

STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of SB2290
RELATING TO MICROBEADS**

SENATOR MIKE GABBARD, CHAIR

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: 2/9/2022

Room Number: CR224/Videoconference

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities.

4 **Department Testimony:** The Department supports this measure. This measure seeks to amend
5 Hawaii Revised Statutes (HRS), Chapter 328 by requiring a phase out and ultimate prohibition
6 on the manufacture and sale in Hawaii of personal care products and non-prescription drugs
7 containing plastic microbeads five millimeters in size or smaller. The Department is aware that
8 the accumulation and possible impacts of microplastic particles in the marine environment is
9 recognized as an important environmental issue and supports efforts to decrease microplastic
10 pollution in Hawaii's waters to protect our marine environment. Banning personal care products
11 with plastic microbeads, not regulated under the federal Microbead-Free Waters Act of 2015, is a
12 small step towards achieving this overall goal.

13 The Department respectfully requests that the proposed amendments be moved from chapter
14 328, HRS, to chapter 321, HRS.

15

16 **Offered Amendments:** None.

17 Thank you for the opportunity to testify on this measure.



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Toby Taniguchi, KTA Superstores, *Advisor*
Joe Carter, Coca-Cola Bottling of Hawaii, *Immediate Past Chair*

TO: Committee on Agriculture and the Environment
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 9, 2022

TIME: 1pm

PLACE: Via Videoconference

RE: SB2290 Relating to Microbeads

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA is in opposition to this measure. It's unclear what products this measure is intended to regulate. Microbeads were used in certain personal care products, also known as rinse-off cosmetics, until they were phased out by the Microbead-Free Waters Act of 2015.

On the FDA information page about the Act it notes that:

“Under the new law, state or local authorities are not allowed to enact laws or continue to enforce laws that:

- restrict the manufacture of rinse-off cosmetics that contain plastic microbeads, or
- restrict the introduction or delivery of such products into interstate commerce,

unless the state or local restrictions are the same as those of the new federal law that have taken effect.”

The text of the measure states that “The legislature notes that nothing in this Act shall be construed to apply to rinse-off cosmetics and rinse-off cosmetics that are also non—

prescription drugs, as these products are exclusively regulated by the federal government pursuant to the federal Microbead—Free Waters Act of 2015.” However, it fails to explain what products it does intend to regulate. It does not clarify whether or not products that would meet the definition of personal care products contained in the bill, and which contain microbeads, but are not regulated by the FDA even exist. If such products exist this measure does not indicate what these products are, what they’re used for, and if they are manufactured or sold in Hawaii presently.

For these reasons we ask that the measure be held. We thank you for the opportunity to testify.



**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
FEBRUARY 9, 2022
Re: SB 2290 Relating to Microbeads**

Good afternoon, Chairperson Gabbard and members of the Senate Committee on Agriculture and the Environment. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

We oppose to SB 2290 Relating to Microbeads. Beginning 7/1/2022 this measure bans the manufacture of a personal care product, except a non-prescription drug, that contains plastic microbeads. Beginning 7/1/2023: bans the sale or offer for sale of a personal care product, except a non-prescription drug, that contains plastic microbeads and bans the manufacture of a non-prescription drug that contains plastic microbeads. Beginning 7/1/2024: bans the sale or offer for sale of a non-prescription drug that contains plastic microbeads. Specifically exempts rinse-off cosmetics and rinse-off cosmetics that are also non-prescription drugs regulated by the federal Microbead-Free Waters Act of 2015.

It is our understanding that the plastic microbeads used in many of the personal care products are NOT typically found in the litter in our oceans and that wastewater treatments are in fact removing almost all of these particles. Consumers are the driving force in what products retailer's stock and sell in their stores. Over the years we have seen many companies switching to use alternative microbead in their products.

We would like to point out that there are thousands of personal care products that would be impacted including not only foundation makeup, eyeshadows and eyelines, but also creams, body lotions, hand sanitizers, makeup remover, nail polish, facial masks, eyeliner, sunscreen, deodorant, foundation, blush, bronzers, lip gloss, lipsticks, nail files, styling hair lotions, lip balms, hair sprays, hair mousse, pomade, and hair gel products, to name a few. By banning these products, the choices that consumers in Hawaii have will shrink considerably. Many favorite makeups, lotions, deodorants will no longer be available to purchase. Small local retailers who do not have mainland locations will be forced to take a loss on the products if they must sell them at a deep discount or discard them to make the deadline. Local consumers would then turn to the internet to order their favorite banned products online. Or purchase it through the black market where personal care products and cosmetics are one of the sought-after items to steal by retail organized crime.

It is our understanding that cosmetic companies are already phasing out the use of microbeads in their products.

Mahalo again for this opportunity to testify.

SB-2290

Submitted on: 2/6/2022 9:48:23 AM

Testimony for AEN on 2/9/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Henry Curtis	Testifying for Life of the Land	Support	No

Comments:

Life of the Land supports this measure.

SB-2290

Submitted on: 2/6/2022 6:27:18 PM

Testimony for AEN on 2/9/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kaitlyn P Jacobs	Individual	Support	No

Comments:

I support this measure, thank you!

SB-2290

Submitted on: 2/7/2022 8:29:46 PM

Testimony for AEN on 2/9/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Maui OFR	Individual	Support	No

Comments:

There's already so much microplastic in our waters, we don't need to add more because of beauty products. Keep plastic out of the ocean!

SB-2290

Submitted on: 2/7/2022 10:33:16 PM

Testimony for AEN on 2/9/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Megan Lamson Leatherman	Individual	Support	No

Comments:

Aloha and mahalo for this opportunity to testify.

I am totally in SUPPORT of banning plastic microbeads in personal care products as is proposed in SB2290. Actually, I'm surprised they aren't already outright banned with the Federal legislation passed during the Obama administration. Regardless, please support this bill to ensure we can keep our oceans and waterways clean. There are already two locations within the state (Tern Island and Kamilo Point) that were determined by EPA recently to have waters contaminated by microplastics (such as microbeads). These small particles are known to cause problems for aquatic wildlife and may also be problematic for human health.

Thanks for your time and consideration and support of this bill.

Sincerely,

Megan Lamson Leatherman, M. Sc.

Honalo, Hawai'i Island



Hawai'i's voice for wildlife
Kō Hawai'i o nā holoholona lōhiu

**Before the Senate Committee on
Agriculture and Environment**

**Wednesday, February 9, 2022
1:00pm**

State Capitol, Conference Room 224, Via Videoconference

**In consideration of
SENATE BILL 2290
RELATING TO MICROBEADS**

Conservation Council For Hawaii **STRONGLY SUPPORTS SB2290**. Microbeads are found on our island's shores at an alarming rate. Their presence in our waters and on our shorelines are detrimental to the native species that thrive in our coastal regions. Native seabirds and marine life ingest microbeads which often prove toxic leading to extreme poisoning and death at times. It is important that our state adopt stricter policy in banning the manufacturing of all plastics in our islands, CCH believes SB 2290 is a step in the right direction.

Thank you for the opportunity to support SB 2290.

February 8, 2022

Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair
Committee on Agriculture and Environment
Hawaii State Legislature
415 South Beretania Street
Honolulu, HI 96813

RE: Opposition to SB 2290

Chair Gabbard and Vice Chair Nishihara:

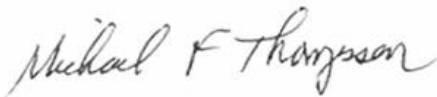
On behalf of the members of the Personal Care Products Council (PCPC),¹ I am writing to express our opposition to SB 2290, legislation to ban the manufacture of a personal care product that contains plastic microbeads.

The personal care products industry's deep commitment to product safety and environmental stewardship includes protection of the marine environment that sustains life on our planet. That's why the industry responded early and aggressively to concerns over microbeads, even though these ingredients make up a very tiny fraction of plastic litter in waterways. The industry announced a voluntary phase-out of microbeads, and then worked with elected officials, environmental advocacy groups and others to support laws that permanently ban them. Several states adopted laws and the Council of State Governments accepted the language into their Shared State Legislation Volume 75. Subsequently, the Microbead-Free Waters Act, was signed into law by President Obama in 2015 and bans the manufacturing of products containing microbeads as of July 1, 2017.

No ingredient commonly used in cosmetics and personal care products has been detected in marine plastic litter. Research looking at the occurrence and environmental fate of ingredients is currently being conducted, although to date there is no evidence to show that personal care products contribute to marine litter. In addition, it is important to note that microbead litter can be effectively removed from water by wastewater treatment plants. In studies conducted in the U.S. and Europe, treatment facilities were found to remove more than 99 percent of these particles. Moreover, the main type of plastic that was detected in these studies was fibers, which were never used in cosmetics.

For all of the above reasons, we respectfully ask for your NO vote on SB 2290. Thank you for your consideration and the opportunity to comment.

Sincerely,



Sr. Vice President, Government Affairs

¹ Founded in 1894, the Personal Care Products Council (PCPC) is the voice and advocate for 600 member companies representing the \$499.6 billion global cosmetics and personal care products industry. PCPC's members represent approximately 90% of the U.S. beauty industry and are some of the most beloved and trusted brands in beauty and personal care today. As the manufacturers, distributors and suppliers of a diverse range of products millions of consumers rely on every day – from sunscreens, toothpaste and shampoo to moisturizer, makeup and fragrance – PCPC's member companies are global leaders committed to product safety, quality and innovation.



CONSUMER
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ASSOCIATION

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February 9, 2022

To: Committee on Agriculture and Environment
The Honorable Mike Gabbard, Chair
The Honorable Clarence K. Nishihara, Vice Chair

Fr: Carlos I. Gutierrez, Vice President, State & Local Government Affairs
Consumer Healthcare Products Association

RE: SB 2290 Relating to Microbeads - OPPOSE

Dear Chairman Gabbard,

On behalf of the Consumer Healthcare Products Association (CHPA), the national trade association representing the leading manufacturers of over-the-counter (OTC) medications, dietary supplements, and consumer medical devices, I'm writing to express opposition to SB 2290 – legislation seeking to ban the sale of microbeads in specific products.

Consumer healthcare product manufacturers understand that plastic pollution in the environment is of concern to policy makers in the State of Hawai'i. We do not oppose the phase-out of plastic microbeads from consumer healthcare products. In fact, many OTC manufacturers have already begun proactively phasing-out the use of synthetic plastic microbeads. We do, however, believe it is important that there be one unified national approach to address the concerns raised in these proposals.

States Are Preempted from Acting on Microbeads

The United States Congress passed the Microbead-Free Waters Act of 2015 that added a subsection at the end of the federal Food, Drug, and Cosmetic Act's section 301(ddd) that includes the following preemption provision:

c) PREEMPTION OF STATE LAWS.—No State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect restrictions with respect to the manufacture or introduction or delivery for introduction into interstate commerce of rinse-off cosmetics containing plastic microbeads (as defined in section 301(ddd) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a)) that are not identical to the restrictions under such section 301(ddd) that have begun to apply under subsection (b).

Additionally, section 751 of the federal Food, Drug, and Cosmetic Act provides additional preemption provisions. Specifically, section 751 states that “no State or

political subdivision of a State may establish or continue in effect any requirement that 1) relates to the regulation of a drug that is not subject to the requirements of section 353(b)(1) or 353(f)(1)(A) of the title; and 2) that is different from or in addition to, or that is otherwise not identify with, a requirement under this chapter, the Poison Prevention Packaging Act of 1970, or the Fair Packaging and Labeling Act.

Conclusion

In an effort to maintain consistent regulation of microbeads across the country, and to avoid violating existing federal preemption laws, we respectfully request you reject passage of SB 2290. Thank you for taking the time to consider our concerns and feel free to contact me or our local representative, Lauren Zirbel, directly with any follow up questions you may have.

Respectfully submitted,



Carlos I. Gutierrez
Vice President, State & Local Government Affairs
Consumer Healthcare Products Association
cgutierrez@chpa.org | 202-429-3521