
ENGROSSED SUBSTITUTE HOUSE BILL 2565

State of Washington 66th Legislature 2020 Regular Session

By House Environment & Energy (originally sponsored by
Representatives Fitzgibbon, Doglio, and Hudgins)

READ FIRST TIME 02/03/20.

1 AN ACT Relating to the labeling of disposable wipes products;
2 adding a new chapter to Title 70 RCW; creating a new section;
3 prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

18 (2) "Covered product" means a nonflushable nonwoven disposable
19 wipe that is a premoistened wipe constructed from nonwoven sheets and
20 designed and marketed for diapering, personal hygiene, or household

1 hard surface cleaning purposes. A nonflushable nonwoven disposable
2 wipe excludes any wipe product designed or marketed for cleaning or
3 medicating the anorectal or vaginal areas on the human body and
4 labeled "flushable," "sewer safe," "septic safe," or otherwise
5 indicating that the product is appropriate for disposal in a toilet
6 including, but not limited to, premoistened toilet tissue.

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

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

13 (a) In the case of a cylindrical or nearly cylindrical package,
14 the surface area of the principal display panel constitutes forty
15 percent of the product package, as measured by multiplying the height
16 of the container times the circumference.

17 (b) In the case of a flexible film package, in which a
18 rectangular prism or nearly rectangular prism stack of wipes is
19 housed within the film, the surface area of the principal display
20 panel constitutes the length times the width of the side of the
21 package when the flexible packaging film is pressed flat against the
22 stack of wipes on all sides of the stack.

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

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

29 (2) Place the symbol on the principal display panel in a
30 prominent and reasonably visible location on the package which, in
31 the case of packaging intended to dispense individual wipes, is
32 permanently affixed in a location that is visible to a person each
33 time a wipe is dispensed from the package;

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

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

38 (5) Ensure the symbol has sufficiently high contrast with the
39 immediate background of the packaging to render it likely to be read

1 by the ordinary individual under customary conditions of purchase and
2 use. In the case of a printed symbol, "high contrast" is defined as
3 follows:

4 (a) Provided with either a light symbol on a dark background or a
5 dark symbol on a light background; and

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

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

10 (ii) Where B1 = light reflectance value of the lighter area and
11 B2 = light reflectance value of the darker area.

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

15 NEW SECTION. **Sec. 4.** Upon the request by the state, acting
16 through the attorney general, a city, or a county, a covered entity
17 must submit to the requesting entity, within ninety days of the
18 request, nonconfidential business information and documentation
19 demonstrating compliance with this chapter, in a format that is easy
20 to understand.

21 NEW SECTION. **Sec. 5.** (1) The state, acting through the attorney
22 general, and cities and counties have concurrent and exclusive
23 authority to enforce this chapter and to collect civil penalties for
24 a violation of this chapter, subject to the conditions in this
25 section. An enforcing government entity may impose a civil penalty in
26 the amount of up to two thousand dollars for the first violation of
27 this chapter, up to five thousand dollars for the second violation of
28 this chapter, and up to ten thousand dollars for the third and any
29 subsequent violation of this chapter. If a covered entity has paid a
30 prior penalty for the same violation to a different government entity
31 with enforcement authority under this subsection, the penalty imposed
32 by a government entity is reduced by the amount of the payment.

33 (2) Any civil penalties collected pursuant to this section must
34 be paid to the office of the city attorney, city prosecutor, district
35 attorney, or attorney general, whichever office brought the action.
36 Penalties collected by the attorney general on behalf of the state
37 must be deposited in the nonflushable products revolving account
38 created in section 7 of this act.

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

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

7 NEW SECTION. **Sec. 6.** Covered entities that violate the
8 requirements of this chapter are subject to civil penalties described
9 in section 5 of this act. A specific violation is deemed to have
10 occurred upon the sale of a noncompliant product package. The
11 repeated sale of the same noncompliant product package is considered
12 part of the same, single violation. A city, county, or the state must
13 send a written notice of an alleged violation and a copy of the
14 requirements of this chapter to a noncompliant covered entity, which
15 will have ninety days to become compliant. A city, county, or the
16 state may assess a first penalty if the covered entity has not met
17 the requirements of this chapter ninety days following the date the
18 notification was sent. A city, county, or the state may impose a
19 second, third, and subsequent penalties on a covered entity that
20 remains noncompliant with the requirements of this chapter for every
21 month of noncompliance.

22 NEW SECTION. **Sec. 7.** The nonflushable products revolving
23 account is created in the custody of the state treasurer. All
24 receipts from civil penalties or other amounts recovered by the state
25 in enforcement actions under section 5 of this act must be deposited
26 in the account. Expenditures from the account must be used by the
27 attorney general for the payment of costs, expenses, and charges
28 incurred in the enforcement of this chapter. Only the attorney
29 general or the attorney general's designee may authorize expenditures
30 from the account. The account is subject to allotment procedures
31 under chapter 43.88 RCW, but an appropriation is not required for
32 expenditures.

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

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

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

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

11 NEW SECTION. **Sec. 12.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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