

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 818 (Bloom)
Version: February 16, 2021
Hearing Date: June 29, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Solid waste: premoistened nonwoven disposable wipes

DIGEST

This bill establishes labeling requirements for premoistened nonwoven disposable wipes so that customers can easily identify which wipes are unsafe to dispose of using sanitary sewer systems.

EXECUTIVE SUMMARY

Not all premoistened disposable wipes are created equal. Specifically, some are designed to be flushable and others are not – but consumers often do not realize some wipes must be thrown away instead of flushed. As a result, improperly disposed wipes have clogged sewer systems in the state, harming sanitation and threatening wastewater infrastructure. This bill would implement a comprehensive labeling regime for wipes that should not be flushed, with civil penalties for manufacturers who fail to comply with the labeling requirements. The bill would also establish a public research and education campaign aimed at informing California consumers of the risks of disposing of these products in drains and toilets. The author has agreed to accept a minor amendment that will clarify what constitutes a violation for purposes of calculating the civil penalty.

This bill is sponsored by the California Association of Sanitation Agencies, INDA – Association of Nonwoven Fabric Industry, and the National Stewardship Action Council and supported by a wide range of municipal entities, local governments, environmental groups, and industry members. There is no known opposition. This bill passed out of the Senate Environmental Quality Committee with a 7-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Integrated Waste Management Act of 1989 (the Act), which authorizes the Department of Resources Recycling and Recovery to generally regulate the disposal, management, and recycling of solid waste in cooperation with local agencies. (Pub. Resources Code, div. 30, §§ 40000 et seq.)
 - a) "Solid waste" includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes; the term does not include hazardous, radioactive, or medical waste. (Pub. Resources Code, § 40191.)
- 2) States that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products. Provides that for consumers to have accurate and useful information about the environmental impact of plastic products, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials. (Pub. Resources Code, § 42355.5.)
- 3) Provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. (Bus. & Prof. Code, § 17580.5(a).)

This bill:

- 1) Declares that it is the intent of the Legislature 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.
- 2) Adds Part 9, addressing premoistened disposable wipes, to the Act.
- 3) For purposes of Part 9, defines the following relevant terms:
 - a) "Covered entity" is the manufacturer of a covered product that is sold in the state or offered for sale in the state, and includes a wholesaler, supplier, or

- retailer that is responsible for the labeling or packaging of the covered product.
- b) "Covered product" is a consumer product sold or offered for sale in the state that is either of the following:
 - i. A premoistened nonwoven disposable wipe marketed as a baby wipe or a diapering wipe.
 - ii. A premoistened nonwoven disposable wipe that is both (A) composed entirely, or in part, of petrochemical-derived fibers; and (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, and body cleansing wipes.
 - 4) Provides that, subject to exceptions listed below, a covered product manufactured on or after July 1, 2022, shall be labeled clearly and conspicuously with specified "do not flush" symbols and labels in sufficiently high contrast with the background of the packaging to render it likely to be seen and read by the ordinary consumer under customary conditions of purchase and use, with specifications provided for the labels based on the container's type and shape.
 - 5) Provides exceptions to the labeling requirement for specified packaging formats, such as certain products sold in bulk or in the same package with other, noncovered products.
 - 6) Prohibits a covered entity, directly or through another entity, from making any representation about the flushable attributes, flushable benefits, flushable performance, or flushable efficacy of a covered product in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of a covered product, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name.
 - 7) Provides that, if a covered entity is required to be registered with the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act and the Department of Pesticide Regulation, a covered entity must submit a label compliant with the labeling requirements for approval no later than January 1, 2023; if the label is not approved, the covered entity must use a label with as many of the requirements of this section as the relevant agency has approved.
 - 8) Provides that 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 Part 9.

- 9) Establishes a consumer education and outreach program, as specified, and sunsets the consumer outreach program on December 31, 2026.
- 10) Provides that any person who violates the labeling requirements may be enjoined in any court of competent jurisdiction.
- 11) Provides that a covered entity who violates the labeling requirements may be liable for a civil penalty of up to \$2,500 per day, up to a maximum of \$10,000, for each violation. The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court should consider the following factors:
 - 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 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 Part 9 and when those 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.
- 12) Provides that a civil action for a violation may be brought 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.
- 13) Provides that civil penalties collected for violations of the labeling requirement shall be paid to the office of the city attorney, county counsel, city prosecutor, district attorney, or Attorney General that brought the action; monies collected by the Attorney General shall be deposited into the Unfair Competition Law Fund established pursuant to business and Professions Code section 17206.
- 14) Includes a severability clause.

COMMENTS

1. Author's comment

According to the author:

When wet wipes products are flushed into the sewer system they can cause significant issues for private property owners, sewer collection systems, and

wastewater treatment plants. Wet products that do not break down can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners. Wet wipes have been shown to cause significant damage to residential septic systems, resulting in expensive repairs and remediation for homeowners.

2. While premoistened disposable wipes are incredibly popular, many consumers do not realize that most varieties should not be flushed down a toilet

Premoistened disposable wipes are a convenient way to clean or sanitize. Unfortunately, the labels of many disposable wipes are falsely labeled “flushable,” and others are simply silent as to whether they can be flushed, so many consumers have no reason to know that they are improperly disposing of these wipes. As a result, improper flushing wreak havoc on sewer systems; one group estimates that U.S. municipalities spend at least \$1 billion annually to remove clogs caused by wipes.¹ Bill supporter City of Thousand Oaks reports that premoistened wipes have been responsible for clogging its sewer system pumps, leading to operational delays and added costs to clear or repair equipment; bill supporter City of Camarillo reports that the city’s wastewater treatment plant had to spend approximately \$500,000 to upgrade its pump systems to manage the volume of disposable wipes passing through the system on a daily basis.

During the COVID-19 pandemic, sanitary wipe sales increased by 75 percent.² According to the author, wastewater operators in Redding, San Clemente, Orange County, Lakeport, Victorville, Beale Air Force Base, Napa, Cupertino, Tiburon, Marin, and San Diego reported wipes clogging sewage systems as a result of this spike in sanitary wipe sales. The United States Environmental Protection Agency (EPA) issued a press release encouraging people not to flush non-flushable wipes,³ but there is no evidence suggesting the problem has abated.

There is currently no federal statutory or regulatory regime requiring nonflushable⁴ disposable wipes to be labeled as such. This bill would implement for the state a comprehensive labeling regime for nonflushable, premoistened nonwoven disposable wipes. The environmental impact of this bill has been considered by the Senate Environmental Quality Committee; that Committee’s analysis is incorporated herein by

¹ *Ibid.*

² Porter, *America’s Obsession With Wipes Is Tearing Up Sewer Systems*, Bloomberg CityLab (Mar. 26, 2021), <https://www.bloomberg.com/news/articles/2021-03-26/pandemic-wipes-create-sewer-clogging-fatbergs> [last visited Jun. 25, 2021].

³ EPA, Press Release, *EPA Encourages Americans to Only Flush Toilet Paper* (Mar. 30, 2020), <https://www.epa.gov/newsreleases/epa-encourages-americans-only-flush-toilet-paper> [last visited Jun. 25, 2021].

⁴ This analysis uses “nonflushable” to describe the wipes covered by this bill, i.e., wipes that are not designed to be flushed. These wipes can, of course, be flushed, design notwithstanding; the ease of flushing them is what gives rise to the need for this bill.

reference. This analysis considers the constitutional implications of the labeling requirement and the bill's enforcement provisions.

3. The bill's labeling requirement is very likely permissible compelled commercial speech under the state and federal constitutions

This bill compels the manufacturers of nonflushable disposable wipe manufacturers to include specified information on the product packaging, constituting compelled commercial speech under the Free Speech clause of the First Amendment of the United States Constitution and under the state constitution.⁵ The nature of the speech at issue, however, very likely does not run afoul of the constitutional limits on compelled commercial speech. Commercial speech is protected under the state and federal guarantees of free speech, but to a lesser degree than noncommercial speech.⁶ Generally speaking, a requirement that a manufacturer provides purely factual and uncontroversial information in connection with its products is analyzed under rational basis review.⁷ Under that level of review, the state clearly has an interest in informing consumers that nonflushable wipes are, in fact, nonflushable – educating consumers about how to properly dispose of these wipes benefits local sanitation entities as well as the environment. And to the extent there is any question as to whether compelled factual commercial statements requires intermediate scrutiny⁸ – which requires that the compelled speech furthers an important government interest by means that are substantially related to that interest – it seems likely that this bill would satisfy that inquiry as well. The state's interest in preventing nonflushable wipes is high, given the problems these wipes have been causing in sanitation systems across the state, and lesser measures, such as consumer education campaigns, have not been effective in reducing the problem. It therefore seems likely that the noticeable, but not overwhelming, labeling requirements imposed by this bill would satisfy even intermediate scrutiny.

4. This bill provides that a violation of the labeling requirement is punishable with a \$2,500 per day civil penalty, awardable in a civil action brought by a public prosecutor

To permit enforcement of the labeling requirement discussed above, this bill provides that a covered entity that violates the requirement may be liable for civil penalties awardable in a civil action in any court of competent jurisdiction. Specifically, the bill provides that a covered entity that violates the labeling requirement will be liable for a civil penalty of up to \$2,500 per day, with the penalty capped at \$100,000 per violation. The bill requires the court to consider several factors in assessing the amount of the civil penalty, including the nature and gravity of the violation, the violator's past and

⁵ See U.S. Const., 1st amend.

⁶ *Gerawan Farming, Inc. v. Lyons* (2004) 33 Cal.4th 1, 22.

⁷ See *Zaudurer v. Office of Disciplinary Counsel of Supreme Court* (1985) 471 U.S. 626, 651; *Beeman v. Anthem Prescription Management, LLC* (1999) 353-354.

⁸ *Beeman*, at p. 353.

present efforts to prevent or abate conditions threatening public health or the environment, and whether the violator took good faith measures to comply with the labeling requirement. The bill also permits a person violating the labeling requirements to be enjoined in any court of competent jurisdiction.

As currently drafted, the bill does not define what constitutes a violation. Given that this bill involves product lines with hundreds, if not thousands, of units apiece, this could give rise to considerable confusion over how to calculate what a manufacturer owes per day – in particular whether every *unit* of a product with a noncompliant label offered for sale counts as a separate violation, or whether a noncompliant *label* on a product offered for sale is a violation, regardless of how many total units are on the shelves. In order to resolve this ambiguity, the author has agreed to accept amendments clarifying that it is the noncompliant *label* that constitutes a violation, regardless of how many units of that product offered for sale bear that label; the manufacturer would thus be liable for \$2,500 each day units bearing the noncompliant label are offered for sale, up to the bill's existing limit of \$100,000.

The bill limits who may seek penalties or an injunction to enforce the labeling requirement: only the Attorney General (acting in the name of the people of the state), a district attorney, a city attorney, a county counsel, or a city prosecutor in a city or city and county having a full-time city prosecutor, may pursue such an enforcement action. The bill also provides that monies collected by any entity other than the Attorney General shall be paid to the office of the entity that brought the action; in actions brought by the Attorney General, monies collected shall be deposited in the Unfair Competition Fund established in Business and Professions Code section 17206.

5. Amendments

As noted above, the bill does not currently define what constitutes a violation. The author has therefore agreed to accept the below amendment to clarify how the per-day violation is calculated, as well as technical amendments identified by Legislative Counsel.

Amendment 1

On page 3, in line 28, strike out “then”

Amendment 2

On page 3, in line 37, strike out “then”

Amendment 3

At page 8, in line 15, after the period insert “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.”

6. Arguments in support

According to bill sponsor California Association of Sanitation Agencies:

The National Association of Clean Water Agencies (NACWA) reports that California wastewater utilities spend \$47 million annually on operations and maintenance (O&M) alone to manage wet wipe debris. In addition to the O&M figures, wastewater collection and treatment agencies have made significant investments in capital improvements to treatment infrastructure to install new equipment like “deraggers,” bar screens, grinders, and upgraded pump systems. These upgrades are necessitated by the need to manage the volume of wipes coming through the system on a daily basis. Unfortunately, we anticipate that the capital costs, maintenance, and education and outreach resources will grow as the popularity of these products continues to surge. It is also important to note that many single-use wet wipes are made with plastic fibers. Those plastic fibers can shed off and contribute to microplastic pollution in the environment...

The wet wipes issue has long plagued the wastewater industry and we are pleased that AB 818 will provide real tangible progress toward better consumer information. The long and tedious negotiation process undertaken with industry and product stewardship advocates last spring will ultimately result in California enacting the strongest-in-the-nation labeling standards for non-flushable wipes products. We believe the agreement strikes a good balance of being aggressively environmentally protective, while providing necessary flexibility and consideration of manufacturing and commerce concerns.

SUPPORT

California Association of Sanitation Agencies (co-sponsor)
INDA – Association of Nonwoven Fabric Industry (co-sponsor)
National Stewardship Action council (co-sponsor)
7th Generation Advisors
Alliance of Nurses for Health Environments
American Chemistry Council
American Forest & Paper Association
Association of California Water Agencies
Bay Area Pollution Prevention Group

California Association of Sanitation Agencies
California Municipal Utilities Association
California Product Stewardship Council
California Resource Recovery Association
California Special Districts Association
California State Association of Counties
California Water Association
Californians Against Waste
Camarillo Sanitary District
Central Contra Costa Sanitary District
City of Oceanside
City of Roseville
City of Sunnyvale
City of Thousand Oaks
City of West Hollywood
Clean Water Action
Colorado Medical Waste
Consumer Brands Association
Consumer Healthcare Products Association
County of Los Angeles
Credo Beauty
Cucamonga Valley Water District
Defenders of Wildlife
Delta Diablo
East Bay Municipal Utility District
Eastern Municipal Water District
Families Advocating for Chemical and Toxics Safety
Full Circle Environmental
Heal the Bay
Irvine Ranch Water District
Kimberly-Clark Corporation
Las Virgenes – Triunfo Joint Powers Authority
League of California Cities
League of California Cities, Los Angeles County Division
Los Angeles City Councilmember Paul Koretz, Council District 5
Los Angeles County Sanitation Districts
Los Angeles County Solid Waste Management Committee/Integrated Waste
Management Task Force
Marin Sanitary Service
Merced County Regional Waste Management Authority
Monterey One Water
Natracare
Northern California Recycling Association
Ocean Conservancy

Orange County Sanitation District
Personal Care Products Council
Plastic Oceans International
Plastic Pollution Coalition
Proctor & Gamble Company
Rancho Water
Rethink Waste
Russian River Watershed
San Francisco Baykeeper
Save Our Shores
Sea Hugger
Sierra Club
Silicon Valley Democratic Club
Sonoma Water
Stege Sanitary District
Surfrider Foundation
The 5 Gyres Institute
Upper San Gabriel Valley Municipal Water District
UPSTREAM
Vallejo Flood and Wastewater District
Western Municipal Water District
Wishtoyo Chumach Foundation
Zanker Recycling
Zero Waste Sonoma
Zero Waste USA

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 343 (Allen, 2021) places restrictions on the use of the “chasing arrows” recycling symbol to ensure that consumers are provided with accurate information about the ease of recycling labeled products. SB 343 is pending before the Assembly Judiciary Committee.

AB 661 (Bennett, 2021) adds, among other things, a recyclability requirement for general purpose wipes. AB 661 is pending before the Assembly Appropriations Committee.

Prior Legislation:

AB 2287 (Eggman, Ch. 281, Stats. 2020) repealed the prohibition on marking products as “marine degradable” and set requirements for regulations for labeling products as “marine degradable” and specified products as “biodegradable.”

AB 1672 (Bloom, 2019) would have imposed similar labeling requirements for premoistened nonwoven disposable wipes with similar penalty provisions. AB 1672 died in the Senate Appropriations Committee.

AB 888 (Bloom, Ch. 594, Stats. 2015) prohibited, starting on January 1, 2020, from selling or offering for promotional purposes in this state a personal care product containing plastic microbeads that are used to exfoliate or cleanse in a rinse-off product, as specified.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 7, Noes 0)

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Environmental Safety and Toxic Materials Committee (Ayes 9, Noes 0)
