

SENATE No. 529

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting water systems through the labeling of flushable wipes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	
<i>John C. Velis</i>	<i>Second Hampden and Hampshire</i>	<i>3/1/2021</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>3/5/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/8/2021</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/9/2021</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>3/10/2021</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>3/12/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/17/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/18/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>3/30/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>11/15/2021</i>

SENATE No. 529

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 529) of James B. Eldridge, Carolyn C. Dykema, John C. Velis, Linda Dean Campbell and other members of the General Court for legislation to protect water systems through the labeling of flushable wipes. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act protecting water systems through the labeling of flushable wipes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 94 of the General Laws, as appearing in the 2018 Official Edition,
2 is hereby amended by adding the following section:

3 Section 330. (a) As used in this section, the following words shall, unless the context
4 otherwise requires, have the following meanings:

5 “Covered entity”, the manufacturer of a covered product that is sold in this state or
6 brought into the state for sale. A covered entity shall not include a wholesaler, supplier or retailer
7 that is not responsible for the labeling or packaging of a covered product.

8 “Covered product”, a nonwoven disposable product manufactured and sold in this state or
9 brought into the state for sale that is constructed from nonwoven sheets, including moist toilet
10 tissue or cloth, that is designed, marketed to or commonly used by the general public for personal
11 hygiene or cleaning purposes, including, but not limited to, diaper wipes, toilet wipes, household

12 cleaning wipes, personal care wipes and facial wipes. Covered products include both flushable
13 and nonflushable wipes.

14 “Flushable wipe”, a nonwoven disposable product that meets the performance standards.

15 “Label notice”, the phrase “Do Not Flush” of a size equal to at least 2 per cent of the
16 surface area of the principal display panel; provided, however, that for covered products
17 regulated pursuant to the Federal Hazardous Substances Act, 15 U.S.C. §§ 1261 to 1278a, under
18 the jurisdiction of the United States Consumer Product Safety Commission, if the label notice
19 requirements in subsection (d) would result in a type size larger than other cautionary material as
20 outlined in 16 CFR § 1500.121, then the type size for the label notice shall be equal to or greater
21 than the type size required for the other cautionary material; provided further, that for covered
22 products required to be registered by the United States Environmental Protection Agency under
23 the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 to 136y, if the
24 label notice requirements would result in a type size on the principal display panel larger than a
25 warning pursuant to FIFRA, then the type size for the label notice shall be equal to or greater
26 than the type size required for the child hazard statement as outlined in 40 C.F.R. § 156.60.

27 “Labeling requirements”, the labeling provisions contained in subsection (d).

28 “Manufacturer”, any person or entity responsible for the manufacture, packaging or
29 labeling of a covered product. “Manufacturer” shall not include a wholesaler, supplier or retailer
30 that is not responsible for the manufacture, packaging or labeling of a covered product.

31 “Nonflushable wipe”, a covered product that does not meet the performance standards.

32 Nonflushable wipe includes wipes that are not manufactured or marketed to be flushed, such as

33 premoistened wipes constructed from nonwoven sheets and designed and marketed for diapering,
34 personal hygiene or household hard surface cleaning purposes.

35 “Performance standards”, the testing methods and criteria for flushability outlined in the
36 most current version of or an official update to the “Guidelines for Assessing the Flushability of
37 Disposable Nonwoven Products,” Edition 4, May 2018 published by INDA/EDANA.

38 “Principal display panel”, the side of the product package that is most likely to be
39 displayed, presented or shown under customary conditions of display for retail sale. In the case
40 of a cylindrical or nearly cylindrical package, the surface area of the principal display panel
41 constitutes 40 per cent of the product package as measured by multiplying the height of the
42 container times the circumference. In the case of a flexible film package, in which a rectangular
43 prism or nearly rectangular prism stack of wipes is housed within such film, the surface area of
44 the principal display panel is measured by multiplying the length times the width of the
45 aforementioned side of the package when the flexible packaging film is pressed flat against the
46 stack of wipes on all sides of the stack.

47 “Representations”, product names, labels, endorsements, depictions, illustrations,
48 trademarks, trade names and related displays or communications.

49 “Symbol”, the “Do Not Flush” symbol, or a gender equivalent thereof, as depicted in
50 INDA/EDANA Code of Practice 2 and published within “Guidelines for Assessing the
51 Flushability of Disposable Nonwoven Products,” Edition 4, May 2018. The symbol shall be
52 sized equal to at least 2 per cent of the surface area of the principal display panel, except as
53 provided in clause (ii) of paragraph (1) of subsection (d).

54 (b) A covered entity shall not label a covered product as safe to flush, safe for sewer
55 systems or safe for septic systems, unless the product is a flushable wipe. Unless a product is a
56 flushable wipe, a covered entity shall not, in any manner, make any of the following
57 representations regarding a covered product:

58 (1) The product can be flushed;

59 (2) The product is safe for sewer systems;

60 (3) The product is safe for septic systems;

61 (4) The product breaks apart shortly after flushing;

62 (5) The product will not clog household plumbing systems;

63 (6) The product will not clog household septic systems;

64 (7) The product is safe for plumbing;

65 (8) The product is safe to flush; or

66 (9) The product will dissolve or disperse in interaction with water.

67 A covered entity, directly or through any corporation, partnership, subsidiary, division,
68 trade name or association in connection to the manufacturing, labeling, packaging, advertising,
69 promotion, offering for sale, sale or distribution of a covered product that does not meet the
70 performance standards, or that is otherwise a nonflushable wipe, shall not make any
71 representation in any manner, expressly or by implication, including through the use of a product
72 name, endorsement, depiction, illustration, trademark or trade name, about the flushable
73 attributes, benefits, performance or efficacy of a nonflushable wipe.

74 (c) A covered entity shall test its covered products and verify that any covered product
75 that is a flushable wipe meets the performance standards or comply with the labeling
76 requirements. Within 90 days of this section taking effect, a covered entity shall submit, on a
77 form designated by the department of environmental protection, documentation establishing that
78 all covered products that are flushable wipes meet the performance standards, and shall certify
79 that all covered products that do not meet the performance standards comply with the labeling
80 requirements and that the covered entity is in compliance with the requirements of subsection
81 (d).

82 Within 90 days of publication of an update to the performance standards, a covered entity
83 shall test its covered products and verify that any covered product that is a flushable wipe meets
84 the performance standards or comply with the labeling requirements. Within 30 days of
85 completion of this updated testing, a covered entity shall submit, on a form designated by the
86 department of environmental protection, documentation establishing that all covered products
87 that are flushable wipes meet the updated performance standards, and shall certify that all
88 covered products that do not meet the performance standards comply with the labeling
89 requirements and that the covered entity is in compliance with the requirements of subsection
90 (d).

91 For any covered product introduced for sale in this state after this section takes effect, a
92 covered entity shall test such covered products and verify that any such covered product that is a
93 flushable wipe meets the performance standards or comply with the labeling requirements. At
94 least 60 days prior to introduction of any such covered product for sale in this state, a covered
95 entity shall submit, on a form designated by the department of environmental protection,
96 documentation establishing that all covered products that are flushable wipes meet the updated

97 performance standards, and shall certify that all covered products that do not meet the
98 performance standards comply with the labeling requirements and that the covered entity is in
99 compliance with the requirements of subsection (d).

100 (d) A covered product that does not meet the performance standards, or that is otherwise
101 a nonflushable wipe, shall be labeled clearly and conspicuously in adherence with the labeling
102 requirements as follows:

103 (1) In the case of cylindrical or near cylindrical packaging intended to dispense individual
104 wipes, a covered entity shall:

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

107 (ii) Place the symbol on the principal display panel and either the symbol, label notice or
108 the symbol and label notice in combination on the flip lid; provided, however, that if the label
109 notice does not appear on the flip lid, the label notice shall be placed on the principal display
110 panel; and the symbol, label notice, or the symbol and label notice in combination on the flip lid
111 shall cover a minimum of 8 per cent of the surface area of the flip lid. If the symbol, label notice,
112 or the symbol and label notice in combination on the flip lid are embossed, they shall not be
113 required to comply with paragraph (6).

114 (2) In the case of flexible film packaging intended to dispense individual wipes, a
115 covered entity shall place the symbol on the principal display panel and dispensing side panel
116 and place the label notice on either the principal display panel or dispensing side panel in a
117 prominent location reasonably visible to the user each time a wipe is dispensed; provided,

118 however, that if the principal display panel is on the dispensing side of the package, 2 symbols
119 shall not be required.

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

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

127 (5) A covered entity shall ensure the symbol is not obscured by packaging seams, folds,
128 or other package design elements.

129 (6) A covered entity shall ensure the symbol has sufficiently high contrast with the
130 immediate background of the packaging to render it likely to be read by the ordinary individual
131 under customary conditions of purchase and use. In the case of printed symbol, “high contrast”
132 is defined as follows:

133 (i) Provided with either a light symbol on a dark background or a dark symbol on a light
134 background; and

135 (ii) A minimum level or percentage of contrast between the symbol artwork and the
136 background of at least 70 per cent. Contrast in per cent shall be determined as follows:

137 $\text{Contrast} = (B1 - B2) \times 100 / B1$; where B1 = light reflectance value of the lighter area
138 and B2 = light reflectance value of the darker area.

139 (e) No package or box containing a covered product that does not meet the performance
140 standards, or that is otherwise a nonflushable wipe, manufactured on or before the effective date
141 of this section may be offered for distribution or sale in the state, unless the product packaging
142 complies with the labeling requirements in subsection (d).

143 (f) For covered products that do not meet the performance standards, or that are otherwise
144 nonflushable wipes, sold in bulk at retail, both the package purchased in the store and the
145 individual packages contained within shall comply with the requirements in subsection (d)
146 applicable to the particular packaging types.

147 (g) The department of environmental protection has authority to enforce this section and
148 to collect civil penalties for a violation of this section, subject to the conditions in this subsection.

149 Whoever violates this section may be enjoined in any court of competent jurisdiction.

150 Whoever violates this section may be liable for a civil penalty not to exceed \$2,500 for
151 each violation. The civil penalty may be assessed and recovered in a civil action brought in any
152 court of competent jurisdiction.

153 A specific violation is deemed to have occurred upon the sale of a noncompliant product
154 package. The repeated sale of the same noncompliant product package is considered part of the
155 same, single violation.

156 In assessing the amount of a civil penalty for a violation of this section, the court shall
157 consider:

158 (1) The nature, circumstances, extent, and gravity of the violation;

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

161 (3) The violator's ability to pay the proposed penalty;

162 (4) The effect that the proposed penalty would have on the violator and the community as
163 a whole;

164 (5) Whether the violator took good faith measures to comply with this section and when
165 these measures were taken;

166 (6) The deterrent effect that the imposition of the penalty would have on both the violator
167 and the regulated community as a whole; and

168 (7) Any other factor that justice may require.

169 The department of environmental protection may refer violations of this section to the
170 attorney general for enforcement and actions may be brought pursuant to this section by the
171 attorney general in the name of the people of the state in any court of competent jurisdiction.

172 Any civil penalties collected pursuant to this section shall be paid to the enforcing
173 governmental entity that brought the action.

174 The remedies provided by this section are not exclusive and are in addition to the
175 remedies that may be available pursuant to chapter 93A or other consumer protection laws, if
176 applicable.

177 In addition to penalties recovered under this section, the enforcing government entity
178 may recover reasonable enforcement costs and attorneys' fees from the liable covered entity.

SECTION 2. This act shall take effect on January 1, 2022.