

Date of Hearing: March 24, 2021

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 367 (Cristina Garcia) – As Introduced February 1, 2021

[Note: This bill is doubled referred to the Assembly Higher Education Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Menstrual products

SUMMARY: Requires all public schools serving students in grades 6 to 12, the California State University and each community college district, and public agencies that maintain restroom facilities for the public and for employees, and encourages the Regents of the University of California and private institutions of higher learning, to stock at least 50% of restrooms with menstrual products at all times. Specifically, **this bill:**

- 1) Requires that all public schools serving students in grades 6 to 12 stock at least 50% of the schools' restrooms with menstrual products at all times. This expands the current requirement that public schools meeting the 40% pupil poverty threshold required to operate a schoolwide Title 1 program stock at least 50% of the schools' restrooms with menstrual products at all times.
- 2) Changes the term feminine hygiene products to menstrual products.
- 3) Requires the California State University and each community college district to stock 50% of all campus restrooms at all times with free menstrual products.
- 4) Encourages the Regents of the University of California and private universities, colleges, and institutions of higher learning to stock 50% of all campus restrooms at all times with free menstrual products.
- 5) Requires a public agency that conducts an establishment serving the public or open to the public and that maintains restroom facilities for the public, to stock at least 50% of restrooms at all times with free menstrual products.
- 6) Requires a public agency to stock 50% of all restrooms available to employees with free menstrual products at all times.

EXISTING LAW:

- 1) Requires a public school serving grades 6 to 12, inclusive, that meets the 40% pupil poverty threshold required to operate a schoolwide Title 1 program to stock at least 50% of the school's restrooms with feminine hygiene products at all times. (Education Code (EC) 35292.6)
- 2) Prohibits such a school from charging for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products. (EC 35292.6)

- 3) Defines “feminine hygiene products” to mean tampons and sanitary napkins for use in connection with the menstrual cycle. (EC 35292.6)
- 4) Requires that public and private schools enrolling students from Kindergarten through 12th grade ensure that every restroom is maintained and cleaned regularly, fully operational and stocked at all times with toilet paper, soap and paper towels or functional hand dryers (EC 35292.5).
- 5) Requires that, as a condition of participation in the school facilities program, school districts establish a facilities inspection system to ensure that each of its schools is maintained in good repair (EC 17070.75(f)) through the use of the Facility Inspection Tool created by the Office of Public School Construction, or a local evaluation instrument that meets the same criteria (EC 17002).
- 6) Defines “Good Repair” for school facilities to mean that, among other items, restrooms and restroom fixtures are functional and appear to be maintained and stocked with supplies regularly (EC 17002).
- 7) Requires that the safety, cleanliness and adequacy of school facilities, including any needed maintenance to ensure good repair, be reported on the School Accountability Report Card (EC 33126).

FISCAL EFFECT: This Office of Legislative Counsel has identified this bill as a possible state mandated local program.

COMMENTS:

Need for the bill. The author states, “Our biology doesn’t always send an advanced warning when we’re about to start menstruating, which often means we need to stop whatever we’re doing and deal with a period. Often periods arrive at inconvenient times. They can surprise us during an important midterm, while playing with our children at a park, sitting in a lobby waiting to interview for a job, shopping at the grocery store, or even standing on the Assembly Floor presenting an important piece of legislation. Having convenient and free access to these products means our period will not prevent us from being productive members of society, and would alleviate the anxiety of trying to find a product when out in public.”

Adolescent experience relating to menstruation and school. A 2019 Harris Interactive poll of 2,000 U.S. teens aged 13 to 19 commissioned by the nonprofit organization PERIOD and a menstrual products company found:

- Two-thirds of teens have felt stress due to lack of access to period products.
- 20% have struggled to afford period products or were not able to purchase them at all.
- 61% have worn a tampon or pad for more than 4 hours because they did not have enough access to period products (which puts them at risk of infection and TSS).
- 84% have either missed class time or know someone who missed class time because they did not have access to period products.
- 25% have missed class because of lack of access to period products.
- 83% think lack of access to period products is an issue that is not talked about enough.
- 66% do not want to be at school when they are on their period.

- 69% feel embarrassed when they have to bring period products to the bathroom.
- The majority (51%) of students feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 51% have missed at least part of a class or class period due to menstruation symptoms such as cramps.

Dangers of toxic shock syndrome. While some pupils who menstruate may choose to reduce the cost of feminine hygiene products by reducing the time between changing the product, this choice can have a deathly health consequences caused by Toxic Shock Syndrome (TSS). In 1980 the Center for Disease Control (CDC) established a close association between incidents of TSS and tampon use. The potentially fatal disease causes fever, shock, low blood pressure, skin rashes and liver and kidney abnormalities. In 1982 the Federal Drug Administration (FDA) required that menstrual tampon packages contain a brief statement alerting consumers to the dangers of TSS, including the risk to all women using tampons during their menstrual period, especially the reported higher risks to women under 30 years of age and teenage girls. The package warnings were also to include information on the incidence of TSS of 6 to 17 per 100,000 menstruating women and girls per year and the risk of death from contracting TSS.

Similar legislation in other states and cities. According to the Wall Street Journal, as of February, 2020 more than a dozen state legislatures had recently introduced bills that would require public schools to supply free tampons and other menstrual products in their bathrooms, and California, Illinois, New Hampshire and New York had already enacted similar legislation.

New York City adopted legislation in July 2016 requiring the Department of Education to make free feminine hygiene products available to students in the bathrooms of school buildings, in which there are female students in grades 6 to 12. The intent of the legislation was to ensure that students have the support they need to focus on learning and feel comfortable in the classroom. Supporters also pointed out that increasing access to basic feminine hygiene products demonstrates a commitment to advancing gender equity. This legislation followed a successful pilot program during the 2015-16 school year, in which the City placed 380 dispensers in 25 middle and high schools. The City reported a 2.4% increase in school attendance during the pilot program year.

Approved state mandate claim for existing requirement. The Commission on State Mandates has found that the existing requirement to provide feminine hygiene products in the restrooms of specified schools imposes a reimbursable state-mandated program and in December, 2020 issued an annual statewide cost estimate of \$548,610 to \$2,169,774 plus an annual inflation adjustment (in addition to an estimated \$1,547,455 to \$5,576,255 for the Initial Claiming Period of 2017-2018 and 2018-2019). The Legislative Analyst's Office estimates an ongoing cost of \$2.1 million, noting that some claims appeared overstated, and recommends adding the mandate and this cost to the K-12 mandates block grant.

Recommended Committee amendments. Staff recommends that the bill be amended to 1) specify that the new requirement on public schools will apply commencing no later than the beginning of the 2022-23 school year, and 2) affirm that "public schools" means schools operated by school districts and county offices, and charter schools for purposes of the current and new requirement.

Arguments in support. California Latinas for Reproductive Justice writes, “By providing menstrual products in schools, California helps ensure its students have equal access to education and are empowered to reach their full potential, irrespective of their gender or economic status. Research shows that students lacking access to menstrual products experience higher rates of absence and are less able to focus and engage in the classroom. For example, one study found that one in four girls missed class due to a lack of access to menstrual products and that one in five reported not being able to afford menstrual products. A campus chapter of PERIOD. at UC Davis surveyed students and reported that 52% of student respondents said they missed class or work in the last school year because they could not access a tampon or pad. Absenteeism can lead to significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood. Significantly, after New York City passed a law providing free menstrual products to students, participating schools saw a 2.4% increase in attendance. AB 367 is a critical step toward removing barriers to equity for all Californians who menstruate, especially those who have struggled to access menstrual products due to gender or income.”

Related legislation. AB 10 (C. Garcia) Chapter 687, Statutes of 2017 requires a public school serving grades 6 to grade 12 that meets the 40% pupil poverty threshold required to operate a schoolwide Title 1 program to stock at least 50% of the school’s restrooms with feminine hygiene products at all times.

AB 9 (C. Garcia) of the 2017-18 Session, would have exempted the sale of tampons, sanitary napkins, menstrual sponges, and menstrual cups from sales taxes. This bill was held in the Assembly Appropriations Committee.

AB 1561 (C. Garcia) of the 2015-2016 Session, which was vetoed by the Governor, would have exempted the sale of tampons, sanitary napkins, menstrual sponges, and menstrual cups from sales taxes during the period from 2017 through 2022.

SB 971 (Huff) Chapter 923, Statutes of 2004, eliminated the requirement, established by SB 892 in 2003, for schools to submit reports to the Office of Public School Construction on the responses to restroom maintenance complaint forms.

SB 550 (Vasconcellos), Chapter 900, Statutes of 2004, authorized school districts to use the Uniform Complaint Process to help identify and resolve any deficiencies related to instructional materials, the condition of a facility that is not maintained in a clean or safe manner or in good repair, and teacher vacancy or misassignment.

SB 892 (Murray), Chapter 909, Statutes of 2003, established the requirement that every public and private school have restroom facilities that are open as prescribed during school hours, and at all times to keep every restroom maintained and cleaned regularly, fully operational, and stocked with soap and paper supplies.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Girls (Co-Sponsor)
California Latinas for Reproductive Justice (Co-Sponsor)
Free the Period (Co-Sponsor)

PERIOD. The Menstrual Movement (Co-Sponsor)
Advocates for Youth
American Civil Liberties Union of Northern California
American Civil Liberties Union of Southern California
American Civil Liberties Union of San Diego and Imperial Counties
California Association of Student Councils
California Faculty Association
California School Boards Association
California School Nurses Organization
California State Student Association
Equal Period
Femtruth Youth
Ignite
Naral Pro-choice California
The Unity Council
UC Coalition for Reproductive Justice
Urge: Unite for Reproductive and Gender Equity

Opposition

None on file

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