

# Enrolled House Bill 2344

Sponsored by Representatives WILDE, REARDON, Senator DEMBROW, Representative POWER, Senator PROZANSKI; Representatives DEXTER, HOLVEY, LEIF, MEEK, MORGAN, NERON, PRUSAK, SCHOUTEN, SMITH WARNER, SOLLMAN (Presession filed.)

CHAPTER .....

AN ACT

Relating to labeling requirements for wipes; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. (1) As used in sections 1 to 3 of this 2021 Act:**

**(a) "Covered entity" means:**

**(A) The manufacturer of a covered product that is sold or offered for sale in this state; and**

**(B) A wholesaler, supplier or retailer that has contractually undertaken responsibility to a manufacturer for labeling or packaging a covered product.**

**(b) "Covered product" means a consumer product that is sold or offered for sale in this state and that is:**

**(A) A premoistened nonwoven disposable wipe marketed as a baby wipe or diapering wipe; or**

**(B) A premoistened nonwoven disposable wipe that is:**

**(i) Composed partly or entirely of petrochemical-derived fibers; and**

**(ii) Likely to be used in or near 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 and other 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:**

**(A) Provided by either a light symbol on a solid dark background or a dark symbol on a solid light background; and**

**(B) Having at least 70 percent contrast between the symbol artwork and background using the formula  $[(B1 - B2) / B1] * 100$ , where B1 is the light reflectance value of the relatively lighter area and B2 is the light reflectance value of the relatively darker area.**

**(d) "Label notice" means the phrase "Do Not Flush" displayed at a size that is equal to at least two percent of the surface area of the principal display panel, except as follows:**

**(A) For a covered product regulated under the Federal Hazardous Substances Act, 15 U.S.C. 1261 et seq., and regulations of the United States Consumer Product Safety Commission in 16 C.F.R. 1500.121, if the label notice requirements in this paragraph would result in a type size larger than first aid instructions required under the Federal Hazardous Sub-**

stances Act or regulations of the United States Consumer Product Safety Commission, the type size for the label notice must, to the extent permitted under federal law, be equal to or greater than the type size required for the first aid instructions; and

(B) 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. 136 et seq., if the label notice requirements in this paragraph would result in a type size on the principal display panel that is larger than a warning required under the Federal Insecticide, Fungicide, and Rodenticide Act, the type size for the label notice must, to the extent permitted under federal law, be equal to or greater than the type size required for the “Keep out of reach of children” statement.

(e) “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 and that:

(A) For a cylindrical or nearly cylindrical product package, constitutes 40 percent of the product package, as measured by multiplying the height of the container by the circumference; or

(B) For a flexible film package in which a rectangular 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) “Special district” means a special district, as defined in ORS 197.015, that provides wastewater services.

(g) “Symbol” means the “Do Not Flush” symbol or its equivalent, as depicted in the INDA/EDANA Code of Practice, Second Edition, and published within “Guidelines for Assessing the Flushability of Disposable Nonwoven Products,” as in effect on the effective date of this 2021 Act. The symbol must be sized equal to at least two percent of the surface area of the principal display panel, except as specified in subsection (2)(a)(B)(iii) of this section.

(2) Except as otherwise provided in this section, a covered product that is manufactured after July 1, 2022, must be labeled clearly and conspicuously in accordance with the following requirements:

(a) For cylindrical or nearly cylindrical packaging intended to dispense individual wipes, a covered entity shall:

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

(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 requirements:

(i) If the label notice does not appear on the flip lid, the label notice must 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, in which case the symbol or label notice, or the symbol and label notice in combination, do not need to comply with the requirement set forth in paragraph (f) of this subsection.

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

(b) For 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.

(c) For 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.

(d) For 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.

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

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

(3) For covered products sold in bulk at retail, both the outer package visible at retail and the individual packages contained within must comply with the labeling requirements set forth in subsection (2) of this section that apply to the particular packaging types, except the following:

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

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

(4) 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 subsection (2) of this section.

(5) If a covered product is provided within the same packaging 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 subsection (2) of this section by placing the symbol and label notice in a prominent location reasonably visible to the user of the covered product.

(6) 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, may 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.

(7) 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. 136 et seq., and the State Department of Agriculture under ORS chapter 634, the covered entity, to the extent permitted under federal law, shall submit a label compliant with the labeling requirements of subsection (2) of this section no later than July 1, 2023, to the United States Environmental Protection Agency and, upon its approval, to the State Department of Agriculture, which shall review the label of the covered product in the manner authorized under ORS chapter 634 and administrative rules adopted under ORS chapter 634. Compliance with the labeling requirements of subsection (2) of this section is not a requirement for pesticide registration under ORS chapter 634.

(8) If the United States Environmental Protection Agency and the State Department of Agriculture do not approve a product label that otherwise complies with the labeling requirements of subsection (2) of this section, the covered entity shall use a label with as many of the requirements of this section as the agency and the department have approved.

(9) 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 purposes of this section.

(10) Except as expressly authorized by state law, this section supersedes and preempts any ordinance or other regulation enacted before, on or after the effective date of this 2021 Act by the governing body of a city, county or other political subdivision of this state that governs labeling requirements for covered products.

**SECTION 2.** Within 90 days after receiving a request from a city, county or special district that provides wastewater service, a covered entity shall submit to the city, county or special district business information and documentation that is not confidential and that demonstrates compliance with section 1 of this 2021 Act. The information must be written and organized for ease of comprehension.

**SECTION 3.** (1) A city, county or special district that provides wastewater service has exclusive and concurrent authority to enforce compliance with the requirements of section 1 of this 2021 Act. Selling, or displaying for sale, a product package that does not comply with the requirements of section 1 of this 2021 Act is a violation for which the city, county or special district may bring an action to recover a civil penalty in the amounts set forth in subsection (2)(b) of this section. Selling, or displaying for sale, multiple units of the same noncompliant product package is part of the same violation.

(2)(a) Except as provided in paragraph (c) of this subsection, before bringing an action to recover a civil penalty for a violation, a city, county or special district that provides wastewater services shall send to the alleged violator a written notice of violation, dated with the date of mailing, and shall include a copy of the provisions of section 1 of this 2021 Act.

(b) If a covered entity sells or displays for sale a product package that does not comply with the requirements of section 1 of this 2021 Act after receiving the notice described in paragraph (a) of this subsection, the city, county or special district may bring an action to recover:

(A) A civil penalty of not more than \$2,000 for a first violation that occurs between 90 days and 120 days after the date of the notice;

(B) An additional civil penalty of not more than \$5,000 for a second violation or for a first violation that continues for more than 120 days after the date of the notice; and

(C) An additional civil penalty of not more than \$10,000 for a third and any subsequent violation or for a first violation that continues during any part of each 30-day period that follows the period described in subparagraph (B) of this paragraph.

(c) For the purposes of the notice requirement set forth in paragraph (a) of this subsection, a product package is the same product package, and the city, county or special district need not send a separate notice of violation, if within 90 days after the date of the notice the covered entity changes the product package in a manner that is unrelated to compliance with the requirements of section 1 of this 2021 Act.

(d) If a covered entity has paid a previous penalty for the same violation to another jurisdiction that has enforcement authority under this section, the penalty imposed on the covered entity must be reduced by the amount of the covered entity's previous payment.

(3) A covered entity shall pay any civil penalty imposed under this section to the city, county or special district that brought the action to recover the civil penalty.

(4) In addition to the amount of any civil penalty imposed, a city, county or special district may recover reasonable enforcement costs and attorney fees.

**SECTION 4.** Sections 1 to 3 of this 2021 Act become operative on July 1, 2022.

**SECTION 5.** This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

**Passed by House April 16, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 26, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State