

ESHB 2565 - S AMD 1251

By Senator Das

ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that creating
4 labeling standards for disposable wipes products will protect public
5 health, the environment, water quality, and public infrastructure
6 used for the collection, transport, and treatment of wastewater. It
7 is not the intent of the legislature to address standards for
8 flushability with this chapter.

9 NEW SECTION. **Sec. 2.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires
11 otherwise.

12 (1) "Covered entity" means a manufacturer of a covered product
13 and a wholesaler, supplier, or retailer that has contractually
14 undertaken responsibility to the manufacturer for the "do not flush"
15 labeling of a covered product.

16 (2) "Covered product" means a nonflushable nonwoven disposable
17 wipe that is a premoistened wipe constructed from nonwoven sheets and
18 designed and marketed for diapering, personal hygiene, or household
19 hard surface cleaning purposes. A nonflushable nonwoven disposable
20 wipe excludes any wipe product designed or marketed for cleaning or
21 medicating the anorectal or vaginal areas on the human body and
22 labeled "flushable," "sewer safe," "septic safe," or otherwise
23 indicating that the product is appropriate for disposal in a toilet
24 including, but not limited to, premoistened toilet tissue.

25 (3) "Label" means to represent by statement, word, picture,
26 design, or emblem on a covered product package.

27 (4) "Principal display panel" means the side of a product package
28 that is most likely to be displayed, presented, or shown under
29 customary conditions of display for retail sale. The term is further
30 defined as follows:

1 (a) In the case of a cylindrical or nearly cylindrical package,
2 the surface area of the principal display panel constitutes forty
3 percent of the product package, as measured by multiplying the height
4 of the container times the circumference.

5 (b) In the case of a flexible film package, in which a
6 rectangular prism or nearly rectangular prism stack of wipes is
7 housed within the film, the surface area of the principal display
8 panel constitutes the length times the width of the side of the
9 package when the flexible packaging film is pressed flat against the
10 stack of wipes on all sides of the stack.

11 NEW SECTION. **Sec. 3.** A covered entity must clearly and
12 conspicuously label a covered product as "do not flush" as follows:

13 (1) Use the "do not flush" symbol, or a gender equivalent
14 thereof, described in the INDA/EDANA code of practice 2 (COP2, as
15 published in "Guidelines for Assessing the Flushability of Disposable
16 Nonwoven Products," Edition 4, May 2018, by INDA/EDANA);

17 (2) Place the symbol on the principal display panel in a
18 prominent and reasonably visible location on the package which, in
19 the case of packaging intended to dispense individual wipes, is
20 permanently affixed in a location that is visible to a person each
21 time a wipe is dispensed from the package;

22 (3) Size the symbol to cover at least two percent of the surface
23 area of the principal display panel on which the symbol is presented;

24 (4) Ensure the symbol is not obscured by packaging seams, folds,
25 or other package design elements;

26 (5) Ensure the symbol has sufficiently high contrast with the
27 immediate background of the packaging to render it likely to be read
28 by the ordinary individual under customary conditions of purchase and
29 use. In the case of a printed symbol, "high contrast" is defined as
30 follows:

31 (a) Provided with either a light symbol on a dark background or a
32 dark symbol on a light background; and

33 (b) A minimum level or percentage of contrast between the symbol
34 artwork and the background of at least seventy percent. Contrast in
35 percent is determined by:

36 (i) $\text{Contrast} = (B1 - B2) \times 100 / B1$; and

37 (ii) Where B1 = light reflectance value of the lighter area and
38 B2 = light reflectance value of the darker area; and

1 (6) Beginning January 1, 2023, no package or box containing a
2 covered product manufactured on or before the effective date of this
3 section may be offered for distribution or sale in the state.

4 NEW SECTION. **Sec. 4.** Upon a request by a city or a county, a
5 covered entity must submit to the requesting entity, within ninety
6 days of the request, nonconfidential business information and
7 documentation demonstrating compliance with this chapter, in a format
8 that is easy to understand.

9 NEW SECTION. **Sec. 5.** (1) Cities and counties have concurrent
10 and exclusive authority to enforce this chapter and to collect civil
11 penalties for a violation of this chapter, subject to the conditions
12 in this section. An enforcing government entity may impose a civil
13 penalty in the amount of up to two thousand dollars for the first
14 violation of this chapter, up to five thousand dollars for the second
15 violation of this chapter, and up to ten thousand dollars for the
16 third and any subsequent violation of this chapter. If a covered
17 entity has paid a prior penalty for the same violation to a different
18 government entity with enforcement authority under this subsection,
19 the penalty imposed by a government entity is reduced by the amount
20 of the payment.

21 (2) Any civil penalties collected pursuant to this section must
22 be paid to the enforcing governmental entity that brought the action.

23 (3) The remedies provided by this section are not exclusive and
24 are in addition to the remedies that may be available pursuant to
25 chapter 19.86 RCW or other consumer protection laws, if applicable.

26 (4) In addition to penalties recovered under this section, the
27 enforcing government entity may recover reasonable enforcement costs
28 and attorneys' fees from the liable covered entity.

29 NEW SECTION. **Sec. 6.** Covered entities that violate the
30 requirements of this chapter are subject to civil penalties described
31 in section 5 of this act. A specific violation is deemed to have
32 occurred upon the sale of a noncompliant product package. The
33 repeated sale of the same noncompliant product package is considered
34 part of the same, single violation. A city or county must send a
35 written notice of an alleged violation and a copy of the requirements
36 of this chapter to a noncompliant covered entity, which will have
37 ninety days to become compliant. A city or county may assess a first

1 penalty if the covered entity has not met the requirements of this
2 chapter ninety days following the date the notification was sent. A
3 city or county may impose a second, third, and subsequent penalties
4 on a covered entity that remains noncompliant with the requirements
5 of this chapter for every month of noncompliance.

6 NEW SECTION. **Sec. 7.** Sections 1 through 6, 8, and 10 of this
7 act constitute a new chapter in Title 70 RCW.

8 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2022.

9 NEW SECTION. **Sec. 9.** For a covered product required to be
10 registered by the United States environmental protection agency under
11 the federal insecticide, fungicide, and rodenticide act (7 U.S.C.
12 Sec. 136 et seq. (1996)), this act applies beginning July 1, 2023.

13 NEW SECTION. **Sec. 10.** This chapter preempts all existing or
14 future laws enacted by a county, city, town, or other political
15 subdivision of the state regarding the labeling of a covered product.
16 Nothing in this section is intended to preempt the enforcement
17 authority of a city or county as provided under sections 5 and 6 of
18 this act.

19 NEW SECTION. **Sec. 11.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected."

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23 On page 1, line 1 of the title, after "products;" strike the
24 remainder of the title and insert "adding a new chapter to Title 70
25 RCW; creating a new section; prescribing penalties; and providing an
26 effective date."

EFFECT: Removes the state attorney general from enforcement
provisions.
Removes the revolving account.

Makes technical changes.

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