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AB-888 Waste management: plastic microbeads. (2015-2016)

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Assembly Bill No. 888

CHAPTER 594

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.

[Approved by Governor October 08, 2015. Filed with Secretary of State October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 888, 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.

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 Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

CHAPTER 5.9. Plastic Microbeads Nuisance Prevention Law

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

- (a) Plastic does not biodegrade into elements or compounds commonly found in nature like other organic materials, but, instead, upon exposure to the elements photodegrades into smaller pieces of plastic causing land and water pollution that is virtually impossible to remediate.
- (b) Plastic pollution is the dominant type of anthropogenic debris found throughout the marine environment.
- (c) Plastic pollution is an environmental and human health hazard and a public nuisance.
- (d) Microplastics that are five millimeters or less in diameter become bioavailable as soon as they enter the marine environment and are ingested by marine organisms.
- (e) Microplastics are persistent organic compounds that attract other pollutants commonly present in the environment, many of which are recognized to have serious deleterious impacts on human health or the environment, including DDT, DDE, PCBs, and flame retardants.
- (f) PAHs, PCBs, and PBDEs from plastic transfer to fish tissue when ingested and bioaccumulate.
- (g) Fish that humans consume have been found to ingest microplastics, which are then ingested by the humans who consume these fish.
- (h) Consumer personal care products such as facial scrubs, soaps, and toothpaste increasingly contain thousands of microplastics in the form of plastic microbeads that are flushed down drains or make their way into the environment by other means as part of their intended use.
- (i) Plastic microbeads in personal care products are generally not recoverable through ordinary wastewater treatment and can be released into the environment.
- (j) Plastic microbeads have been found in surface waters within the United States, as well as in fish, marine mammals, reptiles, mussels, and worms.
- (k) There are economically feasible alternatives to plastic microbeads used in personal care products, as evidenced by the current use of biodegradable, natural, abrasive materials in personal care products such as beeswax, shells, nuts, seeds, and sand.

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

- (a) "Person" means an individual, business, or other entity.
- (b) (1) "Personal care product" means an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and an article intended for use as a component of that type of article.
- (2) "Personal care product" does not include a prescription drug, as defined in Section 110010.2 of the Health and Safety Code.
- (c) "Plastic microbead" means an intentionally added solid plastic particle measuring five millimeters or less in every dimension.

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

42363. Section 42362 shall not apply to a person that sells or offers for promotional purposes a personal care product containing plastic microbeads in an amount less than 1 part per million (ppm) by weight.

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

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

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

- (A) The nature and extent of the violation.
- (B) The number of, and severity of, the violations.

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

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

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

(F) Any other factor that justice may require.

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

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

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