) PFAS that was introduced to the package or component during manufacturing or distribution (see BACKGROUND). The bill exempts from the PFAS ban packages and packaging components for medical devices or equipment.

Existing law authorizes the Department of Energy and Environmental Protection (DEEP) commissioner to report to the governor and the legislature on the effectiveness of the state's packaging restrictions, including recommending that the law be expanded to include other toxic substances. The bill authorizes the commissioner to (1) create a list of packaging chemicals of high concern, which must be considered toxic chemicals and (2) recommend to the Environment Committee that chemicals on the list be statutorily banned from packaging within two years after making the recommendation.

The bill expands upon the current procedure for showing that a package or packaging components comply with the law's restrictions (i.e., certificates of compliance), which apply to the existing restrictions on lead, mercury, cadmium, and hexavalent chromium and the bill's ban on PFAS chemicals. It also prohibits material used to replace a chemical that is banned from packaging or packaging components from being used in an amount or way that creates a hazard at least equal to the hazard of the banned chemical.

The bill applies existing civil and criminal penalties for violations of the packing and packaging component law to its ban on PFAS in packaging and components, including those for making false statements in certificates of compliance (see BACKGROUND).

It also makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2021

PFAS IN PACKAGING AND COMPONENTS

The law's existing restrictions on lead, mercury, cadmium, and hexavalent chromium in packaging and packaging components applies to intentional introductions. The bill expands the law's meaning of intentional introductions to packaging and components by applying it to PFAS and other regulated chemicals. But the bill's ban on PFAS in components applies regardless of whether there was intent to introduce it.

The bill also considers using a regulated chemical as a processing agent, mold release agent, or intermediate as an intentional introduction when the chemical is detected in the final package or component.

CERTIFICATE OF COMPLIANCE

Current law allows package and packaging component manufacturers and distributors to show that they comply with the law's restrictions by providing a certificate of compliance saying that they relied on the written assurance from the manufacturer about the package's or component's content.

The bill instead makes manufacturers and suppliers responsible for providing the certificates. It also (1) requires certificates to be provided to the public, not just the DEEP commissioner, upon request; (2) allows certificates to be made available through a website; (3) requires an amended or new certificate when a package or component is changed or new; and (4) if the commissioner suspects a violation of the law, requires her to receive certain purchaser information.

Content

Under the bill, if requested by a purchaser, a manufacturer or supplier of a package or component must provide a certificate of compliance, signed by an authorized official, saying that it meets the law's content requirements. If the package or component meets one of the existing exemptions that generally apply to the restricted metals, the certificate must state the specific reason the exemption applies. Manufacturers and suppliers must keep copies of their certificates on file.

Providing Certificates Upon Request

The bill requires certificates, or copies of them, to be provided to the commissioner or the public if either requests them. It allows a manufacturer or supplier to make a certificate available (1) on the manufacturer's website or (2) through an authorized representative of the manufacturer, such as a packaging clearinghouse. (It is unclear how a supplier could make a certificate available on a manufacturer's or representative's website.)

Under the bill, a request from the public must be made in writing and have a copy provided to the commissioner. It must be specific as to the requested package or component information. The manufacturer or supplier, as applicable, must respond to the request within 60 days after receiving it.

The bill also requires a purchaser who receives a certificate of compliance to keep it for the entire time he or she uses the associated package or component.

The bill specifies that the certificate of compliance requirement does not apply to packaging or packaging components for medical devices or medical equipment.

Amended Certificates

If a package or package component manufacturer or supplier reformulates or creates a new package or component, the bill requires it to provide an amended or new certificate of compliance to all current

purchasers.

Suspected Violation

Under the bill, if the commissioner has grounds to suspect that a package (but not a packaging component) is offered for sale in violation of existing law and the bill, she may ask the package's manufacturer or distributor (but not the supplier) to provide a certificate of compliance within the next 30 days.

The bill requires the manufacturer or distributor to (1) give the commissioner the certificate attesting that the package is free of a regulated chemical (but not a metal); (2) notify anyone who sells the package in Connecticut that selling it is prohibited; and (3) give the commissioner a copy of the notice to sellers and a list of who received it, with their addresses.

TOXIC CHEMICALS LIST

The bill allows the DEEP commissioner to periodically review, revise, and publish a list of packaging chemicals of high concern. Chemicals on the list must be considered toxic chemicals.

The bill requires the commissioner to remove a chemical from the list if it no longer meets the criteria for which it was included. The bill caps at 10 the number of chemicals that may be on the list at any time.

Eligibility for Listing

The bill establishes three standards for the commissioner to place a chemical on the list.

First, a chemical can be listed if the commissioner included it on DEEP's list of chemicals of concern due to credible scientific evidence that it is:

1. a carcinogen, reproductive or developmental toxicant, or endocrine disruptor or
2. (a) persistent, bioaccumulative, and toxic; (b) very persistent and very bioaccumulative; (c) persistent, mobile and toxic; or

(d) very persistent and very mobile.

The commissioner may also include a chemical on the list if she determines that there is strong credible scientific evidence (rather than just credible scientific evidence) that it is a human carcinogen, reproductive or developmental toxicant, or endocrine disruptor.

Lastly, the list may include a chemical if the commissioner determines that there is strong credible scientific evidence that it was:

1. found in human blood, breast milk, urine, or other bodily tissues or fluids, through bioengineering studies;
2. found in packaging through sampling and analysis; and
3. added to or in a package.

Under the bill, “credible scientific evidence” is study results that are the product of an independent scientific peer-reviewed experimental design and conduct. The results also must be published in a peer-reviewed journal or a publication from an authoritative federal or international governmental agency (e.g., U.S. Department of Health and Human Services’ National Toxicology Program, World Health Organization, and the European Chemicals Agency).

The criteria for determining if a substance is “persistent, bioaccumulative, and toxic” or “very persistent and very bioaccumulative” are set in Annex XIII of the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) Regulation of the European Union (EC) No. 1907/2006 of the European Parliament and the Council, or its amendments. Similarly, the criteria for determining if a substance is “persistent, mobile, and toxic” or “very persistent and very mobile” is set in the following 2019 REACH report: “REACH: Improvement of guidance and methods for the identification and assessment of PMT/vPvM substances: Final Report.”

BACKGROUND

Packaging and Components

Under existing law, “packaging” is a container used to market, protect, or handle a product and includes a unit package, intermediate package, and shipping container. It also includes an unsealed receptacle, such as a crate, cup, tray, wrapper, or bag, among other things. “Packaging components” are package parts such as interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, label, dye, pigment, adhesive, stabilizer, or another additive.

Penalties

By law, anyone who violates the packaging and packing component law is subject to a civil penalty of up to \$10,000 per offense, which the court sets. A violation includes making a false statement in a certificate of compliance. The law makes each violation, and each day a violation continues, a separate and distinct offense.

Knowingly violating this law, including false statements in certificates of compliance, is punishable by a fine of up to \$50,000, up to two years in prison, or both. Each false statement is subject to the possible fine.

The law also allows the DEEP commissioner to ask the attorney general to seek an injunction to stop someone from continuing a violation. It requires the attorney general, if asked by the commissioner, to take court action to recover a civil penalty a court imposes for a violation of these laws (CGS § 22a-255l).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 21 Nay 11 (03/29/2021)