

INTRODUCED BY Assembly Member Bloom
(Coauthor: Assembly Member Nestande)

FEBRUARY 13, 2014

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 1699, as introduced, Bloom. Waste management: microplastics.

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 American Society for Testing and Materials standard specification.

This bill would prohibit, after January 1, 2016, a person in the course of doing business, as defined, from selling or offering for promotional purposes in this state any cleaning product, personal care product, or both containing microplastic, as specified. The bill would provide exceptions to the above provision, including an exception for the sale of a product containing less than 1 part per million (ppm) by weight of microplastic, as provided.

The bill would require the imposition of 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, as provided, or a by a person in the public interest, as specified.

The bill would require the Department of Resources Recycling and Recovery to administer and implement these provisions and would authorize the department to adopt and modify regulations as necessary to further the purposes of this act.

The bill would establish the Plastic Pollution Fund in the State Treasury. The bill would authorize the department to expend the funds, upon appropriation by the Legislature, to implement and administer the act 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. The bill would require 50% of all civil penalties collected in an action pursuant to the act to be paid to the Attorney General, local officials, or to a person acting in the public interest, whichever entity 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:

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. MICROPLASTIC NUISANCE PREVENTION LAW

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

(a) Plastic does not biodegrade like other organic materials, but, upon exposure to the elements photodegrades into smaller pieces 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) Consumer personal care products such as facial scrubs, soaps, and toothpaste increasingly contain thousands of microplastic particles, ranging from 50-500 microns, which are flushed down drains as part of their intended use.

(e) Microplastics in personal care products are not recoverable through ordinary wastewater treatment and so are released into the environment.

(f) Microplastics of the size found in cleaning and personal care products are ingested by marine organisms.

(g) 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.

(h) Microplastics have been found in surface waters within the United States, as well as in fish, marine mammals, and reptiles, and in the digestive and circulatory systems of mussels and worms.

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

(j) Fish that humans consume have been found to ingest microplastics.

(k) There are many biodegradable, natural alternatives to microplastics that are economically feasible alternatives to microplastics, as evidenced by their current use in some consumer personal care products.

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

(a) "Department" means the Department of Resources Recycling and Recovery.

(b) "Cleaning products, personal care products, or both" means mixtures and solutions used for bathing and cleaning, including, but not limited to, hand and body soap, exfoliates, shampoos, toothpastes, and scrubs.

(c) "Microplastic" means any plastic size 5 millimeter or less in all dimensions.

(d) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.

(e) "Person in the course of doing business" does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system.

(f) "Plastic" means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various forms. Plastics are typically made from petroleum, natural gas, or other organic substances.

42362. On or after January 1, 2016, a person in the course of

doing business shall not sell or offer for promotional purposes in this state any cleaning products, personal care products, or both containing microplastic.

42363. (a) Section 42362 shall not apply to any person in the course of doing business that sells or offers for promotional purposes a cleaning product, personal care product, or both containing microplastic in less than 1 part per million (ppm) by weight.

(b) (1) Section 42362 shall not apply to any person in the course of doing business if it is shown that an otherwise prohibited cleaning product, personal care product, or both is designed for a use where it is unlikely that the product will pass or probably will pass into any wastewater treatment system or water of the state.

(2) The department shall adopt regulations as necessary to implement this subdivision.

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 violates 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 person.

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

(E) The deterrent effect that the imposition of the penalty would have on both the person 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 of a city having a population in excess of 750,000 persons, or, with the consent of the district attorney, by a city prosecutor in a city or city and county having a full-time city prosecutor, or as provided in subdivision (d).

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

(1) The private action is commenced more than 60 days from the date that the person has given notice of an alleged violation of Section 42362 that is the subject of the private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator.

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

(e) The court, in issuing any final order in any action brought pursuant to this section, shall award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing party, unless the court determines the award is inappropriate.

42365. The department shall administer and implement this chapter. The department may adopt and modify regulations as necessary to implement and further the purposes of this chapter.

42366. (a) The Plastic Pollution Fund is hereby established in the State Treasury. The department may expend the funds in the Plastic Pollution Fund, upon appropriation by the Legislature, to implement and administer this chapter by directly expending those funds, by transferring those funds to other state agencies, or by providing grants to local governments or other entities deemed eligible by the department, including, but not limited to, nongovernmental organizations and the California Conservation Corps.

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

(1) Fifty percent of all civil penalties collected pursuant to Section 42364.

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

42367. Fifty percent of all civil penalties collected pursuant to Section 42364 shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 42364, to that person.

42368. This chapter does not alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this chapter shall create or enlarge any defense in any action to enforce the legal obligation. Penalties and sanctions imposed under this chapter shall be in addition to any penalties or sanctions otherwise prescribed by law.