

ESHB 2565 - S COMM AMD

By Committee on Environment, Energy & Technology

NOT 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 the request by the state, acting  
5 through the attorney general, a city, or a county, a covered entity  
6 must submit to the requesting entity, within ninety days of the  
7 request, nonconfidential business information and documentation  
8 demonstrating compliance with this chapter, in a format that is easy  
9 to understand.

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

22 (2) Any civil penalties collected pursuant to this section must  
23 be paid to the office of the city attorney, city prosecutor, district  
24 attorney, or attorney general, whichever office brought the action.  
25 Penalties collected by the attorney general on behalf of the state  
26 must be deposited in the nonflushable products revolving account  
27 created in section 7 of this act.

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

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

34 NEW SECTION. **Sec. 6.** Covered entities that violate the  
35 requirements of this chapter are subject to civil penalties described  
36 in section 5 of this act. A specific violation is deemed to have  
37 occurred upon the sale of a noncompliant product package. The

1 repeated sale of the same noncompliant product package is considered  
2 part of the same, single violation. A city, county, or the state must  
3 send a written notice of an alleged violation and a copy of the  
4 requirements of this chapter to a noncompliant covered entity, which  
5 will have ninety days to become compliant. A city, county, or the  
6 state may assess a first penalty if the covered entity has not met  
7 the requirements of this chapter ninety days following the date the  
8 notification was sent. A city, county, or the state may impose a  
9 second, third, and subsequent penalties on a covered entity that  
10 remains noncompliant with the requirements of this chapter for every  
11 month of noncompliance.

12 NEW SECTION. **Sec. 7.** The nonflushable products revolving  
13 account is created in the custody of the state treasurer. All  
14 receipts from civil penalties or other amounts recovered by the state  
15 in enforcement actions under section 5 of this act must be deposited  
16 in the account. Expenditures from the account must be used by the  
17 attorney general for the payment of costs, expenses, and charges  
18 incurred in the enforcement of this chapter. Only the attorney  
19 general or the attorney general's designee may authorize expenditures  
20 from the account. The account is subject to allotment procedures  
21 under chapter 43.88 RCW, but an appropriation is not required for  
22 expenditures.

23 NEW SECTION. **Sec. 8.** Sections 1 through 7, 9, and 11 of this  
24 act constitute a new chapter in Title 70 RCW.

25 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2022.

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

30 NEW SECTION. **Sec. 11.** This chapter preempts all existing or  
31 future laws enacted by a county, city, town, or other political  
32 subdivision of the state regarding the labeling of a covered product.  
33 Nothing in this section is intended to preempt the enforcement  
34 authority of a city or county as provided under sections 5 and 6 of  
35 this act.

1        NEW SECTION.    **Sec. 12.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected."

**ESHB 2565** - S COMM AMD

By Committee on Environment, Energy & Technology

**NOT ADOPTED 03/05/2020**

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

EFFECT: Corrects a grammatical error.

--- END ---