

ASSEMBLY BILL

No. 2787

**Introduced by Assembly Member Quirk
(Coauthor: Assembly Member Friedman)**

February 18, 2022

An act to add Chapter 5.8 (commencing with Section 42359) to Part 3 of Division 30 of the Public Resources Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2787, as introduced, Quirk. Microplastics in products.

Existing law requires the Ocean Protection Council, on or before December 31, 2024, to adopt and implement a Statewide Microplastics Strategy related to microplastic materials that pose an emerging concern for ocean health, as provided. Existing law declares the goal of the Statewide Microplastic Strategy to be the increase in the understanding of the scale and risks of microplastic materials on the marine environment and to identify proposed solutions to address the impacts of microplastic materials, to the extent feasible. Existing law requires the council, on or before December 31, 2021, to submit to the Legislature the Statewide Microplastics Strategy, along with recommended policy changes, including statutory changes, that may be needed to implement the strategy.

Existing law, the Microbeads Nuisance Prevention Law, prohibits a person from selling or offering for promotional purposes in the 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.

This bill would, on and after specified dates that vary based on the product, ban the sale, distribution in commerce, or offering for promotional purposes in the state of designated products, such as leave-in cosmetics products and waxes and polishes, if the products contain intentionally added microplastics, as defined. The bill would exclude from this ban products consisting, in whole or in part, of specified substances or mixtures containing microplastics. 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 5.8 (commencing with Section 42359)
2 is added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 5.8. MICROPLASTICS IN PRODUCTS
6

7 42359. (a) For purposes of this section, the following terms
8 have the following meanings:

9 (1) "Intentionally added microplastic" means a microplastic
10 that a manufacturer has intentionally added to a product and that
11 has a functional or technical effect in the product.

12 (2) "Microbead" means a microplastic used in a mixture as an
13 abrasive to exfoliate, polish, or clean.

14 (3) "Microplastic" means a solid polymer material containing
15 particles to which chemical additives or other substances may have
16 been added and 1 percent weight by weight (w/w) or more of the
17 particles have either of the following:

18 (A) Dimensions of five millimeters (mm) or less.

19 (B) Fibers that are three nanometers (nm) to 15 mm, inclusive,
20 in length and have a length to a diameter ratio of greater than three.

21 (4) "Person" means individual, business, or other entity.

1 (b) A person shall not sell, distribute in commerce, or offer for
2 promotional purposes in this state any of the following products,
3 on or after the date specified, if the product contains intentionally
4 added microplastics:

5 (1) Rinse-off cosmetic products not subject to regulation
6 pursuant to the Microbeads Nuisance Prevention Law (Chapter
7 5.9 (commencing with Section 42360)), on or after January 1,
8 2027.

9 (2) Leave-on cosmetic products, on or after January 1, 2029.

10 (3) Detergents containing microbeads, encapsulated fragrance,
11 or other microplastics, on or after January 1, 2028.

12 (4) Waxes and polishes, on or after January 1, 2028.

13 (c) Notwithstanding subdivision (a), this section does not apply
14 to any of the following products:

15 (1) A product consisting, in whole or in part, of a substance or
16 mixture containing microplastics where the microplastic meets
17 both of the following conditions:

18 (A) The microplastic is contained by technical means throughout
19 the whole lifecycle to prevent releases of microplastic to the
20 environment.

21 (B) Any microplastic-containing wastes arising are incinerated
22 or disposed of as hazardous waste.

23 (2) A product consisting, in whole or in part, of a substance or
24 mixture containing microplastics where the physical properties of
25 the microplastic are permanently modified when the substance or
26 mixture is used so that the polymers no longer fall within the
27 definition of microplastic, as defined in paragraph (3) of
28 subdivision (a).

29 (3) A product consisting, in whole or in part, of a substance or
30 mixture containing microplastics where the microplastic is
31 permanently incorporated into a solid matrix when used.

32 42359.5. (a) A person who violates or threatens to violate
33 Section 42359 may be enjoined in any court of competent
34 jurisdiction.

35 (b) (1) A person who has violated Section 42359 is liable for
36 a civil penalty not to exceed two thousand five hundred dollars
37 (\$2,500) per day for each violation in addition to any other penalty
38 established by law. That civil penalty may be assessed and
39 recovered in a civil action brought in any court of competent
40 jurisdiction.

- 1 (2) In assessing the amount of a civil penalty for a violation of
- 2 this chapter, the court shall consider all of the following:
- 3 (A) The nature and extent of the violation.
- 4 (B) The number of, and severity of, the violations.
- 5 (C) The economic effect of the penalty on the violator.
- 6 (D) Whether the violator took good faith measures to comply
- 7 with this chapter and when these measures were taken.
- 8 (E) The deterrent effect that the imposition of the penalty would
- 9 have on both the violator and the regulated community as a whole.
- 10 (F) Any other factor that justice may require.
- 11 (c) Actions pursuant to this section may be brought by the
- 12 Attorney General in the name of the people of the state, by a district
- 13 attorney, by a city attorney, or by a city prosecutor in a city or city
- 14 and county having a full-time city prosecutor.
- 15 (d) Civil penalties collected pursuant to this section shall be
- 16 paid to the office of the city attorney, city prosecutor, district
- 17 attorney, or Attorney General, whichever office brought the action.