

HOUSE No. 805

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey and Steven Owens

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 wastewater and sewerage systems through the labeling of non-flushable wipes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/18/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>1/19/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/31/2023</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/6/2023</i>
<i>Brandy Fluker Oakley</i>	<i>12th Suffolk</i>	<i>3/10/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>3/27/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>5/12/2023</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>6/5/2023</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>9/15/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>10/10/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>10/24/2023</i>

HOUSE No. 805

By Representatives Garballey of Arlington and Owens of Watertown, a petition (accompanied by bill, House, No. 805) of Sean Garballey, Steven Owens and others relative to protecting wastewater and sewerage systems through the labeling of non-flushable wipes. Environment and Natural Resources.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act protecting wastewater and sewerage systems through the labeling of non-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 sections:

3 Section 330. Definitions applicable to Secs. 330-333.

4 For the purposes of sections three hundred and thirty to three hundred and thirty-three,
5 inclusive, the following words and phrases shall have the following meanings:--

6 "Covered entity", means the manufacturer of a covered product that is sold in this
7 Commonwealth or offered for sale in the Commonwealth. "Covered entity" includes a
8 wholesaler, supplier, or retailer that is responsible for the labeling or packaging of a covered
9 product.

10 “Covered product”, means a consumer product sold in the Commonwealth or offered for
11 sale in the Commonwealth that is either a premoistened nonwoven disposable wipe marketed as
12 a baby wipe or diapering wipe or a premoistened nonwoven disposable wipe that is both of the
13 following: (a) composed entirely of or in part of petrochemical-derived fibers; and (b) likely to
14 be used in a bathroom and has significant potential to be flushed, including baby wipes,
15 bathroom cleaning wipes, toilet cleaning wipes, hard surface cleaning wipes, disinfecting wipes,
16 hand sanitizing wipes, antibacterial wipes, facial and makeup removal wipes, general purpose
17 cleaning wipes, personal care wipes for use on the body, feminine hygiene wipes, adult
18 incontinence wipes, adult hygiene wipes, and body cleansing wipes.

19 “High contrast” means satisfying both of the following conditions: (a) is provided by
20 either a light symbol on a solid dark background or a dark symbol on a solid light background;
21 (b) has at least 70 percent contrast between the symbol artwork and background using the
22 following formula: $(B1-B2)/B1*100$ =contrast percentage, where B1= the light reflectance value
23 of the lighter area and B2 = the light reflectance value of the darker area.

24 “Label notice” means the phrase “Do Not Flush” and the type size of the label notice
25 shall be equal to at least 2 percent of the surface area of the principal display panel in size. For
26 covered products regulated pursuant to the Federal Hazardous Substances Act, (15 U.S.C. §§
27 1261 et seq.) by the United States Consumer Product Safety Commission under Section
28 1500.121 of Title 16 of the Code of Federal Regulations, if the label notice would result in a type
29 size larger than first aid instructions pursuant to the Federal Hazardous Substances Act, the type
30 size for the label notice shall, to the extent permitted by federal law, be equal to or greater than
31 the type size required for the first aid instructions. For covered products required to be registered
32 by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide,

33 and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 et. seq., if the label notice would result in a type
34 size on the principal display panel larger than a warning pursuant to FIFRA, then the type size
35 for the label notice shall, to the extent permitted by federal law, be equal to or greater than the
36 type size required for the “keep out of reach of children” statement under FIFRA.

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

46 “Symbol” means the “Do Not Flush” symbol, or a gender equivalent thereof, as depicted
47 in the INDA/EDANA Code of Practice Second Edition and published within “Guidelines for
48 Assessing the Flushability of Disposable Nonwoven Products,” Edition 4, May 2018.

49 Section 331. Labeling.

50 A. The symbol shall be sized equal to at least 2 percent of the surface area of the
51 principal display panel, except as specified in clause (iii) of subparagraph (B) of paragraph (1) of
52 subsection B. (a) of Section 331.

53 B. (a) Except as provided in subdivisions (b), (c), (d), and (f), a covered product
54 manufactured on or after July 1, 2025, shall be labeled clearly and conspicuously in adherence
55 with the following labeling requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 (f) (1) If a covered product is required to be registered by the United States
107 Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act
108 (FIFRA) (7 U.S.C. Sec. 136 et seq.) and the Department of Pesticide Regulation under Division
109 6 (commencing with Section 11401) of the Food and Agricultural Code, then the covered entity
110 shall submit a label compliant with the labeling requirements of subdivision (a) no later than July
111 1, 2025, to the United States Environmental Protection Agency, and upon its approval, to the
112 Department of Pesticide Regulation.

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

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

120 Section 332. Massachusetts Consumer Education and Outreach Program

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

124 (1) Participate in a collection study conducted in collaboration with wastewater agencies
125 for the purpose of gaining understanding of consumer behavior regarding the flushing of covered
126 products as a key input into the design of a consumer education and outreach program. The
127 collection study shall be jointly coordinated by the Massachusetts Department of Environmental
128 Protection and a group of waste water collection systems, including, but not limited to:
129 Massachusetts Water Resources Authority and its communities, Greater Lawrence Sanitary
130 District, Upper Blackstone Clean Water, Springfield Water and Sewer Commission, Pittsfield
131 City Wastewater, New Bedford DPI Water/Wastewater Department, Fall River Sewer
132 Commission, City of Brockton Sewer Department.

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

135 (3) Measure effectiveness of the consumer education program on consumer awareness of
136 the symbol and label notice and consumer attitudes about disposal of covered products by
137 conducting a subsequent consumer awareness survey comparing the baseline data provided by
138 the 2025 survey with survey data from subsequent years. The surveys to determine the
139 effectiveness and ongoing success of the consumer education program shall take place annually
140 until December 31, 2035.

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

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

150 (2) Provide education and outreach in Spanish, English, French, Portuguese, Mandarin,
151 Russian, and other languages as needed to reach the Commonwealth's residents.

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

154 (d) Covered entities, either independently or in collaboration with other covered entities,
155 shall report to the joint committee on the environment, natural resources and agriculture, on their

156 activities under this section on an annual basis. The Massachusetts department of environmental
157 protection shall post the reports on its internet website.

158 (e) The Massachusetts Consumer Education and Outreach Program shall conclude on
159 December 31, 2035.

160 Section 333. Enforcement

161 A. (a) The Massachusetts department of environmental protection has authority to
162 enforce section 331 and to collect civil penalties for a violation of section 331, subject to the
163 conditions in this subsection.

164 (b) Whoever violates section 331 may be enjoined in any court of competent jurisdiction.

165 (c) Whoever violates section 331 may be liable for a civil penalty not to exceed two
166 thousand five hundred dollars (\$2,500) per day, up to a maximum of one hundred thousand
167 dollars (\$100,000) for each violation. That civil penalty may be assessed and recovered in a civil
168 action brought in any court of competent jurisdiction. For purposes of this section, offering for
169 sale or selling in Massachusetts one or more units of the same covered product labeled in
170 violation of Section 331 shall constitute a single violation for each day the noncompliant units
171 are offered for sale or sold.

172 (d) A specific violation is deemed to have occurred upon the sale of a noncompliant
173 product
174 package.

175 (e) In assessing the amount of a civil penalty for a violation of section 331, the court
176 shall

177 consider:

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

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

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

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

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

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

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

189 B. (a) The department of environmental protection may refer violations of section 331 to
190 the attorney general for enforcement and actions may be brought pursuant to this section by the
191 attorney general in the name of the people of the Commonwealth in any court of
192 competent jurisdiction.

193 (b) Any civil penalties collected pursuant to this section shall be paid to the enforcing
194 governmental entity that brought the action.

195 C. The remedies provided by this section are not exclusive and are in addition to the
196 remedies that may be available pursuant to Massachusetts general law chapter 93A or
197 other consumer protection laws, if applicable.

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

201 SECTION 2. This act shall take effect on January 1, 2025.