Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 200 (Senator Conway, *et al.*)
Education, Health, and Environmental Affairs Environment and Transportation

Environment - Personal Care Products Containing Synthetic Plastic Microbeads - Prohibition on Manufacturing or Sale

This bill prohibits the manufacture of a personal care product containing "synthetic plastic microbeads" beginning December 31, 2017, and the sale of such a product beginning December 31, 2018. The bill also prohibits the manufacture or sale of an "over-the-counter drug" containing synthetic plastic microbeads beginning December 31, 2018. The bill defines "synthetic plastic microbead" as any intentionally added solid plastic particle that is not biodegradable, less than five millimeters in size, and used in a personal care product for exfoliation, cleansing, or cosmetic purposes. The bill also defines "biodegradable," "over-the-counter drug," "personal care product," and "plastic."

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances. It is assumed that the Maryland Department of the Environment (MDE) can conduct enforcement on a complaint basis with existing budgeted resources, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: State law does not currently prohibit the sale or manufacture of products containing plastic microbeads. Although the Secretary of the Environment is required by statute to provide for the enforcement of any provision within the Environment Article, or

any regulation adopted under the Environment Article, there is no general authority to levy penalties that is applicable to this bill.

Background: The State of Illinois became the first state to ban the manufacture or sale of plastic microbeads from personal care products in June 2014. Since then, the New Jersey Legislature passed a similar phased-in ban, which was subsequently vetoed by the Governor, but with proposed changes. Similar legislation has recently been introduced in the U.S. Congress as well as several states, including California, New York, and Washington.

Supporters of a ban on the use of microbeads contend that plastic microbeads cannot be treated by conventional wastewater treatment technologies, resulting in their discharge into waterways and posing a threat to the ecosystem through ingestion by fish and other animals in the food chain. Microbeads also pose a potential public health threat from human consumption of fish and other animals that have ingested microbeads, as well as from the pollution of water supplies. Some supporters also contend that any ban of microbeads should also cover biodegradable plastic microbeads, as plastic only biodegrades under limited conditions.

Several of the largest producers of personal care products containing microbeads have agreed to phase out microbeads from their products within a few years, and generally intend to use alternatives such as crushed seeds and nutshells; however, it is unclear whether microbead producers will use only natural alternatives.

State Fiscal Effect: The bill is not anticipated to materially affect State operations or finances, as it is assumed that the personal care product and over-the-counter drug industries continue to voluntarily phase out the use of plastic microbeads. Additionally, the bill does not specify how MDE is to enforce the bill and does not establish penalties for violations. Thus, given the voluntary industry phase out, it is assumed that MDE will conduct enforcement on a complaint basis only, necessitating minimal or no inspection and enforcement resources at MDE or prosecutorial resources within the Office of the Attorney General.

Small Business Effect: Although the affected industry continues to implement its plan to phase out the use of plastic microbeads, it is unclear whether small business retailers are able to sell existing and future inventories and stock alternative over-the-counter drugs by December 31, 2018, given the accelerated phase-out and the required approval process by the federal Food and Drug Administration for any reformulated drugs. It is assumed that the sale of alternative products do not meaningfully affect the profits or revenues of small business retailers.

Additional Information

Prior Introductions: None.

Cross File: HB 216 (Delegate Morhaim, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of the Environment; Department of Health and Mental Hygiene; Law360.com; *San Francisco Chronicle; Chicago Tribune;* the State of New Jersey; the Office of Congressmen Frank Pallone, Jr.; U.S. Food and Drug Administration, Personal Care Products Council, Department of Legislative Services

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