

ASSEMBLY BILL

No. 888

Introduced by Assembly Member Bloom

February 26, 2015

An act to add Chapter 5.9 (commencing with Section 42360) to Part 3 of Division 30 of the Public Resources Code, relating to waste management.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as introduced, Bloom. Waste management: plastic microbeads.

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from discharging or releasing such a chemical into any source of drinking water, except as specified. Existing law prohibits the sale of expanded polystyrene packaging material by a wholesaler or manufacturer. Existing law prohibits a person from selling a plastic product in this state that is labeled with the term “compostable,” “home compostable,” or “marine degradable” unless, at the time of sale, the plastic product meets the applicable ASTM International standard specification.

This bill would prohibit, on and after January 1, 2020, a person, as defined, from selling or offering for promotional purposes in this state a personal care product containing intentionally added plastic microbeads, as specified. The bill would exempt from those prohibitions the sale or promotional offer of a product containing less than 1 part per million (ppm) by weight of plastic microbeads, as provided.

The bill would make a violator liable for a civil penalty not to exceed \$2,500 per day for each violation. The bill would authorize the penalty to be assessed and recovered in a civil action brought in any court of competent jurisdiction by the Attorney General or local officials, or by a person in the public interest, as provided. The bill would require 50% of the civil penalties collected in an action brought pursuant to the act to be retained by the entity or person who brought the action.

The bill would establish the Plastic Pollution Fund in the State Treasury. The bill would authorize the Department of Resources Recycling and Recovery to expend the funds, upon appropriation by the Legislature, to implement and administer the act and reduce plastic pollution by, among other things, providing grants to local governments or other entities. The bill would require 50% of all civil penalties collected pursuant to the act, and any interest earned on the money in the fund, to be deposited into the fund.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Chapter 5.9 (commencing with Section 42360)
2 is added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 5.9. PLASTIC MICROBEADS NUISANCE PREVENTION
6 LAW

7
8 42360. The Legislature finds and declares all of the following:

9 (a) Plastic does not biodegrade into elements or compounds
10 commonly found in nature like other organic materials, but instead,
11 upon exposure to the elements photodegrades into smaller pieces
12 of plastic causing land and water pollution that is virtually
13 impossible to remediate.

14 (b) Plastic pollution is the dominant type of anthropogenic debris
15 found throughout the marine environment.

16 (c) Plastic pollution is an environmental and human health
17 hazard and a public nuisance.

18 (d) Microplastics that are five millimeters or less in diameter
19 become bioavailable as soon as they enter the marine environment
20 and are ingested by marine organisms.

1 (e) Microplastics are persistent organic compounds that attract
2 other pollutants commonly present in the environment, many of
3 which are recognized to have serious deleterious impacts on human
4 health or the environment, including DDT, DDE, PCBs, and flame
5 retardants.

6 (f) PAHs, PCBs and PBDEs from plastic transfer to fish tissue
7 during digestion and bioaccumulate, resulting in liver damage.

8 (g) Fish that humans consume have been found to ingest
9 microplastics.

10 (h) Consumer personal care products such as facial scrubs,
11 soaps, and toothpaste increasingly contain thousands of
12 microplastics in the form of plastic microbeads which are flushed
13 down drains or make their way into the environment by other
14 means as part of their intended use.

15 (i) Some plastic microbeads in personal care products are not
16 recoverable through ordinary wastewater treatment and can be
17 released into the environment.

18 (j) Plastic microbeads have been found in surface waters within
19 the United States, as well as in fish, marine mammals, and reptiles,
20 and in the digestive and circulatory systems of mussels and worms.

21 (k) There are economically feasible alternatives to plastic
22 microbeads used in personal care products, as evidenced by the
23 current use of biodegradable, natural, abrasive materials in personal
24 care products such as beeswax, shells, nuts, seeds, and sand.

25 42361. As used in this chapter, the following terms have the
26 following meanings:

27 (a) “Natural Exfoliant” means a substance occurring in and
28 generated by the natural environment and includes, but is not
29 limited to, the following substances: walnut shells, apricot hulls,
30 sand, clay, or beeswax.

31 (b) “Person” means an individual, business, or other entity.

32 (c) “Personal care product” means an article intended to be
33 rubbed, poured, sprinkled, or sprayed on, introduced to, or
34 otherwise applied to, the human body or any part thereof for
35 cleansing, beautifying, promoting attractiveness, or altering the
36 appearance, and an article intended for use as a component of such
37 an article.

38 (d) “Plastic microbead” means an intentionally added plastic
39 particle measuring five millimeters or less in every dimension.

1 42362. On and after January 1, 2020, a person shall not sell or
2 offer for promotional purposes in this state any personal care
3 products containing plastic microbeads.

4 42363. Section 42362 shall not apply to either of the following:

5 (a) A person that sells or offers for promotional purposes a
6 personal care product containing plastic microbeads in less than
7 1 part per million (ppm) by weight.

8 (b) A product containing natural exfoliants that does not contain
9 plastic microbeads.

10 42364. (a) A person who violates or threatens to violate Section
11 42362 may be enjoined in any court of competent jurisdiction.

12 (b) (1) A person who has violated Section 42362 is liable for
13 a civil penalty not to exceed two thousand five hundred dollars
14 (\$2,500) per day for each violation in addition to any other penalty
15 established by law. That civil penalty may be assessed and
16 recovered in a civil action brought in any court of competent
17 jurisdiction.

18 (2) In assessing the amount of a civil penalty for a violation of
19 this chapter, the court shall consider all of the following:

20 (A) The nature and extent of the violation.

21 (B) The number of, and severity of, the violations.

22 (C) The economic effect of the penalty on the violator.

23 (D) Whether the violator took good faith measures to comply
24 with this chapter and when these measures were taken.

25 (E) The deterrent effect that the imposition of the penalty would
26 have on both the violator and the regulated community as a whole.

27 (F) Any other factor that justice may require.

28 (c) Actions pursuant to this section may be brought by the
29 Attorney General in the name of the people of the state, by a district
30 attorney, by a city attorney, or by a city prosecutor in a city or city
31 and county having a full-time city prosecutor, or as provided in
32 subdivision (d).

33 (d) Actions pursuant to this section may be brought by a person
34 in the public interest if both of the following requirements are met:

35 (1) The private action is commenced more than 30 days from
36 the date that the person has given notice of an alleged violation of
37 Section 42362 that is the subject of the private action to the
38 Attorney General and the district attorney, city attorney, or
39 prosecutor in whose jurisdiction the violation is alleged to have
40 occurred, and to the alleged violator.

1 (2) Neither the Attorney General, a district attorney, a city
2 attorney, nor a prosecutor has commenced and is diligently
3 prosecuting an action against the violation.

4 (3) The court, in issuing any final order in any action brought
5 pursuant to this section, shall award costs of litigation, including
6 reasonable attorney and expert witness fees, to any prevailing or
7 substantially prevailing plaintiff.

8 (e) Fifty percent of all civil penalties collected pursuant to this
9 section shall be paid to the office of the city attorney, city
10 prosecutor, district attorney, or Attorney General, whichever office
11 brought the action, or, in the case of an action brought by a person
12 under subdivision (d), to the person taking action in the public
13 interest.

14 42365. (a) The Plastic Pollution Fund is hereby established in
15 the State Treasury. The department may expend the funds in the
16 Plastic Pollution Fund, upon appropriation by the Legislature, to
17 implement and administer this chapter and for the purpose of
18 reducing plastic pollution.

19 (b) In addition to any other money that may be deposited in the
20 Plastic Pollution Fund, all of the following amounts shall be
21 deposited in the fund:

22 (1) Fifty percent of all civil penalties collected pursuant to this
23 chapter.

24 (2) Any interest earned upon the money deposited into the
25 Plastic Pollution Fund.

26 (c) The department may expend the funds in the Plastic Pollution
27 Fund by directly expending those funds, by transferring those funds
28 to other state agencies, or by providing grants to local governments
29 or other entities deemed eligible by the department, including, but
30 not limited to, nongovernmental organizations and conservation
31 corps.

32 42366. This chapter does not alter or diminish any legal
33 obligation otherwise required in common law or by statute or
34 regulation, and this chapter does not create or enlarge any defense
35 in any action to enforce the legal obligation. Penalties and sanctions
36 imposed pursuant to this chapter shall be in addition to any
37 penalties or sanctions otherwise prescribed by law.