

119TH CONGRESS
1ST SESSION

S. _____

To require certain products to be labeled with ‘Do Not Flush’ labeling,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To require certain products to be labeled with ‘Do Not Flush’
labeling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wastewater Infrastruc-
5 ture Pollution Prevention and Environmental Safety Act”
6 or the “WIPPES Act”.

7 **SEC. 2. “DO NOT FLUSH” LABELING.**

8 (a) IN GENERAL.—A covered entity shall label a cov-
9 ered product clearly and conspicuously with the label no-

1 tice and symbol, in accordance with subsections (b) and
2 (c).

3 (b) REQUIREMENTS.—

4 (1) CYLINDRICAL PACKAGING.—In the case of a
5 covered product sold in cylindrical or near-cylindrical
6 packaging, and intended to dispense individual
7 wipes—

8 (A) the symbol and label notice shall be
9 displayed on the principal display panel in a
10 clear and conspicuous location reasonably visi-
11 ble to the user each time a wipe is dispensed;
12 or

13 (B) the symbol shall be displayed on the
14 principal display panel and the label notice, or
15 a combination of the label notice and symbol,
16 shall be displayed on a flip lid in a manner that
17 covers at least 8 percent of the surface area of
18 the flip lid.

19 (2) FLEXIBLE FILM PACKAGING.—In the case
20 of a covered product sold in flexible film packaging,
21 and intended to dispense individual wipes—

22 (A) the symbol shall be displayed on the
23 principal display panel and, if the principal dis-
24 play panel is not on the dispensing side of the
25 packaging, on the dispensing side panel; and

1 (B) the label notice shall be displayed on
2 either the principal display panel or the dis-
3 pensing side panel, in a clear and conspicuous
4 location reasonably visible to the user each time
5 a wipe is dispensed.

6 (3) RIGID PACKAGING.—In the case of a cov-
7 ered product sold in a refillable tub or other rigid
8 packaging that may be reused by a customer, and
9 that is intended to dispense individual wipes, the
10 symbol and label notice shall be displayed on the
11 principal display panel in a clear and conspicuous lo-
12 cation reasonably visible to the user each time a
13 wipe is dispensed.

14 (4) PACKAGING NOT INTENDED TO DISPENSE
15 INDIVIDUAL WIPES.—In the case of a covered prod-
16 uct sold in packaging that is not intended to dis-
17 pense individual wipes, the symbol and label notice
18 shall be displayed on the principal display panel in
19 a clear and conspicuous location reasonably visible to
20 the user of the covered product.

21 (5) BULK PACKAGING.—

22 (A) IN GENERAL.—In the case of a covered
23 product sold in bulk at retail, the symbol and
24 label notice shall be displayed on both the outer
25 packaging visible at retail and the individual

1 packaging contained within the outer pack-
2 aging.

3 (B) EXEMPTION.—The following shall be
4 exempt from the requirements of subparagraph
5 (A):

6 (i) Individually packaged covered
7 products that are contained within outer
8 packaging, are not intended to dispense in-
9 dividual wipes, and have no retail labeling.

10 (ii) Outer packaging that does not ob-
11 scure the symbol and label notice on indi-
12 vidually packaged covered products con-
13 tained within.

14 (6) PACKAGING OF COMBINED PRODUCTS.—

15 (A) OUTER PACKAGING.—The outer pack-
16 aging of combined products shall be exempt
17 from the symbol and label notice requirements
18 of subsection (a).

19 (B) PACKAGES LESS THAN 3 BY 3
20 INCHES.—In the case of a covered product in
21 packaging smaller than 3 inches by 3 inches
22 (such as an individually packaged wipe in tear-
23 top packaging) and sold as part of a combined
24 product, if a symbol and label notice are placed
25 in a prominent location reasonably visible to the

1 user of the covered product, such covered prod-
2 uct shall be considered to be labeled clearly and
3 conspicuously.

4 (c) REASONABLE VISIBILITY OF SYMBOL AND LABEL
5 NOTICE.—

6 (1) IN GENERAL.—A covered entity shall ensure
7 that—

8 (A) packaging seams or folds or other
9 packaging design elements do not obscure the
10 symbol or label notice;

11 (B) the symbol and label notice are each
12 equal in size to at least 2 percent of the surface
13 area of the principal display panel; and

14 (C) the symbol and label notice have high
15 contrast with the immediate background of the
16 packaging so that such symbol and label notice
17 may be seen and read by an ordinary individual
18 under customary conditions of purchase and
19 use.

20 (2) PROXIMITY OF SYMBOL AND LABEL NO-
21 TICE.—A covered entity may display a symbol and
22 label notice either adjacent to or on separate areas
23 of the principal display panel.

24 (3) EXCEPTION.—Paragraph (1)(C) does not
25 apply to an embossed symbol or label notice on the

1 flip lid of a covered product sold in cylindrical or
2 near-cylindrical packaging.

3 (d) REPRESENTATIONS OF FLUSHABILITY.—With re-
4 spect to a covered product, a covered entity may not make
5 any express or implied representation that such covered
6 product can or should be flushed.

7 (e) ENFORCEMENT BY FEDERAL TRADE COMMIS-
8 SION.—

9 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
10 TICES.—A violation of this section or any regulation
11 promulgated under this section shall be treated as a
12 violation of a regulation under section 18(a)(1)(B)
13 of the Federal Trade Commission Act (15 U.S.C.
14 57a(a)(1)(B)) regarding unfair or deceptive acts or
15 practices.

16 (2) POWERS OF COMMISSION.—The Commis-
17 sion shall enforce this section and any regulations
18 promulgated under this section by the same means,
19 and with the same jurisdiction, powers, and duties,
20 as though all applicable terms and provisions of the
21 Federal Trade Commission Act (15 U.S.C. 41 et
22 seq.) were incorporated into and made a part of this
23 section, and any person who violates this section or
24 any regulation promulgated under this section shall
25 be subject to the penalties and entitled to the privi-

1 leges and immunities provided in the Federal Trade
2 Commission Act.

3 (3) REGULATIONS.—The Commission may pro-
4 mulgate regulations under section 553 of title 5,
5 United States Code, to implement this section. In
6 developing the regulations, the Commission may con-
7 sult with the Administrator of the Environmental
8 Protection Agency, the Commissioner of Food and
9 Drugs, the Consumer Product Safety Commission,
10 or any other agency as appropriate.

11 (4) AUTHORITY PRESERVED.—Nothing in this
12 section may be construed to limit the authority of
13 the Commission under any other provision of law.

14 (f) PREEMPTION OF STATE LAWS.—No State or po-
15 litical subdivision of a State may directly or indirectly es-
16 tablish or continue in effect, under any authority, require-
17 ments with respect to the “Do Not Flush” labeling of cov-
18 ered products that are not identical to the requirements
19 of this section and the regulations promulgated under this
20 section.

21 (g) DEFINITIONS.—In this section:

22 (1) COMBINED PRODUCT.—The term “com-
23 bined product” means two or more products sold in
24 shared retail packaging, of which—

1 (A) at least one of the products is a cov-
2 ered product; and

3 (B) at least one of the products is another
4 consumer product intended to be used in com-
5 bination with such covered product.

6 (2) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (3) COVERED ENTITY.—The term “covered en-
9 tity” means a manufacturer, wholesaler, supplier, in-
10 dividual or group of individuals, or retailer that is
11 responsible for the labeling or retail packaging of a
12 covered product that is sold or offered for retail sale
13 in the United States.

14 (4) COVERED PRODUCT.—

15 (A) IN GENERAL.—The term “covered
16 product” means a premoistened, nonwoven dis-
17 posable wipe sold or offered for retail sale—

18 (i) that is marketed as a baby wipe or
19 diapering wipe; or

20 (ii) that is a household or personal
21 care wipe (including a wipe described in
22 subparagraph (B)) that—

23 (I) is composed entirely, or in
24 part, of petrochemical-derived fibers;
25 and

1 (II) has significant potential to
2 be flushed.

3 (B) INCLUSIONS.—The wipes described in
4 this subparagraph are—

5 (i) antibacterial wipes and disinfecting
6 wipes;

7 (ii) wipes intended for general purpose
8 cleaning or bathroom cleaning, including
9 toilet cleaning and hard surface cleaning;
10 and

11 (iii) wipes intended for personal care
12 use on the body, including hand sanitizing,
13 makeup removal, feminine hygiene, adult
14 hygiene (including incontinence hygiene),
15 and body cleansing.

16 (5) HIGH CONTRAST.—The term “high con-
17 trast” means, with respect to the symbol or label no-
18 tice, that such symbol or label notice—

19 (A) is either light on a solid dark back-
20 ground or dark on a solid light background; and

21 (B) has a contrast percentage of at least
22 70 percent between such symbol or label notice
23 and the background, using the formula $(B1 -$
24 $B2) / B1 * 100 =$ contrast percentage, where
25 B1 is the light reflectance value of the lighter

1 area and B2 is the light reflectance value of the
2 darker area.

3 (6) LABEL NOTICE.—The term “label notice”
4 means the written phrase “Do Not Flush”.

5 (7) PRINCIPAL DISPLAY PANEL.—The term
6 “principal display panel” means the side of a prod-
7 uct package that is most likely to be displayed, pre-
8 sented, or shown under customary conditions of dis-
9 play for retail sale, and—

10 (A) in the case of a cylindrical or near-cy-
11 lindrical package, the surface area of which
12 constitutes at least 40 percent of the product
13 package, as measured by multiplying the height
14 by the circumference of the package; or

15 (B) in the case of a flexible film package
16 in which a rectangular prism or near-rectan-
17 gular prism stack of wipes is housed within the
18 film, the surface area of which is measured by
19 multiplying the length by the width of the side
20 of the package when the flexible packaging film
21 is pressed flat against the stack of wipes on all
22 sides of the stack.

23 (8) STATE.—The term “State” means each
24 State of the United States, the District of Columbia,

1 and each commonwealth, territory, or possession of
2 the United States.

3 (9) SYMBOL.—The term “symbol” means the
4 “Do Not Flush” symbol, as depicted in the most re-
5 cent edition of the Guidelines for Assessing the
6 Flushability of Disposable Nonwoven Products pub-
7 lished by the Association of the Nonwoven Fabrics
8 Industry (INDA) and the European Disposables
9 And Nonwovens Association (EDANA), or an other-
10 wise equivalent symbol adopted by the Commission
11 through rulemaking under this section.

12 (h) EFFECTIVE DATE.—This section shall apply to
13 a covered entity beginning on the date that is 1 year after
14 the date of the enactment of this Act.