SENATE DOCKET, NO. 1211 FILED ON: 1/19/2023

SENATE . . . . . No. 480

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
James B. Eldridge	*Middlesex and Worcester*	
Vanna Howard	*17th Middlesex*	*1/31/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*2/1/2023*
Kay Khan	*11th Middlesex*	*7/24/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*10/6/2023*

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SENATE . . . . . No. 480

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 480) of James B. Eldridge, Vanna Howard and Lindsay N. Sabadosa for legislation to protect 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:

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

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

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

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

"Covered product", means a consumer product sold in the Commonwealth or offered for sale in the Commonwealth that is either a premoistened nonwoven disposable wipe marketed as

a baby wipe or diapering wipe or a premoistened nonwoven disposable wipe that is both of the following: (a) composed entirely of 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, adult hygiene wipes, and body cleansing wipes.

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

"Label notice" means the phrase "Do Not Flush" and the type size of the label notice shall be equal to at least 2 percent of the surface area of the principal display panel in size. For covered products regulated pursuant to the Federal Hazardous Substances Act, (15 U.S.C. §§ 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 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. For covered products required to be registered by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C.§§ 136 et. seq., if the label notice would result in a type size on the principal display panel larger than a warning pursuant to FIFRA, then 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 FIFRA.

"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. 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 times the circumference. In the case of a flexible film package, in which a rectangular prism or nearly rectangular prism stack of wipes is housed within such film, the surface area of the principal display panel is measured by multiplying the length times 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.

"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.

Section 331. Labeling.

A. 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 subsection B. (a) of Section 331.

B. (a) Except as provided in subdivisions (b), (c), (d), and (f), a covered product manufactured on or after July 1, 2025, 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 of 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 (FIFRA) (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 July 1, 2025, 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.

Section 332. Massachusetts Consumer Education and Outreach Program

A. (a) The Massachusetts 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 Massachusetts Department of Environmental Protection and a group of waste water collection systems, including, but not limited to: Massachusetts Water Resources Authority and its communities, Greater Lawrence Sanitary District, Upper Blackstone Clean Water, Springfield Water and Sewer Commission, Pittsfield City Wastewater, New Bedford DPI Water/Wastewater Department, Fall River Sewer Commission, City of Brockton Sewer Department.

(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 2025 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, 2035.

(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 Commonwealth. 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, English, French, Portuguese, Mandarin, Russian, and other languages as needed to reach the Commonwealth's residents.

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

(d) Covered entities, either independently or in collaboration with other covered entities, shall report to the joint committee on the environment, natural resources and agriculture, on their activities under this section on an annual basis. The Massachusetts department of environmental protection shall post the reports on its internet website.

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

Section 333. Enforcement

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

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

(c) Whoever violates section 331 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 Massachusetts one or more units of the same covered product labeled in violation of Section 331 shall constitute a single violation for each day the noncompliant units are offered for sale or sold.

(d) A specific violation is deemed to have occurred upon the sale of a noncompliant product package. (e) In assessing the amount of a civil penalty for a violation of section 331, the court shall consider:

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

(2) 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;

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

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

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

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

(7) Any other factor that justice may require.

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

(b) Any civil penalties collected pursuant to this section shall be paid to the enforcing governmental entity that brought the action. C. The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to Massachusetts general law chapter 93A or other consumer protection laws, if applicable. D. In addition to penalties recovered under this section, the enforcing government entity may recover reasonable enforcement costs and attorneys' fees from the liable covered entity.

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