

HOUSE BILL REPORT

ESHB 2565

As Amended by the Senate

Title: An act relating to the labeling of disposable wipes products.

Brief Description: Concerning the labeling of disposable wipes products.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Fitzgibbon, Doglio and Hudgins).

Brief History:

Committee Activity:

Environment & Energy: 1/21/20, 1/30/20 [DPS].

Floor Activity:

Passed House: 2/16/20, 92-3.

Senate Amended.

Passed Senate: 3/5/20, 36-10.

Brief Summary of Engrossed Substitute Bill

- Establishes "Do Not Flush" labeling requirements for nonflushable, nonwoven disposable wipes.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

Staff: Nikkole Hughes (786-7156).

Background:

Disposable Wipes.

Disposable wipes include wipes made for baby care, hand washing, personal cleansing, makeup removal, and household cleaning. Disposable wipes are typically made of materials such as polyester, polypropylene, cotton, wood pulp, or rayon fibers formed into sheets.

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They may be packaged individually or in small or bulk packaging. They are typically moistened with water and other ingredients, such as cleansing and moisturizing agents, depending on their intended use. They may also contain other ingredients, such as preservatives to prevent the growth of bacteria or mold.

Many types of disposable wipes are regulated at the federal level for their quality and content. Wipes intended for a therapeutic purpose, such as treating acne, are drugs under federal law and must meet certain requirements established by the United States Food and Drug Administration. Wipes intended to control germs on inanimate surfaces and wipes containing insect repellents are regulated by the United States Environmental Protection Agency. Wipes intended for cleansing household objects are regulated by the Consumer Product Safety Commission.

Industry Flushability Standards.

Some, but not all, types of disposable wipes may be suitable for disposal down a toilet. In 2008, trade associations representing suppliers of nonwoven materials and products suppliers published the first edition of the Guidelines for Assessing the Flushability of Disposable Nonwoven Products (Guidelines) to help manufacturers of disposable wipes determine whether their products should be flushed into the wastewater system. Under the Guidelines, only products labelled as "flushable" have demonstrated compatibility with wastewater infrastructure. The most recent edition of the Guidelines was published in November 2018.

Summary of Engrossed Substitute Bill:

Definitions.

"Covered entity" means a manufacturer of a covered product and a wholesaler, supplier, or retailer that has contractually undertaken responsibility to the manufacturer for the "Do Not Flush" labeling of a covered product.

"Covered product" means a nonflushable, nonwoven disposable wipe that is a premoistened wipe constructed from nonwoven sheets and designed and marketed for diapering, personal hygiene, or household hard surface cleaning purposes. A nonflushable, nonwoven disposable wipe excludes any wipe product labeled "flushable," "sewer safe," "septic safe," or otherwise indicating that the product is appropriate for disposal in a toilet.

"Principal display panel" means the side of a product package that is most likely to be displayed, presented, or shown under customary conditions of display for retail sale.

Labeling Requirements for Covered Products.

A covered entity must clearly and conspicuously label a covered product as "Do Not Flush" as follows:

- use the "Do Not Flush" symbol, or a gender equivalent thereof, described in the Guidelines for Assessing the Flushability of Disposable Nonwoven Products, Edition 4, published May 2018;
- place the symbol on the principal display panel in a prominent and reasonably visible location on the package which, in the case of packaging intended to dispense individual wipes, is permanently affixed in a location that is visible to a person each time a wipe is dispensed from the package;

- size the symbol to cover at least 2 percent of the surface area of the side of the principal display panel on which the symbol is presented;
- ensure the symbol is not obscured by packaging seams, folds, or other package design elements; and
- ensure the symbol has sufficiently high contrast with the immediate background of the packaging to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

These requirements take effect for most products July 1, 2022. For covered products required to be registered by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, these requirements take effect July 1, 2023.

Beginning January 1, 2023, no package or box containing a covered product manufactured on or before the effective date of the labeling requirements for that product may be offered for distribution or sale in the state.

Enforcement.

Upon request by the state, acting through the Attorney General, a city, or a county, a covered entity must submit to the requesting entity, within 90 days of the request, nonconfidential business information and documentation demonstrating compliance with the labeling requirements, in a format that is easy to understand and scientifically accurate.

The Attorney General, cities, and counties have concurrent and exclusive authority to enforce the labeling requirements and collect civil penalties for a violation of the requirements. A specific violation is deemed to have occurred upon the sale of a noncompliant product package. The repeated sale of the same noncompliant product package is considered part of the same single violation.

An enforcing government entity may impose a civil penalty in the amount of up to \$2,000 for the first violation, up to \$5,000 for the second violation, and up to \$10,000 for the third and any subsequent violation. If a covered entity has paid a prior penalty for the same violation to a different government entity with enforcement authority, the penalty imposed by a government entity is reduced by the amount of the payment.

Nonflushable Products Revolving Account.

All receipts from civil penalties or other amounts recovered by the state in enforcement action must be deposited into the Nonflushable Products Revolving Account, which is created in the custody of the State Treasurer. Expenditures from the account must be used by the Attorney General for the payment of costs, expenses, and charges incurred in the enforcement of the labeling requirements. Only the Attorney General or the Attorney General's designee may authorize expenditures from the account.

Preemption.

The labeling requirements for nonflushable, nonwoven disposable wipes preempt all existing or future laws enacted by a county, city, town, or other political subdivision of Washington regarding the labeling of a covered product. This preemption is not intended to preempt the enforcement authority of a city or county.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- removes the Attorney General from enforcement authority;
- removes the revolving account; and
- makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect July 1, 2022.

Staff Summary of Public Testimony:

(In support) This bill represents the first cut at a gnarly subject. People flush things down the toilet that are in a sense flushable, but that cause problems downstream. The goal with this bill is to ensure that consumers know that these products should be disposed of in the trash. Systems across the Puget Sound have been experiencing problems with their pumps and pipes that can result in wastewater leaks and spills. The increasing prevalence of wipes causing clogs and other issues started with the introduction of personal care wipes 20 years ago. These wipes accumulate with dental floss, fat, grease, and other substances to form large, solid clogs in the sewer system. Sewer systems and sewer workers in the state provide vital services to protect the public health. When dealing with clogs caused by wet wipes, workers are placed at undue risk to pathogens, sewage, and sharp objects. Wastewater treatment plants are not designed to process and collect microplastic fibers from wet wipes. The industry's current labeling code of practice reflects more than two years of stakeholder collaboration and negotiation. This bill increases the size of the symbol compared to the industry guidelines. There are many industry stakeholders who will be impacted by these requirements.

(Opposed) The requirements in this bill present a challenge for store-brand products, which would be included under the definitions provided in this bill.

(Other) The Department of Ecology (Ecology) has the sole authority to adopt rules to ensure enforcement of the bill, but the actual enforcement authority is given to the Attorney General, counties, and cities. This bill places Ecology in the unusual position of writing rules that it will not ultimately enforce.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Judi Gladstone, Washington Association of Sewer and Water Districts; Frank Dick, City of Vancouver; Logan Bahr, Association of Washington Cities; Steve Lindstrom, Sno-King Water District Coalition; Melissa Gombosky and Jessica Franken, INDA; and Heather Trim, Zero Waste Washington.

(Opposed) Holly Chisa, Northwest Grocery Association.

(Other) Denise Clifford, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.