

SENATE BILL REPORT

ESHB 2565

As Passed Senate - Amended, March 5, 2020

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

Committee Activity: Environment, Energy & Technology: 2/20/20, 2/26/20 [DPA, DNP, w/oRec].

Floor Activity:

Passed Senate - Amended: 3/05/20, 36-10.

Brief Summary of Engrossed First Substitute Bill

- Establishes labeling requirements for nonflushable, nonwoven disposable wipes packaging.
- Provides cities and counties with concurrent authority to enforce requirements.
- Establishes penalties for non-compliant labeling of packaging.
- Preempts all current and future local ordinances for labeling of nonflushable, nonwoven disposable wipes packaging.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Hobbs, Lias, McCoy, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Brown and Short.

Minority Report: That it be referred without recommendation.

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

Signed by Senators Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology.

Staff: Jan Odano (786-7486)

Background: 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. 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.

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 First Substitute Bill: A covered entity must clearly and conspicuously label a nonflushable, nonwoven disposable wipe 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.

A covered entity includes 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. A covered product is 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.

Upon request by 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.

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.

Civil penalties must be paid to the enforcing governmental entity. The enforcing government entity may recover reasonable enforcement costs and attorneys' fees from the liable covered entity.

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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Improper disposal causes issues for our sewer systems and this will minimize the impacts to infrastructure. Nonflushable wipes are made from plastic.

OTHER: The enforcement measures need to be addressed as the Attorney General Office will not be able to meet the expectation in the bill with respect to the civil penalties. The AGO does not have regulatory powers or a process for assessing or protesting penalties. The AGO requirements for enforcement should be removed.

Persons Testifying: PRO: Melissa Gombosky, INDA; Logan Bahr, Association of Washington Cities; Heather Trim, Zero Waste Washington.

OTHER: Bill Sherman, Counsel for Environmental Protection Unit, Attorney General's Office.

Persons Signed In To Testify But Not Testifying: No one.