

HOUSE BILL REPORT

SHB 1213

As Passed House:
February 6, 2023

Title: An act relating to compliance with labeling requirements for wipes.

Brief Description: Concerning compliance with labeling requirements for wipes.

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

Brief History:

Committee Activity:

Environment & Energy: 1/16/23, 1/23/23 [DPS].

Floor Activity:

Passed House: 2/6/23, 93-0.

Brief Summary of Substitute Bill

- Eliminates the 2023 deadline for products subject to the labeling requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to also meet labeling requirements for nonflushable, nonwoven disposable wipes, and instead institutes a process whereby a FIFRA-regulated wipe must achieve compliance with labeling requirements by the later of 2025 or 24 months after a product receives label approval under FIFRA from the United States Environmental Protection Agency.
- Clarifies that nonflushable, nonwoven disposable wipes that were manufactured prior to July 1, 2022, may be sold so long as the product is labeled consistent with requirements.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by 15 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Berry, Couture, Duerr, Fey, Goehner, Lekanoff, Ramel, Slatter and Street.

Staff: Jacob Lipson (786-7196).

Background:

Disposable wipes include wipes made for baby care, hand washing, personal cleansing, makeup removal, and household cleaning. Many types of disposable wipes are federally regulated for quality and content, including wipes intended to control germs on inanimate surfaces and wipes containing insecticides, which are regulated by the United States Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Washington State Department of Agriculture (WSDA) administers FIFRA as well as the state Pesticide Control Act and the state Pesticide Application Act. Its activities include adopting rules requiring the registration and restricted use of pesticides, and labeling requirements applicable to pesticides.

Under legislation enacted in 2020 the packaging for nonwoven, nonflushable disposable wipes must be labeled clearly and conspicuously with a Do Not Flush label that:

- uses a Do Not Flush symbol established in 2018 guidelines published by certain trade associations representing wipe material and product suppliers;
- places 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;
- sizes the symbol to cover at least two percent of the surface area of the side of the principal display panel on which the symbol is presented;
- ensures the symbol is not obscured by packaging seams, folds, or other package design elements; and
- ensures 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.

The Do Not Flush labeling requirements took effect for most nonflushable, nonwoven disposable wipes on July 1, 2022. For nonflushable, nonwoven disposable wipes required to be registered by the EPA under FIFRA, Do Not Flush labeling requirements take effect July 1, 2023. Manufacturers are responsible for compliance with labeling requirements unless a wholesaler, supplier, or retailer has contractually undertaken responsibility to the manufacturer for Do Not Flush labeling requirements.

Beginning January 1, 2023, no package or box containing nonwoven, nonflushable disposable wipes subject to Do Not Flush labeling requirements that were manufactured on or before January 1, 2022, may be offered for distribution or sale.

Cities and counties have concurrent and exclusive authority to enforce the Do Not Flush labeling requirements and collect civil penalties for a violation of the requirements. The Do Not Flush labeling requirements for covered products preempt all existing or future labeling laws enacted by a county, city, town, or other political subdivision of Washington.

Summary of Substitute Bill:

The Do Not Flush labeling requirements that apply broadly to nonwoven, nonflushable disposable wipes are amended, including:

- clarifying that packages of wipes manufactured on or before July 1, 2022, may be sold after January 1, 2023, if the product has been labeled consistent with state labeling requirements; and
- specifying that labeling requirements apply to packaging containing wipes, rather than to the wipes themselves.

The 2023 effective date of Do Not Flush labeling requirements applicable to nonwoven, nonflushable disposable wipes required to be registered by the United States Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is eliminated. Instead, manufacturers responsible for FIFRA-regulated wipes or wipes subject to Washington State Department of Agriculture (WSDA) pesticide registration requirements must:

- submit to the EPA a label compliant with Do Not Flush labeling requirements by July 1, 2023, and upon approval by the EPA, submit a label to the WSDA for approval; and
- comply with Do Not Flush labeling requirements, beginning with wipes manufactured after July 1, 2025, or 24 months after receiving the EPA labeling approval, whichever is later.

Nonwoven, nonflushable disposable wipes that are newly introduced into commerce in Washington after July 1, 2023, must begin complying with Do Not Flush labeling requirements by July 1, 2025.

If either the EPA or the WSDA do not approve a product label that complies with all of the Do Not Flush labeling requirements, the manufacturer must use a label that meets as many of the Do Not Flush labeling requirements as the EPA and the WSDA have approved. A manufacturer may include words or products in addition to those specified in Do Not Flush labeling requirements if necessary to obtain the WSDA or the EPA approval for the label. A manufacturer of product in commerce in Washington prior to 2023 that has not received the WSDA approval 24 months after the EPA has approved a label remains in compliance with Do Not Flush requirements if the manufacturer provides evidence, upon request, of the timely submission of the label to the WSDA.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Manufacturers of wipes that are regulated pesticide products must receive multiple layers of government review. Backlogs in receiving federal labeling approval make compliance with state Do Not Flush labeling requirements challenging. The deadlines being proposed for wipe products that are regulated pesticides are more aggressive than those in other states that have adopted similar laws on wipe products. An amendment to address new products introduced after 2023 would help fill a gap in the current bill.

(Opposed) This bill is too generous in the amount of time it provides to industries to come into compliance with labeling requirements. There is a federal bill being considered on this topic, and it is important that state legislation not set a bad precedent for any federal laws that get passed.

(Other) This issue is too urgent for sewer system operators to wait until 2026 to resolve, and the compliance deadline should be sped up.

Persons Testifying: (In support) Representative Alex Ybarra, prime sponsor; Brent Ludeman, Household and Commercial Products Association; and Kelly McLain, Washington State Department of Agriculture.

(Opposed) Heather Trim, Zero Waste Washington.

(Other) Maggie Yuse, Seattle Public Utilities.

Persons Signed In To Testify But Not Testifying: None.