

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 367 (Cristina Garcia) – As Amended April 5, 2021

**SUBJECT:** Menstrual products

**SUMMARY:** Establishes the Menstrual Equity Act of 2021 which requires all public schools serving students in grades 6 to 12, the California State University (CSU) and each California Community College (CCC) district, and public agencies that maintain restrooms facilities for the public and for employees, to stock at least 50% of restrooms with menstrual products at all times and requests the Regents of the University of California (UC) and private higher education institutions to do the same. Specifically, **this bill:**

- 1) Establishes the Menstrual Equity Act of 2021.
- 2) Requires any public elementary and secondary school who provides instruction to students in grades six to twelve to stock at least 50% of at the school's restrooms with free menstrual products at all times by the start of the 2022-2023 school year. Clarifies this provision will not be operational until July 1, 2022.
- 3) Establishes a sunset beginning in July 1, 2022 and repeals as of January 1, 2023, an existing provision which requires public elementary and secondary schools to provide free menstrual products in 50% of the school restrooms at all times if the elementary and secondary school:
  - a) Maintains any combination of classes from grades six to twelve; and,
  - b) Meets the 40% pupil poverty threshold required to operate a schoolwide program as defined by Section 6314(a)(1)(A) of Title 20 of the United States (US) Code.
- 4) Requires the CSU and each CCC district to stock 50% of all campus restrooms with free menstrual products.
- 5) Requests the Regents of the UC and private universities, colleges, and institutions of higher learning to stock 50% of all campus restrooms at all times with free menstrual products.
- 6) Requires a public agency that operates an establishment, provides a public service and maintains restroom facilities open for public use, as defined, to stock at least 50% of restrooms with free menstrual products at all times.
- 7) Requires a public agency to stock 50% of the restrooms which are available to employees with free menstrual products at all times.
- 8) Establishes if the Commission on State Mandates determines that this bill contains cost mandated by the state, the state shall reimburse the applicable entities.
- 9) States legislative findings and declarations relating to menstrual products as a right.

**EXISTING LAW:**

- 1) Establishes the UC as a public trust to be administered by the UC Board of Regents (Regents) and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services (Article IX, Section (9)(a) of the California Constitution).
- 2) Stipulates no provision of the Donahue Higher Education Act shall apply to UC unless the UC Regents adopts the provision (Education Code (EDC) Section 67400).
- 3) Establishes the CSU system, made of 23 campuses, and bestows upon the CSU Trustees, through the Board of Trustees, the powers, duties, and functions with respect to the management, administration, and control of the CSU system (EDC Section 66606 and 89030, et seq).
- 4) Establishes the CCC under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in this state. The CCC shall be comprised of community college districts (Education Code (EDC) Section 70900).
- 5) Establishes that CCC districts are under the control of a board of trustees, known as the governing board, who has the authority to establish, maintain, operate, and govern one or more community colleges, within its district as specified (EDC Section 7902).
- 6) Requires the governing board of a CCC district to manage and control school property within its district (EDC Section 81600).
- 7) Requires a CCC campus that has shower facilities for student use to grant access, as specified, to those facilities to any homeless student who is enrolled in coursework, has paid enrollment fees, and is in good standing with the community college district. Requires the CCC to determine a plan of action to implement this requirement (EDC Section 76011).
- 8) Requires the CCC and the CSU and encourages the UC, to provide reasonable accommodations, as specified, on their respective campuses for a lactating students to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding. Requires any new building or renovation, as specified, of an existing building regularly used by students, to provide reasonable accommodations including a sink for lactating students. Requires the CCC and CSU and requests the UC to comply with the provision by January 1, 2020 (EDC Section 66271.9).
- 9) Requires a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets a 40% pupil poverty threshold specified in federal law to stock 50% of the school's restrooms with feminine hygiene products, as defined, and prohibits the public school from charging for feminine hygiene products provided to students. (EDC Section 35292.6)
- 10) Requires a public agency that operates an establishment which is open to the public or provides a service to the public to provide public access to existing restrooms. Defines public agency as the state and any agency of the state and a city, a county, and a city and a county (Health and Safety Code (HSC) Section 118500).

- 11) Requires by March 1, 2017 for any business establishment, place of public accommodation, or state or local government to identify all single – user facilities as all-gender toilet facilities and for the signage to comply with Title 24 of the California Code of Regulations. Clarifies single-user toilet facility as a designated toilet with no more than one water closet or urinal that has a lock and can be used by one occupant at a time, a family, or by more than one person when the person needs assistance (HSC Section 118600).
- 12) Exempts consumers from being charged a sales tax on the purchase of menstrual hygiene products until January 1, 2022 (Revenue and Taxation Code Section 6363.10).

**FISCAL EFFECT:** Unknown

**COMMENTS:** *Double Referral.* This measure was heard by the Assembly Education Committee on March 25, 2021, and passed out with a vote of 7-0.

*Need for the bill.* According to the Author’s office for those who menstruate “our biology does not always send an advanced warning when we’re about to start menstruating, which often means we need to stop whatever we are 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.”

*Period poverty.* The United Nations Sexual and Reproductive Health Agency (UNFPA) associates the provision of menstrual products with basic human rights. The UNFPA estimates that over the lifetime of a person who menstruates, they could easily spend three to eight years menstruating during which they face menstruation related exclusion, neglect, or discrimination. Poverty can limit a person who menstruates ability to access menstrual supplies even in high-income countries such as the United States. According to the U.S. Census Bureau, in 2019 14.5% of the female population under the age of 18 lived in poverty and 10.8% of the female population over the age of 18 lived in poverty. To alleviate the impacts of poverty the federal government, in association with state agencies have established social services program to assist those in poverty with housing, education, and food; but none of these programs assist with the procurement of menstrual sanitary products for those who menstruate. Period poverty is defined as the inability to afford sanitary products and according to the Free the Tampons Foundation, 86% of people who menstruate start their period unexpectedly in public without the supplies they need.

*Current accessibility of menstrual products on campus.* For the last several years the Legislature, in partnership with public institutions of higher education, has dedicated resources to alleviate hunger and homelessness by securing access for college students to basic needs supports. Throughout the years the definition of basic needs has evolved beyond food and housing to include other basic needs supports such as technology and feminine hygiene products. In January 2021, BMC Women’s Health published a peer-reviewed study regarding the impact of period poverty and mental health implications among college-aged women in the United States. This report found 14.2% of college – aged women have experienced period poverty in the past year. To combat period poverty, the CCC, the CSU, and the UC along with student organizations on campuses have worked to provide free menstrual products on campus. In 2016, the Student

Senate of the California Community Colleges (SSCCC) issued a resolution in which the lead organization for student voices on campus encouraged the CCC to implement personal hygiene products dispensers to “secure the necessities of all students with needs of basic personnel health items”. Based on data collected prior to the COVID – 19 pandemic, the CCC Chancellor’s office indicated a number of community colleges offer free feminine hygiene products as part of the campus food pantries or the student health centers. CSU campuses currently provide free menstrual products on all student health centers. The menstrual products are also available in campus food pantries and Basic Needs Centers, but the availability may vary as these are stocked by donations the campus receives from community partners. For the UC system each campus has a different method of providing free menstrual products to students. For example, UC Davis and UC Irvine provide free menstrual products in half of the restrooms on campus.

*Relation to educational achievement.* According to the national study commissioned by the Free the Tampon Foundation, a nonprofit organization advocating for free menstrual products, 34% of women ages 18-54 have gone home immediately to get feminine supplies when their menstrual cycle unexpectedly begins while out in public and 62% immediately went to the store to purchase sanitary products. Most people who menstruate are not able to leave their place of work nor school to procure menstrual products. In *Who Thought This was a Good Idea?*, former Deputy Chief of Staff for Operations to President Obama, described the embarrassment of bleeding through her workpants due to the inability to leave work to purchase products. This incident caused the White House to provide menstrual products in the female restrooms for the first time. A campus chapter of PERIOD at UC Davis surveyed students in the 2017-2018 school year and found more than half of students surveyed had missed class or work on average 1-2 times due to lack of access to menstrual products. Data from a Harris Insight and Analytics survey commissioned by a menstrual product Company and PERIOD, a nonprofit, in 2019 found 4 in 5 teens ages 13 to 19, have either missed class themselves or know someone who has due to lack of menstrual products. According to Dr. Jhumka Gupta, a senior author of a peer reviewed study published by BMC Women’s Health on the impact of period poverty and mental health implications among college-aged women in the United States, “Black and Latinx women had the highest level of period poverty in 2020”. Given the current educational disparities that exist in higher education providing free menstrual products could be another tool utilized by higher education institutions to improve the matriculation progress of students.

*Medical necessity.* The United States Food and Drug Administration (FDA), identifies Toxic Shock Syndrome as a rare disease associated with tampons that can cause organ damage, shock, and even death. Despite a decline in reported cases in the last 30 years, the FDA stresses the importance of following the manufacturer instructions in regards to the usage of tampons including the frequency by which they should be changed, every 4 to 8 hours. In the national study commissioned by *Free the Tampons Foundation*, 79% of women ages 18-54 have engineered a tampon or pad out of paper or something else which is not only unsanitary, but can lead to health risks for women such as urinary tract infections and Toxic Shock Syndrome. In the 2019 Harris Interactive poll of 2,000 U.S. teens ages 13 to 19 commissioned by a menstrual product company and, PERIOD, a global non-profit group, 61% have worn a tampon or pad for more than 4 hours because they did not have adequate access to period products which increases their risk of Toxic Shock Syndrome. Increasing the access to free menstrual products will reduce the likelihood of those who menstruate making unhealthy choices regarding sanitary products.

*Other States and Nations progress with the provision of free menstrual products.* In November of 2020, Scotland became the first nation to require the provision of free menstrual products to

anyone who needs them. Specifically, *The Period Products (Free Provision) (Scotland) Bill*, required schools, colleges, and universities to make a range of period products available in privy facilities and enabled the Scottish Government the power to require other public bodies to provide menstrual products for free. In light of this groundbreaking legislation, other Commonwealth nations have responded. In February 2021, the Prime Minister of New Zealand announced, that all schools would provide free menstrual products until 2024. Movements to provide free menstrual products have been less successful in the United States. According to the Wall Street Journal, in 2020, only four states, California, Illinois, New Hampshire, and New York require public elementary and secondary schools to supply free menstrual products in their bathrooms. While student movements and advocacy groups have continued to advocate for the expansion of free menstrual products to encompass institutions of higher education, the majority of introduced legislation focuses on elementary and secondary schools. However, in 2019 U.S. Representative Meng from New York (D-NY-6), introduced H.R. 1882 (2019), which would have provided free menstrual products in federal buildings, food banks, and businesses with over 100 employees. Despite the bill being held in the Subcommittee on Crime, Terrorism, and Homeland Security, portions of the bill regarding allowing people to use Health Savings Accounts and Flexible Spending Accounts to buy menstrual products were included in the Coronavirus Aid, Relief and Economic Security Act or CARES Act (H.R. 748) which was signed into law on March 27, 2020. As of April 13, 2021, Representative Meng has introduced H.R. 2478 (2021) which appears to increase the availability of menstrual products in certain public buildings. At the time of publication, the bill text was not available for this analysis.

*Arguments in support.* The Cal State Student Association states “lack of access to period products can lead to detrimental impacts to students, as well as faculty staff, such as missed class, anxiety or shame, health risks, and financial issues. As an organization that represents over 480,000 students in the California State University system, we believe AB 367 is in the best interest of CSU students. All students, regardless of sex and gender, should have the ability to attend classes and not worry about accessing menstrual products.” Furthermore the American Association of University Women California advocates that “by providing menstrual products in schools, California helps ensure its student have equal access to education and are empowered to reach their full potential, irrespective of their gender or economic status.”

*Committee comments.* In 2016, AB 10 was signed into law and specified elementary and secondary schools were required to provide menstrual products for free to students in 50% of the restrooms on campus. While the policy analysts at the time considered this to mean women’s restrooms, practitioners interpreted this to mean half of the restrooms on campus which in some cases meant male restrooms as well. However, as society has evolved and gender identity has become a spectrum rather than a binary concept, it is generally understood that those who identify as female are not the only ones who menstruate. To provide clarity for practitioners and to expand the inclusivity of the bill, the Author has suggested and the Committee has agreed to include an amendment that replaces 50% of restrooms with all women’s restrooms, all all – gender restrooms (single-user restrooms), and one male restroom will stock free menstrual products.

There are 72 brick and mortar CCC districts, 23 CSU campuses and 12 University of California campuses and unlike their K-12 counterparts the California Education Code is mute on matters of cleanliness and the availability of restrooms for students. Each CCC district, the CSU Board of Trustees, and the UC Board of Regents are endowed with the authority to manage their campus facilities and this includes the collective bargaining agreements with custodial staff

tasked with cleaning of student and employee restrooms. AB 367 requires menstrual products to be made available at all times to students on CCC and CSU campuses and requests the UC to make them available at all times on UC campuses. Since the cleaning schedule is dictated by collective bargaining, one can assume the restocking schedule will align with the cleaning schedule and therefore to preserve the integrity of collective bargaining, the Committee has suggested and the Author has agreed to amendments to reduce the required availability of these products to times when the campus is open to the public.

In order to keep with the intent of the author to ensure all college students on CCC and CSU campuses have access to free menstrual products at all times, there needs to be a method by which students can alert custodial or department staff of the lack of products in any of the specified restrooms. To address all of the above concerns the Committee has suggested and the author has agreed to accept the following amendments:

35292.6. (a) On or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, shall stock ~~at least 50 percent of the school's restrooms with menstrual products at all times.~~ *school restrooms at all times with an adequate supply of menstrual products in all women's restrooms, all all-gender restrooms, and at least one men's restroom.*

(b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils.

(c) *A public school described in subdivision (1) shall post a notice regarding the requirement of this section in a prominent and conspicuous location in every restroom required to stock menstrual products pursuant to this section. This notice shall include the text of Education Code Section 35292.6 and contact information, including an email address and phone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.*

(c) This section shall become operative on July 1, 2022.

SEC. 4. Section 66027.7 is added to the Education Code, to read:

66027.7. (a) The California State University and each community college district shall stock ~~50 percent of all campus restrooms at all times with free menstrual products.~~ *all women's restrooms, all all-gender restrooms, and at least one men's restroom on campus with an adequate supply of menstrual products free of cost available and accessible at all times when the campus is open to the general public.*

(b) *The California State University and each community college district described shall post a notice regarding the requirement in subdivision (a) in a prominent and conspicuous location in every restroom required to menstrual products pursuant to this section. This notice shall include the text of Education Code 66027.7 and the contact information, including the email address and phone number, for the department designated with maintain the requisite supply of menstrual products.*

(c) *The Regents of the University of California, independent institutions of higher education as defined in 66010, and private postsecondary educational institutions as defined in section*

~~94858 private universities, colleges, and institutions of higher learning are encouraged to stock 50 percent of all campus restrooms at all times with free menstrual products all women's restrooms, all all-gender restrooms, and at least one men's restroom on campus with an adequate supply of menstrual products free of cost available and accessible at all times when the campus is open to the general public.~~

*(d) If the Regents of the University of California, independent institutions of higher education as defined in 66010, and private postsecondary educational institutions as defined in section 94858 implement subdivision (c), the campuses are further encouraged to post a notice regarding the requirement in subdivision (c) in a prominent and conspicuous location in every restroom required to menstrual products pursuant to this section. This notice shall include the text of Education Code 66027.7 and the contact information, including the email address and phone number, for the department designated with maintain the requisite supply of menstrual products.*

SEC. 5. Section 118500 of the Health and Safety Code is amended to read:

118500. (a) A public agency ~~that conducts an establishment serving the public or open to the public and that maintains restroom facilities for the open to the public, shall make every restroom maintained within the facilities available without cost or charge to the patrons, guests, or invitees of the establishment.~~ *stock all women's restrooms, all all-gender restrooms, and at least one men's restroom on campus with an adequate supply of menstrual products at all times without cost or charge to the patrons, guests or invitees of the establishment.*

“Public agency” as used in this section means ~~the state and~~ any agency of the state, ~~and a~~ city, a county, and a city and county.

~~(b) A public agency shall stock at least 50 percent of the restrooms described in subdivision (a) at all times with free menstrual products.~~

SEC. 6. Section 118507 is added to the Health and Safety Code, to read:

118507. A public agency, as defined in Section 118500, shall ~~stock 50 percent of all restrooms available to employees with free menstrual products at all times.~~ *stock employee restrooms at all times with an adequate supply of menstrual products free of cost in all women's restrooms, all-gender restrooms, and at least one men's restroom.*

Costs concerns have been raised regarding the prevention of hoarding the menstrual products if they are available for free in most of the restrooms. Specifically, the concern that students will stock pile or vandalize the dispensers of the free product. As of December 2018, data collected by *Free the Period at UC Davis*, suggests 118 menstrual products were used by students using facilities in high traffic buildings which cost about \$665 per year. The student group went further to suggest hoarding is not an issue as the free menstrual product boxes contained 40 pads and 30 tampons and the average daily use was eleven pads and seven tampons.

*Previous Legislation.* For purpose of this analysis this section pertains to legislation regarding restroom or privy facilities on higher education campuses.

AB 2003 (Garcia) of 2019, held in Assembly Higher Education Committee due to the COVID - 19 pandemic, would have CCC to provide feminine hygiene products in 50% of the restrooms on campus.

AB 2785 (Rubio), Chapter 947, Statutes 2018, requires the CCC and the California State University (CSU) and encourages the University of California (UC), to provide reasonable accommodations, as specified, on their respective campuses for a lactating students to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding. Requires any new building or renovation, as specified, of an existing building regularly used by students, to provide reasonable accommodations including a sink for lactating students. Requires the CCC and CSU and requests the UC to comply with the provision by January 1, 2020.

AB 1995 (Williams and Gonzalez), Chapter 407, Statutes 2016, requires a community college campus that has shower facilities for student use to grant access, as specified, to those facilities to any homeless student who is enrolled in coursework, has paid enrollment fees, and is in good standing with the community college district. Requires the community college to determine a plan of action to implement this requirement.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Alliance for Period Supplies  
American Association of University Women - California  
Black Women for Wellness  
California Alternative Payment Program Association  
California Commission on The Status of Women and Girls  
California Faculty Association  
California Latinas for Reproductive Justice  
California School Boards Association  
California State PTA  
California State Student Association  
California Teachers Association  
Clergy and Laity United for Economic Justice  
Community Now  
Equal Rights Advocates  
Health Access California  
Los Angeles LGBT Center  
National Association of Social Workers, California Chapter  
San Francisco Board of Supervisors  
Student Senate for California Community Colleges  
University of California Student Association  
Work Equity Action Fund  
1 Individual

### **Opposition**

None on file.



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