



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-818 Solid waste: premoistened nonwoven disposable wipes. (2021-2022)

SHARE THIS:  

Date Published: 10/07/2021 02:00 PM

Assembly Bill No. 818

CHAPTER 590

An act to add Part 9 (commencing with Section 49650) to Division 30 of, and to repeal Section 49652 of, the Public Resources Code, relating to solid waste.

[Approved by Governor October 06, 2021. Filed with Secretary of State October 06, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 818, Bloom. Solid waste: premoistened nonwoven disposable wipes.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste.

This bill would require, except as provided, certain premoistened nonwoven disposable wipes manufactured on or after July 1, 2022, to be labeled clearly and conspicuously with the phrase "Do Not Flush" and a related symbol, as specified. The bill would prohibit a covered entity, as defined, from making a representation about the flushable attributes, benefits, performance, or efficacy of those premoistened nonwoven disposable wipes, as provided. The bill would establish enforcement provisions, including authorizing a civil penalty not to exceed \$2,500 per day, up to a maximum of \$100,000 per violation, to be imposed on a covered entity who violates those provisions.

The bill would establish, until January 1, 2027, the California Consumer Education and Outreach Program, under which covered entities would be required, among other things, to participate in a collection study conducted in collaboration with wastewater agencies for the purpose of gaining understanding of consumer behavior regarding the flushing of premoistened nonwoven disposable wipes and to conduct a comprehensive multimedia education and outreach program in the state. The bill would require covered entities to annually report to specified legislative committees and the State Water Resources Control Board on their activities under the program and would require the state board to post the reports on its internet website.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this act to create labeling requirements for premoistened nonwoven disposable wipes that will enable consumers to easily identify which premoistened nonwoven disposable wipes are composed of petrochemical-derived fibers and therefore are not safe to dispose of using sanitary sewer systems, in order to protect public health, the environment, water quality, and public infrastructure used for the collection, transport, and treatment of wastewater.

SEC. 2. Part 9 (commencing with Section 49650) is added to Division 30 of the Public Resources Code, to read:

PART 9. Premoistened Nonwoven Disposable Wipes

49650. For purposes of this part, the following definitions apply:

(a) "Covered entity" means the manufacturer of a covered product that is sold in the state or offered for sale in the state. "Covered entity" includes a wholesaler, supplier, or retailer that is responsible for the labeling or packaging of a covered product.

(b) "Covered product" means a consumer product sold in the state or offered for sale in the state that is either of the following:

(1) A premoistened nonwoven disposable wipe marketed as a baby wipe or diapering wipe.

(2) A premoistened nonwoven disposable wipe that is both of the following:

(A) Composed entirely of or in part of petrochemical-derived fibers.

(B) Likely to be used in a bathroom and has significant potential to be flushed, including baby wipes, bathroom cleaning wipes, toilet cleaning wipes, hard surface cleaning wipes, disinfecting wipes, hand sanitizing wipes, antibacterial wipes, facial and makeup removal wipes, general purpose cleaning wipes, personal care wipes for use on the body, feminine hygiene wipes, adult incontinence wipes, adult hygiene wipes, and body cleansing wipes.

(c) "High contrast" means satisfying both of the following conditions:

(1) Is provided by either a light symbol on a solid dark background or a dark symbol on a solid light background.

(2) Has at least 70 percent contrast between the symbol artwork and background using the following formula:

(A) $(B1 - B2) / B1 * 100 = \text{contrast percentage}$.

(B) B1 = the light reflectance value of the lighter area and B2 = the light reflectance value of the darker area.

(d) (1) "Label notice" means the phrase "Do Not Flush" and the size of the label notice shall be equal to at least 2 percent of the surface area of the principal display panel in size.

(2) For covered products regulated pursuant to the Federal Hazardous Substances Act (15 U.S.C. Sec. 1261 et seq.) by the United States Consumer Product Safety Commission under Section 1500.121 of Title 16 of the Code of Federal Regulations, if the label notice requirements in paragraph (1) would result in a type size larger than first aid instructions pursuant to the Federal Hazardous Substances Act, the type size for the label notice shall, to the extent permitted by federal law, be equal to or greater than the type size required for the first aid instructions.

(3) For covered products required to be registered by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), if the label notice requirements in paragraph (1) would result in a type size on the principal display panel larger than a warning pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, the type size for the label notice shall, to the extent permitted by federal law, be equal to or greater than the type size required for the "keep out of reach of children" statement under the Federal Insecticide, Fungicide, and Rodenticide Act.

(e) (1) "Principal display panel" means the side of the product package that is most likely to be displayed, presented, or shown under customary conditions of display for retail sale.

(2) In the case of a cylindrical or nearly cylindrical package, the surface area of the principal display panel constitutes 40 percent of the product package as measured by multiplying the height of the container by the circumference.

(3) In the case of a flexible film package in which a rectangular prism or nearly rectangular prism stack of wipes is housed within the film, the surface area of the principal display panel is measured by multiplying the length by the width of the side of the package when the flexible packaging film is pressed flat against the stack of wipes on all sides of the stack.

(f) "Symbol" means the "Do Not Flush" symbol, or a gender equivalent thereof, as depicted in the INDA/EDANA Code of Practice Second Edition and published within "Guidelines for Assessing the Flushability of Disposable Nonwoven Products," Edition 4, May 2018. The symbol shall be sized equal to at least 2 percent of the surface area of the principal display panel, except as specified in clause (iii) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 49651.

49651. (a) Except as provided in subdivisions (b), (c), (d), and (f), a covered product manufactured on or after July 1, 2022, shall be labeled clearly and conspicuously in adherence with the following labeling requirements:

(1) In the case of cylindrical or near cylindrical packaging intended to dispense individual wipes, a covered entity shall comply with one of the following options:

(A) Place the symbol and label notice on the principal display panel in a location reasonably viewable each time a wipe is dispensed.

(B) Place the symbol on the principal display panel, and either the symbol or label notice, or the symbol and label notice in combination, on the flip lid, subject to the following:

(i) If the label notice does not appear on the flip lid, the label notice shall be placed on the principal display panel.

(ii) The symbol or label notice, or the symbol and label notice in combination, on the flip lid may be embossed, and in that case are not required to comply with paragraph (6).

(iii) The symbol or label notice, or the symbol and label notice in combination, on the flip lid shall cover a minimum of 8 percent of the surface area of the flip lid.

(2) In the case of flexible film packaging intended to dispense individual wipes, a covered entity shall place the symbol on the principal display panel and dispensing side panel and place the label notice on either the principal display panel or dispensing side panel in a prominent location reasonably visible to the user each time a wipe is dispensed. If the principal display panel is on the dispensing side of the package, two symbols are not required.

(3) In the case of refillable tubs or other rigid packaging intended to dispense individual wipes and be reused by the consumer for that purpose, a covered entity shall place the symbol and label notice on the principal display panel in a prominent location reasonably visible to the user each time a wipe is dispensed.

(4) In the case of packaging not intended to dispense individual wipes, a covered entity shall place the symbol and label notice on the principal display panel in a prominent and reasonably visible location.

(5) A covered entity shall ensure the packaging seams, folds, or other package design elements do not obscure the symbol or the label notice.

(6) A covered entity shall ensure the symbol and label notice have sufficiently high contrast with the immediate background of the packaging to render it likely to be seen and read by the ordinary individual under customary conditions of purchase and use.

(b) For covered products sold in bulk at retail, both the outer package visible at retail and the individual packages contained within shall comply with the labeling requirements in subdivision (a) applicable to the particular packaging types, except the following:

(1) Individual packages contained within the outer package that are not intended to dispense individual wipes and contain no retail labeling.

(2) Outer packages that do not obscure the symbol and label notice on individual packages contained within.

(c) If a covered product is provided within the same packaging as another consumer product for use in combination with the other product, the outside retail packaging of the other consumer product does not need to comply with the labeling requirements of subdivision (a).

(d) If a covered product is provided within the same package as another consumer product for use in combination with the other product and is in a package smaller than three inches by three inches, the covered entity may comply with the requirements of subdivision (a) by placing the symbol and label notice in a prominent location reasonably visible to the user of the covered product.

(e) A covered entity, directly or through a corporation, partnership, subsidiary, division, trade name, or association in connection to the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of a covered product, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, about the flushable attributes, flushable benefits, flushable performance, or flushable efficacy of a covered product.

(f) (1) If a covered product is required to be registered by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) and the Department of Pesticide Regulation under Division 6 (commencing with Section 11401) of the Food and Agricultural Code, then the covered entity shall submit a label compliant with the labeling requirements of subdivision (a) no later than January 1, 2023, to the United States Environmental Protection Agency, and upon its approval, to the Department of Pesticide Regulation.

(2) If the United States Environmental Protection Agency or the Department of Pesticide Regulation does not approve a product label that otherwise complies with the labeling requirements of subdivision (a), the covered entity shall use a label with as many of the requirements of this section as the relevant agency has approved.

(g) A covered entity may include on a covered product words or phrases in addition to those required for the label notice if the words or phrases are consistent with the purposes of this part.

49652. (a) The California Consumer Education and Outreach Program is hereby established. As part of the program, covered entities, in collaboration with other covered entities, shall do all of the following:

(1) Participate in a collection study conducted in collaboration with wastewater agencies for the purpose of gaining understanding of consumer behavior regarding the flushing of covered products as a key input into the design of a consumer education and outreach program. The collection study shall be jointly coordinated by the California Association of Sanitation Agencies and a group of covered entities.

(2) Conduct a consumer opinion survey to identify baseline consumer behavior and awareness regarding the flushing or other disposal of covered products.

(3) Measure effectiveness of the consumer education program on consumer awareness of the symbol and label notice and consumer attitudes about disposal of covered products by conducting a subsequent consumer awareness survey comparing the baseline data provided by the 2022 survey with survey data from subsequent years. The surveys to determine the effectiveness and ongoing success of the consumer education program shall take place annually until December 31, 2026.

(b) Covered entities, either independently or in collaboration with other covered entities or other organizations, shall conduct a comprehensive multimedia education and outreach program in the state. At a minimum, the education and outreach program shall do both of the following:

(1) Promote consumer awareness and understanding of and compliance with the symbol and label notice requirements. Covered entities shall provide wastewater agencies with the consumer education messaging for the symbol and the label notice. The wastewater agencies may include the messaging as part of their routine communications with customers within their service area.

(2) Provide education and outreach in Spanish and English.

(c) Covered entities shall take reasonable steps to ensure that they do not promote products outside of the scope of this part as part of the education and outreach program.

(d) Covered entities shall take reasonable steps to ensure that their education and outreach program does not conflict with the programs of other covered entities or groups of covered entities.

(e) Covered entities, either independently or in collaboration with other covered entities, shall report to the Senate Committee on Environmental Quality, the Assembly Committee on Environmental Safety and Toxic Materials, and the State Water Resources Control Board on their activities under this section on an annual basis. The State Water Resources Control Board shall post the reports on its internet website.

(f) The California Consumer Education and Outreach Program shall conclude on December 31, 2026.

(g) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

49653. (a) A person who violates Section 49651 may be enjoined in any court of competent jurisdiction.

(b) (1) A covered entity who violates Section 49651 may be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day, up to a maximum of one hundred thousand dollars (\$100,000) for each violation. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. For purposes of this section, offering for sale or selling in California one or more units of the same covered product labeled in violation of Section 49651 shall constitute a single violation for each day the noncompliant units are offered for sale or sold.

(2) In assessing the amount of a civil penalty for a violation of Section 49651, the court shall consider all of the following:

(A) The nature, circumstances, extent, and gravity of the violation.

(B) The violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment.

(C) The violator's ability to pay the proposed penalty.

(D) The effect that the proposed penalty would have on the violator and the community as a whole.

(E) Whether the violator took good faith measures to comply with this part and when these measures were taken.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Actions may be brought pursuant to this section by the Attorney General in the name of the people of the state, by a district attorney, by a city attorney, by a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

(d) (1) Civil penalties collected pursuant to this section shall be paid to the office of the city attorney, county counsel, city prosecutor, district attorney, or Attorney General, whichever office brought the action.

(2) Moneys collected by the Attorney General pursuant to this subdivision shall be deposited into the Unfair Competition Law Fund established pursuant to Section 17206 of the Business and Professions Code.

49654. (a) The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(b) The Legislature finds and declares that this part addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this part applies to all cities, including charter cities. This part supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the labeling of covered products.