

SENATE BILL NO. 1072

September 01, 2020, Introduced by Senators IRWIN, MCCANN, BRINKS and CHANG and referred to the Committee on Environmental Quality.

A bill to amend 2000 PA 92, entitled
"Food law,"
(MCL 289.1101 to 289.8111) by adding section 5106.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5106. (1) Except as otherwise provided in this
2 subsection, and subject to subsection (4), beginning January 1,
3 2022, a person shall not knowingly manufacture, sell, offer for
4 sale, distribute for sale, or distribute for use in this state food
5 packaging to which PFAS, bisphenols, or phthalates have been
6 intentionally added in any amount. This prohibition does not take

1 effect unless both of the following occur:

2 (a) The department determines that safer alternatives to PFAS,
3 bisphenols, and phthalates, as they are used in food packaging, are
4 available.

5 (b) By the date and in the manner required under subsection
6 (3), the department publishes its findings in support of the
7 determination made under subdivision (a).

8 (2) To determine whether safer alternatives to PFAS,
9 bisphenols, and phthalates, as they are used in food packaging, are
10 available, the department shall conduct an alternatives assessment
11 as part of the chemical action plan that does all of the following:

12 (a) Evaluates less toxic chemicals and nonchemical
13 alternatives to replace the use of PFAS, bisphenols, and phthalates
14 as they are used in food packaging.

15 (b) Follows the Interstate Chemicals Clearinghouse
16 Alternatives Assessment Guide, version 1.1, published by the
17 Interstate Chemicals Clearinghouse.

18 (c) Includes, at a minimum, an evaluation of chemical hazards,
19 exposure, performance, cost, and availability.

20 (3) By January 1, 2021, the department shall provide its
21 findings to the legislature and make its findings available to the
22 public on whether safer alternatives to PFAS, bisphenols, and
23 phthalates, as they are used in food packaging, are available. The
24 department shall submit to the legislature a report that includes
25 its findings and the results of a peer review of the alternatives
26 assessment conducted under subsection (2). If an alternative is a
27 chemical, it must be a chemical that has been previously approved
28 for food contact by the United States Food and Drug Administration
29 through the issuance of a determination that the chemical has a

1 reasonable certainty of causing no harm, or another form of
2 approval.

3 (4) Both of the following apply to the effective date of the
4 prohibition on the use of PFAS, bisphenols, or phthalates provided
5 in subsection (1):

6 (a) If the report required under subsection (3) finds that
7 safer alternatives are available for the types of food packaging
8 applications specified in the report, the prohibition takes effect
9 January 1, 2022.

10 (b) If the report required under subsection (3) does not find
11 that safer alternatives are available for the types of food
12 packaging applications specified in the report, the prohibition
13 does not take effect January 1, 2022 and subsection (5) applies.

14 (5) If the department does not find in the report required
15 under subsection (3) that safer alternatives are available for the
16 types of food packaging applications specified in the report,
17 beginning January 1, 2021, and each year after that, the department
18 shall review and report to the legislature on alternatives to PFAS,
19 bisphenols, and phthalates as they are used in food packaging, in
20 the manner described in subsections (2) and (3). If a report
21 submitted to the legislature under this subsection finds that safer
22 alternatives are available, the prohibition in subsection (1) takes
23 effect 2 years after the date of that report.

24 (6) A manufacturer of packaging or a packaging component shall
25 develop a certificate of compliance stating that the packaging or
26 packaging component is in compliance with department standards. All
27 of the following apply to a certificate of compliance required
28 under this subsection:

29 (a) A manufacturer shall develop a certificate of compliance

1 by the effective date of any prohibition that results from the
2 implementation of this section.

3 (b) An authorized official of the manufacturer shall sign the
4 certificate of compliance.

5 (c) A manufacturer shall keep the certificate of compliance on
6 file for as long as the packaging or packaging component is in use
7 and for 3 years after the date of the last sale or distribution of
8 the packaging or packaging component.

9 (d) A manufacturer shall provide a certificate of compliance
10 or a copy of a certificate of compliance to the department upon
11 request within 60 days.

12 (e) If a manufacturer is required to provide a certificate of
13 compliance under any other law of this state, the manufacturer may
14 develop a single certificate of compliance that contains the
15 information required by that law and this section.

16 (f) If a manufacturer, that is the subject of a certificate of
17 compliance under this subsection, reformulates or alters the
18 packaging or packaging component, the manufacturer shall develop an
19 amended or new certificate of compliance for the reformulated or
20 new packaging or packaging component.

21 (7) As used in this section:

22 (a) "Alternatives assessment" means an assessment of
23 alternatives to the use of PFAS, bisphenols, and phthalates in food
24 packaging that is conducted in accordance with the Interstate
25 Chemicals Clearinghouse Alternatives Assessment Guide, version 1.1,
26 published by the Interstate Chemicals Clearinghouse.

27 (b) "Bisphenols" means an industrial chemical compound that is
28 a component of hard plastics, such as polycarbonate, epoxy resins,
29 and thermal receipt paper. Bisphenols include, but are not limited

1 to, bisphenol A, bisphenol AF, bisphenol AP, bisphenol B, bisphenol
2 C, bisphenol C2, bisphenol E, bisphenol F, bisphenol G, bisphenol
3 M, bisphenol S, bisphenol P, bisphenol PH, bisphenol TMC, and
4 bisphenol Z.

5 (c) "Chemical action plan" means a plan that identifies
6 sources of and recommends actions to reduce the use, release, and
7 exposure to PFAS, bisphenols, and phthalates.

8 (d) "Food packaging" means packaging or a packaging component
9 that is intended for direct food contact. Food packaging includes,
10 but is not limited to, a food or beverage product that is contained
11 in the food packaging, a food or beverage product to which the food
12 packaging is applied, and a plastic, disposable glove used in
13 commercial or institutional food service.

14 (e) "Manufacturer" means an individual, firm, partnership,
15 organization, joint venture, or corporation that applies packaging
16 or a packaging component to a product for distribution or sale.

17 (f) "Packaging" means a container or wrapper providing a means
18 of marketing, protecting, or handling a product, including unit
19 packaging, intermediate packaging, or a shipping container.
20 Packaging includes, but is not limited to, an unsealed receptacle,
21 such as a carrying case, crate, cup, pail, rigid foil or other
22 tray, wrapping film, bag, or tub.

23 (g) "Packaging component" means an individually assembled part
24 of a packaging container or wrapper, including, but not limited to,
25 any interior or exterior blocking, bracing, cushioning,
26 weatherproofing, exterior strapping, coatings, closure, inks, and
27 labels.

28 (h) "PFAS" means a chemical that contains a perfluoroalkyl or
29 polyfluoroalkyl substance. For the purposes of food packaging, PFAS

1 means a class of fluorinated organic chemicals containing at least
2 1 fully fluorinated carbon atom.

3 (i) "Phthalates" means a member of the class of organic
4 chemicals that are esters of phthalic acid containing 2 carbon
5 chains located in the ortho position.

6 (j) "Safer alternative" means an alternative substance or
7 chemical that, as demonstrated by an alternatives assessment, meets
8 improved hazard and exposure considerations and can be practicably
9 and economically substituted for the original chemical.