

AMENDED IN ASSEMBLY AUGUST 12, 2019

AMENDED IN ASSEMBLY JULY 3, 2019

AMENDED IN ASSEMBLY JUNE 26, 2019

AMENDED IN SENATE MAY 17, 2019

**SENATE BILL**

**No. 392**

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**Introduced by Senator Allen**  
(Coauthor: Assembly Member Bauer-Kahan)

February 20, 2019

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An act to amend Sections 25251, 25252, and 25253 of, to add Sections 25253.6, 25253.7, and 25253.9 to, to repeal Sections 25256.1, 25256.2, and 25256.3 of, and to repeal and add Section 25256 of, the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 392, as amended, 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 vulnerable 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 2021–23 work plan, in addition to any other information that the department is required to include pursuant to the regulations, 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) Existing law requires the department to establish the Toxics Information Clearinghouse to provide a decentralized, web-based system for the collection, maintenance, and distribution of specific chemical hazard trait and environmental and toxicological end-point data, and to make the clearinghouse accessible to the public through a single internet web portal. Existing law requires the Office of Environmental Health Hazard Assessment, on or before January 1, 2011, to evaluate and specify the hazard traits and environmental and toxicological end points and any other relevant data to be included in the clearinghouse.

This bill would repeal the provisions relating to the Toxics Information Clearinghouse, but would require the hazard trait and environmental and toxicological end-point data that was specified by the office for inclusion in the clearinghouse to continue to be maintained and made available to the public on the internet websites of the office and the department.

(5) 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.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25251 of the Health and Safety Code is  
2 amended to read:

3 25251. For purposes of this article, the following definitions  
4 shall apply:

5 (a) “Chemical manufacturer” means a person who manufactures  
6 a chemical or chemical ingredient that is used in a consumer  
7 product.

8 (b) “Consumer product” means a product or part of the product  
9 that is used, brought, or leased for use by a person for any purposes.

10 “Consumer product” does not include any of the following:

11 (1) A dangerous drug or dangerous device as defined in Section  
12 4022 of the Business of Professions Code.

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

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

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

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

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

1       (c) “Council” means the California Environmental Policy  
2 Council established pursuant to subdivision (b) of Section 71017  
3 of the Public Resources Code.

4       (d) “Office” means Office of Environmental Health Hazard  
5 Assessment.

6       (e) “Panel” means the Green Ribbon Science Panel established  
7 pursuant to Section 25254.

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

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

14      25252. (a) On or before January 1, 2011, the department shall  
15 adopt regulations to establish a process to identify and prioritize  
16 those chemicals or chemical ingredients in consumer products that  
17 may be considered as being a chemical of concern, in accordance  
18 with the review process specified in Section 25252.5. The  
19 department shall adopt these regulations in consultation with the  
20 office and all appropriate state agencies and after conducting one  
21 or more public workshops for which the department provides public  
22 notice and provides an opportunity for all interested parties to  
23 comment. The regulations adopted pursuant to this section shall  
24 establish an identification and prioritization process that includes,  
25 but is not limited to, all of the following considerations:

26       (1) The volume of the chemical in commerce in this state.

27       (2) The potential for exposure to the chemical in a consumer  
28 product.

29       (3) Potential effects on sensitive subpopulations, including  
30 infants and children.

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

36       (2) In adopting regulations pursuant to this section, the  
37 department shall reference and use, to the maximum extent feasible,  
38 available information from other nations, governments, and  
39 authoritative bodies that have undertaken similar chemical  
40 prioritization processes, so as to leverage the work and costs

1 already incurred by those entities and to minimize costs and  
2 maximize benefits for the state's economy.

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

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

8 25253. (a) (1) On or before January 1, 2011, the department  
9 shall adopt regulations pursuant to this section that establish a  
10 process for evaluating chemicals of concern in consumer products,  
11 and their potential alternatives, to determine how best to limit  
12 exposure or to reduce the level of hazard posed by a chemical of  
13 concern, in accordance with the review process specified in Section  
14 25252.5. The department shall adopt these regulations in  
15 consultation with all appropriate state agencies and after conducting  
16 one or more public workshops for which the department provides  
17 public notice and provides an opportunity for all interested parties  
18 to comment.

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

25 (A) Product function or performance.  
26 (B) Useful life.  
27 (C) Materials and resource consumption.  
28 (D) Water conservation.  
29 (E) Water quality impacts.  
30 (F) Air emissions.  
31 (G) Production, in-use, and transportation energy inputs.  
32 (H) Energy efficiency.  
33 (I) Greenhouse gas emissions.  
34 (J) Waste and end-of-life disposal.

35 (K) Public health impacts, including potential impacts to  
36 sensitive subpopulations, including infants and children.

37 (L) Environmental impacts.  
38 (M) Economic impacts.

39 (b) The regulations adopted pursuant to this section shall specify  
40 the range of regulatory responses that the department may take

1 following the completion of the alternatives analysis, including,  
2 but not limited to, any of the following actions:

3 (1) Not requiring any action.

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

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

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

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

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

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

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

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

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

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

36 (2) Any study or evaluation that the department proposes to rely  
37 on pursuant to this subdivision shall satisfy one of the reliability  
38 criteria in paragraphs (1) to (3), inclusive, of subparagraph (A) of  
39 paragraph (57) of subdivision (a) of, and also meet the requirements

1 of subparagraph (B) of paragraph (57) of subdivision (a) of Section  
2 69501.1 of Title 22 of the California Code of Regulations.

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

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

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

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

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

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

39 (f) If the department provides public notice of a proposed  
40 regulation pursuant to this article and an opportunity to comment

1 prior to the adoption of the regulation, the dispute resolution  
2 procedures specified in Sections 69507.1 and 69507.2 of Title 22  
3 of the California Code of Regulations, as those sections read on  
4 January 1, 2019, shall not be available to a person who seeks to  
5 dispute the regulation and the requirement to exhaust administrative  
6 remedies in subdivision (b) of Section 69507 of Title 22 of the  
7 California Code of Regulations shall not apply.

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

10 25253.6. The Legislature hereby declares that it is the policy  
11 goal of the state to ensure the safety of consumer products sold in  
12 California through timely administrative and legislative action on  
13 consumer products and chemicals of concern in those products,  
14 particularly those products that may have disproportionate impacts  
15 on vulnerable populations.

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

18 25253.7. (a) (1) The department may issue a formal request  
19 for information from product manufacturers. The request shall be  
20 accompanied by a brief statement on why the department is  
21 requesting the information. A product manufacturer shall provide  
22 to the department data and information on the ingredients and use  
23 of a consumer product upon the department's request within the  
24 time specified in paragraph (4). The department's request may  
25 include, but is not limited to, all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21       25253.9. Subject to an appropriation by the Legislature for  
22 purposes of this section, the department shall include in each  
23 Priority Product Work Plan, commencing with the 2021–23 Priority  
24 Product Work Plan, in addition to any other information that the  
25 department is required to include pursuant to Section 69503.4 of  
26 Title 22 of the California Code of Regulations, or any successor  
27 regulation, all of the following information:

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

32       (b) Any additional ingredient information that is needed for the  
33 department to evaluate the safety of those consumer products,  
34 including, but not limited to, the information specified in Section  
35 25253.7.

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

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

1       (A) The collection of information described in subdivision (b).  
2       (B) All actions required pursuant to this article for a consumer  
3 product that contains a chemical of concern, including, but not  
4 limited to, the listing of that product as a priority product, the  
5 completion of an alternatives analysis for the product, and the  
6 ~~adoption of implementing regulations. finalization of regulatory~~  
7 *response determinations.*

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

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

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

19     SEC. 7. Section 25256 of the Health and Safety Code is  
20 repealed.

21     SEC. 8. Section 25256 is added to the Health and Safety Code,  
22 to read:

23     25256. The hazard trait and environmental and toxicological  
24 end-point data specified by the office for inclusion in the Toxics  
25 Information Clearinghouse pursuant to former Section 25256.1,  
26 as that section read on January 1, 2019, shall continue to be  
27 maintained and made available to the public on the internet  
28 websites of the office and the department.

29     SEC. 9. Section 25256.1 of the Health and Safety Code is  
30 repealed.

31     SEC. 10. Section 25256.2 of the Health and Safety Code is  
32 repealed.

33     SEC. 11. Section 25256.3 of the Health and Safety Code is  
34 repealed.

35     SEC. 12. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIIIIB of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within  
2 the meaning of Section 6 of Article XIII B of the California  
3 Constitution.

O