

AMENDED IN SENATE SEPTEMBER 3, 2015

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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 plastic microbeads that are used to exfoliate or cleanse in a rinse-off product, 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 authorize the Department of Toxic Substances Control to additionally exempt plastic microbeads contained in a personal care product, alternatives to plastic microbeads contained in a personal care product, and a personal care product containing plastic microbeads following a specified alternative analysis process, if a certain finding is made. The bill would require the manufacturer submitting an alternative analysis to reimburse the department for reasonable costs incurred implementing these alternative analysis provisions.~~ *microbeads.*

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. The bill would require the civil penalties collected in an action brought pursuant to the act to be retained by the office that brought the action.

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.

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

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

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

8 (e) Microplastics are persistent organic compounds that attract
9 other pollutants commonly present in the environment, many of
10 which are recognized to have serious deleterious impacts on human
11 health or the environment, including DDT, DDE, PCBs, and flame
12 retardants.

13 (f) PAHs, PCBs, and PBDEs from plastic transfer to fish tissue
14 when ingested and bioaccumulate.

15 (g) Fish that humans consume have been found to ingest
16 microplastics, which are then ingested by the humans who consume
17 these fish.

18 (h) Consumer personal care products such as facial scrubs,
19 soaps, and toothpaste increasingly contain thousands of
20 microplastics in the form of plastic microbeads that are flushed
21 down drains or make their way into the environment by other
22 means as part of their intended use.

23 (i) Plastic microbeads in personal care products are generally
24 not recoverable through ordinary wastewater treatment and can
25 be released into the environment.

26 (j) Plastic microbeads have been found in surface waters within
27 the United States, as well as in fish, marine mammals, reptiles,
28 mussels, and worms.

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

33 42361. As used in this chapter, the following terms have the
34 following meanings:

35 ~~(a) "Department" means Department of Toxic Substances
36 Control.~~

37 ~~(b) "Natural exfoliant" means a substance occurring in and
38 generated by the natural environment and includes, but is not
39 limited to, the following substances: walnut shells, apricot hulls,
40 sand, clay, or beeswax.~~

1 (e)

2 (a) “Person” means an individual, business, or other entity.

3 (d)

4 (b) (1) “Personal care product” means an article intended to be
5 rubbed, poured, sprinkled, or sprayed on, introduced to, or
6 otherwise applied to, the human body or any part thereof for
7 cleansing, beautifying, promoting attractiveness, or altering the
8 appearance, and an article intended for use as a component of that
9 type of article.

10 (2) “Personal care product” does not include a prescription drug,
11 as defined in Section 110010.2 of the Health and Safety Code.

12 (e)

13 (c) “Plastic microbead” means an intentionally added solid
14 plastic particle measuring five millimeters or less in every
15 dimension.

16 42362. On and after January 1, 2020, a person shall not sell or
17 offer for promotional purposes in this state any personal care
18 products containing plastic microbeads that are used to exfoliate
19 or cleanse in a rinse-off product, including, but not limited to,
20 toothpaste.

21 42363. Section 42362 shall not apply to any of the following:
22 *a person that sells or offers for promotional purposes a personal*
23 *care product containing plastic microbeads in an amount less than*
24 *1 part per million (ppm) by weight.*

25 ~~(a) A person that sells or offers for promotional purposes a~~
26 ~~personal care product containing plastic microbeads in less than~~
27 ~~1 part per million (ppm) by weight.~~

28 ~~(b) A product containing natural exfoliants that does not contain~~
29 ~~plastic microbeads.~~

30 ~~(c) A personal care product containing plastic microbeads, or~~
31 ~~a potential alternative to plastic microbeads, that has been exempted~~
32 ~~by the department pursuant to Section 42363.5.~~

33 ~~(d) Plastic microbeads and alternatives to plastic microbeads~~
34 ~~that are contained in a personal care product and that have been~~
35 ~~exempted by the department pursuant to Section 42363.5.~~

36 ~~42363.5. (a) The department shall make available the two-stage~~
37 ~~alternative analysis process established in regulations adopted~~
38 ~~pursuant to Section 25253 of the Health and Safety Code for the~~
39 ~~purpose of evaluating plastic microbeads and alternatives to plastic~~

1 ~~microbeads to the following entities for voluntary submissions~~
2 ~~pursuant to subdivision (b):~~

3 ~~(1) A manufacturer of a personal care product containing plastic~~
4 ~~microbeads, or a potential alternative to plastic microbeads.~~

5 ~~(2) A manufacturer of a plastic microbead that is contained in~~
6 ~~a personal care product.~~

7 ~~(3) A manufacturer of an alternative to a plastic microbead that~~
8 ~~is contained in a personal care product.~~

9 ~~(b) The department, in accordance with that two-stage alternative~~
10 ~~analysis process, and consistent with subdivision (c), shall evaluate~~
11 ~~the alternative analysis to determine if the plastic microbead,~~
12 ~~proposed alternative, or personal care product containing plastic~~
13 ~~microbeads or an alternative poses a hazard to public health or the~~
14 ~~environment and how to limit or to reduce the level of hazard posed~~
15 ~~by the plastic microbead or the alternative. Following evaluation,~~
16 ~~the department may exempt the plastic microbead, its alternative,~~
17 ~~or the personal care product from the requirements of Section~~
18 ~~42362 under either of the following circumstances:~~

19 ~~(1) The department finds that a regulatory response, as described~~
20 ~~in Article 6 (commencing with Section 69506) of Chapter 55 of~~
21 ~~Division 4.5 of Title 22 of the California Code of Regulations, for~~
22 ~~the plastic microbead, its alternative, or the personal care product~~
23 ~~is necessary to protect public health, the environment, or both, and~~
24 ~~the department requires implementation of one or more of the~~
25 ~~regulatory responses as a condition of exempting the plastic~~
26 ~~microbead, its alternative or the personal care product from Section~~
27 ~~42362.~~

28 ~~(2) The department finds that a regulatory response for the~~
29 ~~plastic microbead, its alternative, or the personal care product is~~
30 ~~not necessary to protect public health, the environment, or both.~~

31 ~~(c) For purposes of an alternative analysis under this section,~~
32 ~~all of the following apply:~~

33 ~~(1) Evaluation of the alternative analysis and selection of any~~
34 ~~regulatory responses shall be in consultation with the State Water~~
35 ~~Resources Control Board and the Department of Fish and Wildlife.~~

36 ~~(2) An alternative analysis shall consider natural exfoliant~~
37 ~~alternatives.~~

38 ~~(3) The department shall only accept complete alternative~~
39 ~~analyses for evaluation. An abridged alternative analysis shall not~~
40 ~~be accepted for purposes of evaluation under this section.~~

1 ~~(4) For alternative analyses submitted before January 1, 2017,~~
 2 ~~the department shall complete the evaluation and notify the~~
 3 ~~manufacturer of its decision before January 1, 2018, including~~
 4 ~~whether the product is exempt or if a regulatory response is~~
 5 ~~necessary. The department shall establish a schedule to implement~~
 6 ~~this paragraph. It is the intent of the Legislature, in enacting this~~
 7 ~~paragraph, to provide product manufacturers with a minimum of~~
 8 ~~two years following the department’s decision to develop~~
 9 ~~acceptable alternatives to plastic microbeads.~~

10 ~~(d) (1) A manufacturer that submits an alternative analysis~~
 11 ~~pursuant to this section shall reimburse, within 60 days of receiving~~
 12 ~~an invoice, the department for the reasonable costs incurred by the~~
 13 ~~department in implementing this section. If there is a dispute over~~
 14 ~~costs, the manufacturer shall pay any undisputed costs and shall~~
 15 ~~meet and confer with the department to resolve the disputed items.~~

16 ~~(2) A manufacturer may resubmit an alternative analysis, which~~
 17 ~~shall be considered a new review.~~

18 ~~(3) The department shall strive to limit the costs of each review~~
 19 ~~conducted pursuant to this section to no more than two hundred~~
 20 ~~fifty thousand dollars (\$250,000). If the department estimates that~~
 21 ~~costs of a review may exceed two hundred fifty thousand dollars~~
 22 ~~(\$250,000), the department shall seek approval of the manufacturer~~
 23 ~~submitting the alternative analysis before incurring costs in excess~~
 24 ~~of two hundred fifty thousand dollars (\$250,000). A manufacturer~~
 25 ~~submitting an alternative analysis shall have the right to withdraw~~
 26 ~~the analysis before incurring costs in excess of two hundred fifty~~
 27 ~~thousand dollars (\$250,000).~~

28 42364. (a) A person who violates or threatens to violate Section
 29 42362 may be enjoined in any court of competent jurisdiction.

30 (b) (1) A person who has violated Section 42362 is liable for
 31 a civil penalty not to exceed two thousand five hundred dollars
 32 (\$2,500) per day for each violation in addition to any other penalty
 33 established by law. That civil penalty may be assessed and
 34 recovered in a civil action brought in any court of competent
 35 jurisdiction.

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

- 38 (A) The nature and extent of the violation.
- 39 (B) The number of, and severity of, the violations.
- 40 (C) The economic effect of the penalty on the violator.

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

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

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

6 (c) Actions pursuant to this section may be brought by the
7 Attorney General in the name of the people of the state, by a district
8 attorney, by a city attorney, or by a city prosecutor in a city or city
9 and county having a full-time city prosecutor.

10 (d) Civil penalties collected pursuant to this section shall be
11 paid to the office of the city attorney, city prosecutor, district
12 attorney, or Attorney General, whichever office brought the action.

13 42366. This chapter does not alter or diminish any legal
14 obligation otherwise required in common law or by statute or
15 regulation, and this chapter does not create or enlarge any defense
16 in any action to enforce the legal obligation. Penalties and sanctions
17 imposed pursuant to this chapter shall be in addition to any
18 penalties or sanctions otherwise prescribed by law.