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## New Laws Forcing Companies to Phase Out Microbeads

Microbeads have become standard ingredients in cosmetics and personal-care products, including toothpastes, cleansers, and scrubs. The term “microbead” generally refers to a microscopic plastic particle, [but it can also be used to include other microscopic ingredients such as vitamin E, sand, flaxseed, and walnut shells](#). Recently, [public outcry against plastic microbeads](#) has grown, decrying the non-biodegradable “[plastic soup](#)” accumulating in lakes, rivers, and oceans after microscopic plastics slip through screen holes at wastewater treatment plants. In response, several states are taking steps to legislate away these plastic pollutants. Just this week, on June 9, 2014, Illinois became the first state to pass a ban of the manufacture and sale of microbeads.

[Illinois Senate Bill 2727](#) (SB2727) amends the Illinois Environmental Protection Act to prohibit the manufacture for sale and sale of any non-over-the-counter personal-care product that contains synthetic plastic microbeads by 2018 and 2019, respectively. The law also prohibits the manufacture for sale and sale of any over-the-counter drug that contains synthetic plastic microbeads by 2019 and 2020, respectively. Violators of SB2727 face civil penalties, including a \$1,000 fine for an initial violation, and a \$2,500 fine for each subsequent violation.

Interestingly, SB2727 exempts prescription drugs from these bans, presumably because of potential preemption problems. Also of note, SB 2727 specifically defines “synthetic plastic microbead” to mean “any intentionally added non-biodegradable solid plastic particle measured less than 5 millimeters in size [that] is used to exfoliate or cleanse in a rinse-off product.” This definition eliminates the potential for companies to incur civil penalties for manufacturing and selling products containing natural ingredients such as vitamin E, sand, flaxseed, and walnut shells, which are marketed as “microbeads.” However, the failure to define “rinse-off product” may provide a basis, (albeit a weak one in light of other language in SB2727), for manufacturers to argue that the law does not apply to them.

Illinois may be the first state to ban the manufacture for sale and sale of plastic microbeads but it certainly looks like it will not be the only one to do so. On February 11, 2014, Robert K. Sweeney, [with the support of New York Attorney General Eric Schneiderman](#), introduced the [Microbead-Free Waters Act](#) to the New York State Assembly. The act prohibits the manufacture, distribution, and sale of personal cosmetic products containing plastic microbeads by 2017. Violators will face a \$2,500 fine each day that the violation continues and will be subject to an injunction preventing the violation. [The New York state assembly passed the Microbead-Free Waters Act in May 2015](#), but the state senate has yet to take any action.

Meanwhile, on February 13, 2014, Richard Bloom introduced [AB 1699](#) to the California assembly, which would, starting January 1, 2016, prohibit the “selling or offering for

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promotional purposes any cleaning product, personal care product, or both containing microplastic.” AB 1699 also imposes a fine of \$2,500 for each day the violation continues, and expressly authorizes civil actions brought by any “person in the public interest.” The [California assembly voted](#) 45–10 on May 23, 2014, to approve AB 1699, and the state senate is expected to take action on the bill this month.

While it is unclear how the New York and California senates will vote on the microbead bans, Illinois’ passage of the ban could be the start of a trend that dramatically impacts the cosmetics and personal-care-products industries.

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