



September 14, 2022

The Honorable Gavin Newsom
Governor of California
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: AB 2247 (Bloom) – VETO REQUEST

Dear Governor Newsom:

The undersigned organizations, representing a cross-section of industries respectfully requests that you veto AB 2247 (Bloom), legislation that would create a new public facing database to house information submitted by manufacturers relative to perfluoroalkyl and polyfluoroalkyl (PFAS) substances.

While we can appreciate the intent behind this bill, we and others raised several questions and concerns as the bill was making its way through the process. Unfortunately, many of these issues were not resolved including:

- An overly broad definition of PFAS that does not consider differing health/safety profiles, uses or potential for exposure.
- Overlap and redundancy with new PFAS reporting requirements underway at the U.S. Environmental Protection Agency (USEPA).
- Ability for the Dept. of Toxic Substances Control (DTSC) to address these types of issues under existing authority and the potential for expanded authority under legislation just passed by the Legislature.
- Lack of clarity on how this information will presented to the public to ensure information is presented in an unbiased, scientifically sound manner that does not cause unnecessary concern.
- Lack of any confidential business information/trade secret protections.
- Impractical implementation timeline.

Background

PFAS, or fluorotechnology, are a diverse group of chemistries characterized by the strong bond between fluorine and carbon. Because of this strong bond, PFAS provides products with strength, durability, stability, and resilience. These properties are critical to the reliable and safe function of a broad range of products that are important for industry and consumers, such as smart phones, tablets, and telecommunications systems; aircraft; solar panels and turbines critical to alternative energy

development; medical devices and technology such as MRI imaging devices and pacemakers; lithium batteries, including those for electric vehicles, and engine wirings and gauges. In fact, PFAS are critical to our nation's supply chain resiliency.

Additionally, it is important to note that all PFAS chemistries are not the same. Individual chemistries have their own unique properties and uses, as well as environmental and health profiles. According to the USEPA, "approximately 600 PFAS are manufactured (including imported) and/or used in the United States."¹ Among these 600 are substances in the solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols) and gaseous (e.g., hydrofluorocarbon refrigerants) forms. The fundamental physical, chemical, and biological properties of solids, liquids and gases are clearly different from one another.

The very distinct physical and chemical properties of the three types of commercial PFAS described demonstrate how varied they are and how imposing a new reporting requirement regardless of these differences would be inappropriate.

USEPA Adds PFAS to Toxic Release Inventory and TSCA Reporting

Congress and the Biden Administration recently authorized significant legislation with new rules regulating PFAS.² Subsequently, under the Toxic Release Inventory (TRI) program companies or federal facilities that release 100 or more pounds of the 179 identified PFAS substances must collect and publicly report information on the amount that is released into the air, water, or land, and the quantities managed through disposal, energy recovery, recycling, or treatment. Additionally, the EPA is undergoing rulemaking under the Toxic Substances Control Act (TSCA) Section 8 that would require those who manufacture (including import) any identified PFAS to report information regarding PFAS uses, disposal, exposures, hazards, and production volumes.³

Testing for and identifying what is defined as PFAS is already a complex process. Additional reporting requirements at the state level will lead to multiple testing requirements with multiple definitions of PFAS. At a minimum, California can utilize data from these federal efforts to better inform and prioritize any necessary policy options. We urge you to avoid the redundant use of state resources and support the EPA's efforts to comprehensively identify PFAS substances.

Existing DTSC Authority

Under the Safer Consumer Products (SCP) statute, DTSC has broad authority to request information from manufacturers and others. Specifically, California Code of Regulations, title 22, section 69501.4(b) authorizes DTSC to request information from product or chemical manufacturers, importers, assemblers, or retailers that it determines necessary to implement the Safer Consumer Products Program's framework regulations, via an information call-in. DTSC may use the information obtained through call-ins for several purposes, including identifying product-chemical combinations to evaluate as potential Priority Products; identifying and analyzing alternatives to eliminate or reduce potential exposures and adverse impacts; and filling data gaps to improve understanding and reduce research time.

¹ <https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-26034.pdf>

² S.1790 - National Defense Authorization Act for Fiscal Year 2020

³ <https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0549-0001>

In addition, the Legislature just passed SB 502⁴ granting DTSC expanded authority to require manufacturers provide specific information including:

- information on ingredient chemical identity, concentration, and functional use;
- existing information, if any, related to the use of the products by children, pregnant women, or other sensitive populations; and
- data on state product sales, or national product sales in the absence of state product sales data.

Furthermore, DTSC's budget request⁵ for 37 new positions and \$7.2 million to support the SCP program was approved. These additional resources are aimed at, among other things accelerating the identification of Priority Products, expanding chemical and data analysis, and enforcing requirements, "including notifications and regulatory responses."

Finally, DTSC is utilizing other means to identify chemical ingredients in products. Late last year, the department announced a new partnership⁶ with tech platform Clearya to identify chemicals used in consumer products. In making the announcement, DTSC suggested the partnership will enable the department to "screen products for candidate chemicals and understand more about market presence in ways we've never been able to do before. This will save time, make us more efficient, speed up our process."

We urge you to consider the array of existing laws, regulations, and tools available at both the state and federal level before imposing a sweeping new data reporting requirement.

Database Information/Trade Secret Protections

AB 2247 directs DTSC to contract with the Interstate Chemicals Clearinghouse⁷ (IC2) to create a database that would house an array of information but there is no requirement or guidelines that would ensure information collected is presented to the public in an un-biased, scientifically sound manner. A program presenting such technical and nuanced information should allow manufacturers to be able to review how the data is presented or accompanying statements prior to it being published. Furthermore, the program should have a formal process to allow a company to address information published in a misleading or inaccurate manner.

The mere presence of a PFAS substance in a product does not mean that the product is harmful or that a consumer is at risk. Clear guidelines and safeguards are necessary to ensure the public is presented with fact-based information.

Additionally, some of the information that may be submitted could be proprietary. AB 2247 does not provide for the clear protection of any trade secret or proprietary information. Under TSCA section 8 reporting regulations, those submitting information may assert a confidentiality claim. AB 2247 lacks similar protections and is especially concerning since an outside entity will be managing this information. Some information that could be subject to disclosure may also be subject to US Export Control laws or trigger specific licensing requirements from the federal Bureau of Industry and Security (BIS) if the information is available to citizens from certain foreign countries.

⁴ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB502

⁵ https://esd.dof.ca.gov/Documents/bcp/2223/FY2223_ORG3960_BCP5200.pdf

⁶ https://dtsc.ca.gov/2021/10/19/news-release_t-19-21/

⁷ <https://theic2.org/members#gsc.tab=0>

Late Exemptions Run Counter to Proponents Stated Intent

Proponents have stated “We need to have data about the sources of PFAS entering our waterways in order to make informed management decisions.”⁸ However, the August 11 amendments exempt from reporting several categories of products/applications. If the intent of this bill is to determine the sources of PFAS in the environment, why now are only certain manufacturers required to report and others are not?

Impractical Deadline

The requirement that a database be up and running by July 1, 2026, and that manufacturers must begin to report information by that date seems impractical. This bill has the potential to impact hundreds of thousands of products and component parts. A significant amount of time and resources would be needed to ascertain information from global suppliers.

Fiscal Impacts

As noted by the Assembly Appropriations Committee, AB 2247 would result in “unknown but significant costs, ranging from hundreds of thousands of dollars to the low millions, for DTSC to establish the reporting platform.”

Additionally, the Department of Finance, in a July 25, 2022, analysis⁹ states that “DTSC estimates a one-time cost of \$2 million General Fund for the creation of a new reporting system. Implementation of this bill's requirements and conformance with the state IT requirements may require oversight by the California Department of Technology, while incurring system development costs and added allocation of IT staff resources to develop the reporting system. Eventual operation and maintenance costs would depend on the IT solution to be implemented. The Department of Finance concurs with this assessment but notes that this bill may create ongoing General Fund cost pressures if there are prolonged operation and maintenance costs.”

For these reasons, we respectfully request that you veto AB 2247. Thank you in advance for considering our views.

Sincerely,

Aerospace Defense Alliance of California:	Robert Spiegel
Alliance for Automotive Innovation:	Curt Augustine
American Chemistry Council:	Tim Shestek
American Coatings Association:	Riaz Zaman
American Home Furnishings Alliance:	Bill Perdue
Association of Equipment Manufacturers:	Kip Eideberg
Association of Home Appliance Manufacturers:	Kevin Messner
California Chamber of Commerce:	RJ Cervantes
California Manufacturers & Technology Association:	Robert Spiegel
Carlisle Spray Foam Insulation:	Jon Purcell
Consumer Technology Association:	Dan Moyer

⁸ <https://www.ewg.org/news-insights/news/2022/05/california-assembly-passes-bill-track-and-report-toxic-forever-chemicals>

⁹ <https://esd.dof.ca.gov/LegAnalysis/getPdf/8E06BBF3-830C-ED11-913B-00505685B5D1>

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Household & Commercial Products Association:	Christopher Finarelli
Industrial Environmental Association:	Jack Monger
Juvenile Products Manufacturers Association:	Lauren Aguilar
Motor & Equipment Manufacturers Association:	Alex Boesenberg
National Association of Chemical Distributors:	Jennifer Gibson
National Council of Textile Organizations:	Katie Pettibone
National Electrical Manufacturers Association:	Spencer Pederson
Outdoor Power Equipment Institute:	Daniel J. Mustico
Plastics Industry Association:	Kris Quigley
Printing United Alliance:	Gary Jones
Spray Polyurethane Foam Alliance:	Rick Duncan
The Toy Association:	Erin Raden
Truck & Engine Manufacturers Association:	Timothy A. Blubaugh

cc: Christine Hironaka, Deputy Cabinet Secretary
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