

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 1672 (Bloom) – As Amended April 11, 2019

As Proposed to be Amended

SUBJECT: SOLID WASTE: FLUSHABLE PRODUCT STANDARDS: ENFORCEMENT

KEY ISSUES:

- 1) SHOULD CALIFORNIA ADOPT THE INTERNATIONAL WATER SERVICES FLUSHABILITY GROUP STANDARD FOR DETERMINING THE FLUSHABILITY OF WIPE PRODUCTS SOLD IN THE STATE?
- 2) SHOULD WIPE PRODUCTS FAILING TO MEET THE INTERNATIONAL WATER SERVICES FLUSHABILITY GROUP STANDARD BE PROHIBITED FROM BEING LABELED IN CALIFORNIA AS “FLUSHABLE” STARTING ON JANUARY 1, 2021?
- 3) SHOULD VIOLATIONS OF THE LABELING REQUIREMENTS BE SUBJECT TO CIVIL PENALTIES?

SYNOPSIS

Recognizing that improperly flushed wipe products inflict millions of dollars of damage on California’s wastewater management system, this bill seeks to improve the labeling standard for wipe products to ensure that customers are better informed about what products are, and are not, safe to flush. Accordingly, no later than 2021, this bill would require all wipes sold in California promoting themselves as “flushable” to meet the International Water Services Flushability Group, an advisory group consisting of leading wastewater management agencies from around the world, standard for product flushability. This bill would require wipes that are not deemed flushable to clearly be labeled that they should not be disposed of by flushing. To communicate these messages the bill adopts the labeling standards provided in the “Communicating Appropriate Disposal Pathways for Nonwoven Wipes to Protect Wastewater Systems,” an industry developed guidance document. Finally, this bill would impose civil penalties on any product manufacturer found to be improperly labeling their wipe products.

This measure is sponsored by the California Association of Sanitary Districts, an association of California’s municipal wastewater management organizations. These organizations experience the brunt of the impacts caused by improperly flushed wipes, including equipment break-downs and sewer spills. They support this measure, noting that existing public relations campaigns have not stemmed the tide of non-flushable wipes entering the wastewater stream, and believing that improved labeling is a reasonable next step to lessen the damage caused by wipes. This measure is opposed by a coalition of industry groups, led by INDA – the Association of the Nonwoven Fabrics Industry. INDA and the rest of the opposition contend that the International Water Services Flushability Group standard utilized by this bill would render all of the products they sell to be non-flushable. That standard, along with the rest of this bill, was previously heard and evaluated in the Assembly Committee on Environmental Safety and Toxic Materials where it was approved by a vote of 6-3.

SUMMARY: Establishes performance and labeling standards for flushable wipes and provides for the imposition of civil penalties on parties failing to conform to those standards. Specifically, **this bill:**

- 1) Provides that the following terms have the following meanings:
 - a) “Covered entity” means the manufacturer of a covered product that is sold in this state or brought into the state for sale. “Covered entity” does not include a wholesaler, supplier, or retailer that is not responsible for the labeling or packaging of a covered product;
 - b) “Covered product” means a nonwoven disposable product that is sold in this state or brought into the state for sale, and that is constructed from nonwoven sheets, including moist toilet tissue or cloth, that is designed, marketed, or commonly used for personal hygiene or cleaning purposes, including, but not limited to, diaper wipes, toilet wipes, household cleaning wipes, personal care wipes, and facial wipes;
 - c) “Flushable wipe” means a nonwoven disposable product that meets the performance standards set forth in f);
 - d) “Labeling requirements” means the labeling standards contained in the Code of Practice of the Association of the Nonwoven Fabrics Industry and the European Disposables and Nonwovens Association, titled Communicating Appropriate Disposal Pathways for Nonwoven Wipes to Protect Wastewater Systems, second edition, as published in April 2017;
 - e) “Nonflushable wipe” means a nonwoven disposable product that does not meet the performance standards set forth in f); and
 - f) “Performance standards” means the International Water Services Flushability Group testing methods and criteria for flushability, as published in June 2018, as set forth in publicly available specification documents 1, 2, and 3, and as summarized in chapters 6 and 7 of publicly available specification document 1.
- 2) Provides that on and after January 1, 2021, a covered entity shall not label a covered product as safe to flush, safe for sewer systems, or safe for septic systems, unless the product is a flushable wipe.
- 3) Provides that, on and after January 1, 2021, unless a product is a flushable wipe, a covered entity shall not, in any manner, including in product names, labels, endorsements, depictions, illustrations, trademarks, and trade namesake, make any of the following representations regarding a covered product:
 - a) The product can be flushed;
 - b) The product is safe for sewer systems;
 - c) The product is safe for septic systems;
 - d) The product breaks apart shortly after flushing;
 - e) The product will not clog household plumbing systems;

- f) The product will not clog household septic systems;
 - g) The product is safe for plumbing;
 - h) The product is safe to flush; and
 - i) The product will dissolve or disperse in interaction with water.
- 4) Requires, on and after January 1, 2021, a covered entity to test and maintain self-certification records that verify that its covered products meet the performance standards and comply with the labeling requirements of this bill.
- 5) Provides that, on and after January 1, 2020, a covered product that does not meet the performance standards shall be labeled clearly and conspicuously in adherence with the labeling requirements to communicate that it should not be flushed, and this label shall be in a high contrast font and color respective to the surrounding wording and space on the packaging and shall be in a location that is visible when individual wipes are dispensed from the product packaging.
- 6) Provides that the requirements of 5) shall apply to bulk items, as well as the individual packages contained therein.
- 7) Provides that if a covered product is manufactured prior to December 31, 2019, the covered entity selling the product shall comply with 5) on or before January 1, 2021.
- 8) Provides that a covered entity, directly or through any 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, benefits, performance, or efficacy of a nonflushable wipe.
- 9) Provides that a person who violates the provisions of the bill may be enjoined and subject to a civil penalty not to exceed \$2,500 for each violation. Provides that in determining the civil penalty a court shall consider the following:
- a) The nature, circumstances, extent, and gravity of the violation;
 - b) 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;
 - c) The violator's ability to pay the proposed penalty;
 - d) The effect that the proposed penalty would have on the violator and the community as a whole;
 - e) Whether the violator took good faith measures to comply with this bill and when these measures were taken;
 - f) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and

- g) Any other factor that justice may require.
- 10) Provides that the provisions of the bill may be enforced by the Attorney General in the name of the people of the state, by a district attorney, by a city attorney, or by a city prosecutor in a city or city and county having a full-time city prosecutor.
- 11) Provides that any civil penalties collected pursuant to this section shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and that any penalty collected by the Attorney General shall be deposited into the Unfair Competition Law Fund.
- 12) Provides that the provisions of this bill are severable.
- 13) Makes several findings and declarations related to the bill including the following:
- a) That this bill is intended to protect public health, the environment, water quality, and public infrastructure used for the collection, transport, and treatment of wastewater;
 - b) Nonwoven disposable products are increasingly being marketed by manufacturers as flushable and, as a result, are being flushed down the toilet more frequently by consumers;
 - c) Nonwoven disposable products often contain microplastics;
 - d) Flushing these products presents a growing problem caused by nonwoven disposable products not breaking down after being flushed down the toilet. These products can entangle with tree roots, fats, oils, grease, and other nondispersible products, causing clogs in sewer pipes;
 - e) Nonwoven disposable products that do not disperse rapidly in the sewer can also cause damage to private sewer laterals that result in sewage backups and overflow. These products can also cause clogging in septic systems;
 - f) In June 2018, a group of international wastewater infrastructure experts, known as the International Water Services Flushability Group, adopted reliable criteria for the quality and characteristics of products that can be appropriately disposed of using sanitary sewer systems;
 - g) In April 2017, a group of international nonwoven fabric industry experts, known as the Association of the Nonwoven Fabrics Industry and the European Disposables and Nonwovens Association, adopted baseline labeling requirements for nonwoven disposable products; and
 - h) To prevent nondispersible nonwoven disposable products from entering sewer systems and potentially causing overflows, it is the intent of the Legislature to create labeling requirements that will enable consumers to easily identify which nonwoven disposable products are safe to dispose of using sanitary sewer systems.

EXISTING LAW:

- 1) States that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent

deceiving or misleading consumers about the environmental impact of plastic products. Provides that for consumers to have accurate and useful information about the environmental impact of plastic products, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials. (Public Resources Code Section 42355.5.)

- 2) Prohibits, on and after January 1, 2020, a person from selling or offering for promotional purposes in this state any personal care products containing plastic microbeads that are used to exfoliate or cleanse in a rinse-off product, including, but not limited to, toothpaste. (Public Resources Code Section 42362.)
- 3) Provides that any person who violates 2) may be enjoined and subject to a civil penalty of \$2,500 per day for each violation. Provides that in assessing the civil penalty a court shall consider:
 - a) The nature and extent of the violation;
 - b) The number of, and severity of, the violations;
 - c) The economic effect of the penalty on the violator;
 - d) Whether the violator took good faith measures to comply with the law and when these measures were taken;
 - e) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and
 - f) Any other factor that justice may require. (Public Resources Code Section 42364.)
- 4) Provides that wherever 25 persons in any county, or in two or more counties within the same natural watershed area, desire the formation of a sanitary district within the area, they may sign and present a petition to the board of supervisors of the county in which the greatest portion of the area of the proposed district is situated at the time of the filing of the petition. If the district is to be located in more than one county, the petition shall be signed by no fewer than 15 persons in the county in which the greatest portion of the district is located and by no fewer than 10 persons in each other county in which the district is located. (Health and Safety Code Section 6420.)
- 5) Provides that a sanitary district may acquire, plan, construct, reconstruct, alter, enlarge, lay, renew, replace, maintain, and operate garbage dumpsites and garbage collection and disposal systems, sewers, drains, septic tanks, and sewerage collection, outfall, treatment works and other sanitary disposal systems, and storm water drains and storm water collection, outfall and disposal systems, and water recycling and distribution systems, as the board deems necessary and proper, and in the performance of these functions, either in or out of the district, it may join through joint powers agreements with any county or municipality or any other district or governmental agency. (Health and Safety Code Section 6512 (a).)
- 6) Provides that a sanitary district may lay its sewers and drains in any public street or road in the county, and for this purpose enter upon it and make all necessary and proper excavations, restoring it to proper condition. The work of restoring and repairing any such public street or

road in the county shall be done under the supervision and control of the county engineer or road commissioner at the cost of the district, and in accordance with the standards established by ordinance of the board of supervisors for restoring and repairing county roads. (Health and Safety Code Section 6518.)

- 7) Provides that an on-site wastewater disposal zone may be formed to achieve water quality objectives set by regional water quality control boards, to protect existing and future beneficial water uses, protect public health, and to prevent and abate nuisances. Whenever an on-site wastewater disposal zone has been formed pursuant to this chapter, the public agency shall have the powers set forth in this article, which powers shall be in addition to any other powers provided by law. (Health and Safety Code Section 6975.)
- 8) Provides that an on-site wastewater disposal zone may do all of the following:
 - a) Collect, treat, reclaim, or dispose of waste water without the use of communitywide sanitary sewers or sewage systems and without degrading water quality within or outside the zone;
 - b) Acquire, design, own, construct, install, operate, monitor, inspect, and maintain on-site wastewater disposal systems in a manner which will promote water quality, prevent the pollution, waste, and contamination of water, and abate nuisances;
 - c) Conduct investigations, make analyses, and monitor conditions with regard to water quality within the zone; and
 - d) Adopt and enforce reasonable rules and regulations necessary to implement the purposes of the zone. (Health and Safety Code Section 6976.)
- 9) Provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. (Business and Professions Code Section 17580.5 (a).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Seeking to reduce the proliferation of nonflushable wipe products winding up in California's wastewater management systems, this bill would establish flushability standards for consumer wipes and impose labeling requirements on wipe manufacturers to better help consumers understand whether or not a product can be safely disposed by flushing it down a toilet. In support of this measure the author states:

When wet wipes products are flushed into the sewer system they can cause significant issues for private property owners, sewer collection systems, and wastewater treatment plants. Wet products that do not break down can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners. Wet wipes have been shown to cause significant damage to residential septic systems, resulting in expensive repairs and remediation for homeowners.

AB 1672 presents a straightforward solution to helping combat the aforementioned problems caused by improperly flushing wet wipes. The bill prescribes clear and consistent consumer messaging for these products that indicates to consumers that either a wipe is

“flushable,” or it is not. Under the provisions of AB 1672, wipes can be labeled as “flushable” if they do not cause harm to the sewer system, meaning that manufacturers can demonstrate that their wipes break down in the sewer system like dry toilet paper. For all other wipes that are not intended to be flushed, they must be conspicuously marked with “Do Not Flush” labeling.

Seemingly innocuous wipes can wreak havoc on California’s wastewater management systems. When consumers flush wipes down the toilet that are not engineered to quickly break down or dissolve, the wipes can cause significant problems once they enter the sewer system. Even if a wipe safely clears a consumer’s home piping system and makes it into the wastewater disposal stream, the wipes merge with other improperly flushed products. When fats, oils, and other incorrectly disposed of products are added into the mix, the resulting non-biodegradable mass, charmingly referred to as “fatbergs,” and can damage wastewater treatment equipment and result in environmentally harmful sewer back-ups and spills. In addition to the disgusting nature of these fatbergs, local agencies must spend significant time and resources to remediate them, and if a fatberg results in a release of fluid from the sewer, the fatberg can lead to the imposition of fines and penalties on public agencies by the State Water Resources Control Board. At the same time, it is virtually impossible for the agencies to recover any of their costs for repairing their systems and paying fines for unlawful discharges from those who are truly responsible for the fatbergs and the havoc they reek.

The increased maintenance needed to prevent problems from nonflushable products can be exceedingly costly to public wastewater agencies, who in turn are forced to raise rates on Californians to cover the costs. Many of the sanitation agencies sponsoring this bill are finding that wipes are a significant culprit in causing sewer back-ups and equipment damage. In some cities, costly screening facilities have failed to stop these nonflushable wipes from finding their way through the wastewater system. In 2011, the Orange County Sanitation District conducted nearly 1,000 preventative or corrective maintenance calls on 10 of their 15 regional pump stations. They report that the total labor cost was more than \$300,000, and the Orange County Sanitation District continues to spend significant labor hours working to prevent clogs that could lead to a sewer spill. Their crews report having to clean their three most impacted pumping stations twice a week. In 2012, the Orange County Sanitation District reported that the equivalent of 40 large trash bags of materials overburdened their new headworks and completely plugged three new washer compactors. The impact of the wipes on the wastewater management system is forcing some municipalities to invest in costly new equipment. For example, the City of Camarillo’s Waste Water Treatment Plant has invested approximately \$500,000 to upgrade its waste water treatment plant pump systems to manage the volume of wipes passing through the system on a daily basis. As noted, all of these costs are eventually borne by California ratepayers—not manufacturers of the wipes that damage the systems--regardless of whether or not they happen to personally use wipe products.

Existing product labels are not helping Californians learn when it’s safe to flush a wipe.

Beginning in the 1980s, due to their wide range of household and personal care uses, disposable wipes began to flourish in the California market. In the intervening years, two types of products have come to dominate the disposable wipe market: dispersible and low-strength wipes. Low-strength wipes are designed to collapse in a toilet, presenting a very small profile and the flexibility to travel through pipes unencumbered. However, their low wet strength makes them poor performers in most cleaning jobs. Dispersible wipes are designed to perform like a standard

wipe as far as strength and softness, but in a toilet disperse into individual fibers or small groups of fibers.

Many disposable wipe products are placed into the trash. For example, cleaning wipes, like those used in kitchens or on floors, are rarely disposed of in the wastewater stream. However, when it comes to disposable products that address public health and hygiene considerations, consumers often mistakenly use the wastewater system as a preferred means of disposal. These products include baby wipes, feminine hygiene products, and in some cases, diapers. Existing product labels do not always permit consumers to make an educated decision. For example, an internet search of retailers selling baby wipes reveals a variety of products with names that include the phrases “all natural,” “water wipes,” “aqua pure,” “Babyganics,” and “natural care.” (<https://www.target.com/s?searchTerm=baby+wipes&Nao=0>.) These products certainly give the appearance of being natural and safe, presumably for both a baby and the sewer. Nonetheless, several of these products are not designed to be safely flushed into the wastewater system.

Despite existing public relations campaigns, Californians continue to improperly flush wipes that are not designed to be flushed. When California’s municipal wastewater treatment agencies began to recognize the threat posed to their equipment from improperly flushed wipes, the agencies set out to inform the public of the harms posed by wipes in order to reduce the rate of wipe-related incidents in the wastewater system. The efforts of California’s sanitation agencies are assisted by the International Water Services Flushability Group ongoing campaign to promote the “only the 3Ps” (pee, poop, and paper) set of principles on what should be flushed. Additionally, the California Association of Sanitation Agencies is promoting its own “Wipes Clog Pipes” campaign to boost awareness of the problem in this state. Despite the efforts by the members of the California Association of Sanitation Agencies, the public relations campaign has not made significant progress in lessening the problem. Accordingly, this bill’s proponents suggest that on-product labels are needed to better inform the public. Given the poor track record of public relations campaign aimed at preventing the public from flushing wipes into the waste stream, enhanced product labeling appears to be a reasonable next step to address the issue.

This bill. Recognizing the limits of existing public relations campaigns and seeking to ensure that consumers are better informed and able to make decisions regarding the disposal of wipe products, this bill seeks to improve the labeling of these products. To that end, this bill would prohibit a product from being labeled as “flushable” unless the product can be safely flushed without harming sewer or septic system and breaks down within a short period of time after being flushed so it does not harm plumbing systems. Additionally, for products that do not breakdown quickly, this bill requires those product labels to include clear warnings that they should not be flushed. This bill requires all wipe products sold in California to conform to the labeling standards adopted by the wipe industry and published in the Communicating Appropriate Disposal Pathways for Nonwoven Wipes to Protect Wastewater Systems. In order to determine a wipe’s flushability, the bill utilizes the standards and criteria developed by the International Water Services Flushability Group, a coalition of wastewater management agencies from around the world. As proposed to be amended, the bill proposes to delay the date by which existing products must meet the International Water Services Flushability Group standard until 2021. Finally, the bill vests enforcement authority for the labeling standards with the Attorney General, as well as with local District Attorneys and City or County Counsels, and establishes criteria for evaluating penalty levels. By enabling local agencies to enforce the bill, the author

hopes to develop relationships between local wastewater management agencies and local law enforcement officials in order to effectively enforce this measure.

Dueling methods for testing flushability. As disposable wipe products gained increasing market share around the world, the trade association representing 40 manufacturers of disposable wipes began developing an industrywide standard for wipe flushability. The resulting Guidance Document was heavily based on the work of the Water Environment Research Foundation's Protocols to Assess the Breakdown of Flushable Consumer Products. This framework requires wipes to be tested utilizing a system containing 2 liters of water in an oscillating slosh box in which a single nonwoven wipe is run for 60 minutes. Subsequently, the contents of the box are transferred to, and then rinsed through, a 12.5 millimeter perforated plate sieve. The portions of the wipe retained on the sieve are recovered, dried, and analyzed. To be deemed "flushable," the percent of the starting dry mass passing through the 12.5 millimeter perforated plate sieve after 60 minutes must be greater than 60% for at least 80% of the individual replicates tested.

Alternatively, the International Water Services Flushability Group, a global coalition of water service providers including the California Association of Sanitation Agencies and the Sanitation Districts of Los Angeles County, developed criteria for items that can be flushed down the toilet worldwide. The aim of the International Water Services Flushability Group's standard is to prevent blockages in sewers and household plumbing, thus reducing the human and environmental cost of sewer flooding and pollution. Their standard seeks to ensure that products break into small pieces quickly, are not buoyant, and do not contain plastic or regenerated cellulose and only contains materials which will readily degrade in a range of natural environments. In order to meet the requirement that a wipe break down quickly, the International Water Services Flushability Group requires that after a 1-minute rinse, the percent of the total initial dry mass passing through a 25 millimeter sieve for five test specimens, after 30 minutes of testing, shall be greater than 95%.

The supporters of this bill, California's local wastewater management agencies, generally favor the International Water Services Flushability Group standard. The wipe manufacturers that oppose this measure, unsurprisingly, favor the more lenient industry-developed standard. The manufacturers opposing this bill contend that the International Water Services Flushability Group standard is so strict as to constitute a de facto ban on their products. To counter this argument, the proponents of this bill have suggested to this Committee that products meeting the standard proposed by this bill are sold abroad by some of the very companies in opposition to this bill and could readily be introduced in the California market. The merits of each standard were previously weighed in the Assembly Committee on Environmental Safety and Toxic Materials, and that Committee accepted the standard preferred by the agencies responsible for maintaining California's wastewater system as the applicable standard for the bill. This Committee, which has no expertise on the subject matter of the dissolvability of wipes or water quality, sees no reason to quibble with that judgment. Nonetheless, it should be noted that the standards for flushability may evolve over time as new wipe or waste management technologies emerge. *Accordingly, as this bill progresses, the author may wish to consider amending the bill to vest ongoing oversight of the standard with a state agency that has expertise in water quality, namely the State Water Resources Control Board.*

Product labeling and manufacturer speech. In addition to disagreeing with the method for certifying flushability, wipe manufacturers have challenged similar laws requiring flushability standards and product labeling on First Amendment grounds. In fact, the wipe industry was

successful in stopping immediate enforcement of Washington, D.C.'s enactment of an ordinance enacting the International Water Services Flushability Group standard in the District. (*Kimberly-Clark Corp. v. District of Columbia* (2017) 286 F. Supp. 3d 128.) Courts have long recognized that commercial speech is protected by the First Amendment, although to a far lesser degree than non-commercial speech. Typically, restrictions on commercial speech are aimed at ensuring that advertisements are factual and not misleading, and the United States Supreme Court has held that the government may ban forms of communication more likely to deceive the public than inform it. (*Friedman v. Rogers* (1979) 440 U.S. 1, 11.) The modern standard for evaluating the legality of regulations on commercial speech originated in the early 1980s. In evaluating commercial speech the Supreme Court applies an intermediate scrutiny level of review of the regulation, and must determine the following: whether the expression is protected by the First Amendment; whether the asserted government interest is substantial; whether the regulation directly advances the government's interest; and whether the regulation is not more extensive than necessary. (*Central Hudson Gas & Electric Corporation v. Public Service Commission of New York* (1980) 447 U.S. 557, 566.)

By requiring wipe manufacturers to label their products as not safe to flush if they do not meet a specified standard, this bill implicates protected speech. Accordingly, the labeling requirements must be examined utilizing the *Central Hudson* test, above. In advancing this bill, the author and local wastewater management agencies, highlight the substantial cost of mitigating the damage caused by wipes. They also contend that in the event that wipes clog the sewer system, resulting in a spill, the environmental harm can be significant. Accordingly, given the cost and potential environmental harms of wipes, it appears that there is a substantial governmental interest in reducing the prevalence of non-flushable wipes in the wastewater system. The bill requires products to be tested for flushability and then labeled accordingly. Proponents of the bill argue that better labeling will reduce customer confusion and, thus reduce the number of wipes improperly flushed into the waste stream. The labeling requirement appears to directly advance this goal. Like most other permissible regulations, the bill simply requires the manufacturer to label their product to indicate whether it is flushable or not in accordance with the Water Services Flushability Group standard. Finally, in order to withstand constitutional review, this bill must not be more extensive than necessary. In arguing against the Washington, D.C. requirements, the wipe manufacturers argued that more public information about wipes was necessary and would have been a more direct means of achieving the District's goals. As discussed above, several public outreach campaigns have unsuccessfully endeavored to reduce the rate at which wipes are improperly flushed in California, and thus the proponents of this measure argue that the public awareness campaigns in California—unlike the absence of such campaigns in Washington D.C.—have already been tried and found to have failed to sufficiently address the issue. Seeking to craft an appropriate balance, this bill requires enhanced labeling of the wipe products while not going so far as to entirely prohibit the sale of wipe products in California: a far more extreme solution to the problem.

The enforcement measures in this bill resemble existing laws that seek to reduce pollution in California waterways. In recent years, California has been a national leader in seeking to lessen the amount of products entering the waste stream, and eventually making their way to bodies of water. To that end, in 2014, California banned single-use plastic bags across the state. (SB 270 (Padilla) Chap. 850, Stats. 2014.) The plastic bag prohibition was shortly followed by another forward-thinking measure eliminating the use of plastic micro-beads in personal care products, including face and body washes, which are rinsed into the wastewater stream and eventually into

the ocean. (AB 888 (Bloom) Chap. 594, Stats. 2015.) In the case of both bills, civil enforcement was determined to be an appropriate deterrence to bad conduct.

As with its predecessors, this bill would impose civil penalties on covered entities found to be in violation of the bill's labeling requirement. In fact, the author has adopted an enforcement mechanism nearly identical to his AB 888, in that enforcement authority rests with the Attorney General, as well as local District Attorneys and City or County Counsels, and gives the courts guidance for imposing penalties. This method of enforcing environmental regulations is well proven, and thus appears to be an appropriate method of enforcing the labeling requirements imposed by this bill.

As proposed to be amended, this bill seeks to provide manufacturers with additional time to comply with the new standards. In order to ease the implementation of this bill, the author proposes amendments to delay the applicability of the bill to products currently in the stream of commerce. The author recognizes, for example, that labels take time to update and design, and that packaging produced before this bill were to take effect would have to be recalled simply to avoid triggering civil penalties for the manufacturer. Accordingly, the author is proposing to amend the bill to ensure that product labels for products currently on the market do not need to comply with this bill until 2021. To accomplish this goal, the author is proposing the following amendments to Section 49651:

(a) On and after January 1, ~~2021~~, ~~2020~~ a covered entity shall not label a covered product as safe to flush, safe for sewer systems, or safe for septic systems, unless the product is a flushable wipe.

(b) (1) ***On or after January 1, 2021, unless*** ~~Unless~~ a product is a flushable wipe, a covered entity shall not, in any manner, make any of the following representations regarding a covered product...

(c) On and after January 1, ~~2021~~, ~~2020~~ a covered entity shall test and maintain self-certification records that verify that its covered products meet the performance standards and comply with the labeling requirements.

For consistency, a new subdivision (d) will be added to Section 49652 to read:

(c) If a covered product is manufactured prior to December 31, 2019, the covered entity shall comply with this section no later than before January 1, 2021.

ARGUMENTS IN SUPPORT: This measure is supported by a coalition of local sanitation districts and is sponsored by the California Association of Sanitation Agencies who argues in support of the bill:

AB 1672 presents a straightforward solution to helping combat the problems caused by improperly flushing wet wipes. The bill prescribes clear and consistent consumer messaging for these products that indicates to consumers that either a wipe is "flushable," or it is not. Under the provisions of AB 1672, wipes can be labeled as "flushable" if they do not cause harm to the sewer system, meaning that manufacturers can demonstrate that their wipes break down in the sewer system like dry toilet paper. For all other wipes that are not intended to be flushed, they must be conspicuously marked with "Do Not Flush" labeling.

ARGUMENTS IN OPPOSITION: This bill is opposed by a coalition of business and manufacturing organizations, led by INDA, the Association of the Nonwoven Fabrics Industry who argues:

AB 1672 seeks to codify the flushability specification created by an informal group of wastewater associations called the International Water Services Flushability Group. Their specification is overreaching in that International Water Services Flushability Group IWSFG's PAS3 test fails not only all flushable wipes on the market but some toilet paper as well. Unless wastewater experts have decided that their collection systems can no longer handle toilet paper, the necessity for a flushability test so stringent that fails to pass toilet paper is highly questionable.

The Association for the Nonwoven Fabrics Industry and the European Disposables and Nonwovens Association developed a scientifically-based method to gauge product flushability. This framework was based heavily on recommendations in the report by the Water Environment Research Foundation called "Protocols to Assess the Breakdown of Flushable Consumer Products." The end-result underwent trials accompanied by a rigorous peer review by noted U.S. and European experts in wastewater conveyance and treatment, engineers, and those from academia who study the issue. Among other things, this document established the first broadly-accepted "flushability" definition.

AB 1672's overreaching standard for flushability is likely to undermine the effectiveness of a California standard for "Do Not Flush" labeling on products not designed to be flushed such as baby wipes and surface or sanitizing wipes. The result will be consumer's lack of trust with the labeling and therefore they may decide to flush as they see fit, which will increase the flushing of non-flushables – a direction the industry does not want to go as it is inconsistent with our environmental and wastewater treatment goals.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Sanitation Agencies (sponsor)
 Alameda County Supervisor Nate Miley
 Appraccel
 Byron-Bethany Irrigation District
 California Product Stewardship Council
 California Resource Recovery Association
 Californians Against Waste
 Central Marin Sanitation Agency
 Central Contra Costa Sanitary District
 City of Camarillo
 City of Oxnard
 City of Roseville
 City of Thousand Oaks
 County Sanitation Districts of Los Angeles County
 Delta Diablo
 Dublin San Ramon Services District
 East Bay Municipal Utility District
 Eastern Municipal Water District

Gallinas Watershed Council
Goleta Sanitary Water Resources Recovery District
Goleta West Sanitary District
Las Gallinas Valley Sanitary District
Las Virgenes Municipal Water District
National Stewardship Action Council
Orange County Sanitation District
Oro Loma Sanitary District
Sacramento Area Sewer District
Sacramento County Regional Sanitation District
San Francisco Public Utilities Commission
Sanitation Districts of Los Angeles County
Stopwaste
Sonoma Water
Stege Sanitary District
Union Sanitary District
VA Palo Alto Health Care System
Victor Valley Wastewater Reclamation Authority

Opposition

American Forest and Paper Association
California Chamber of Commerce
California Manufacturers and Technology Association
Consumer Healthcare Products Association
Grocery Manufacturers Association
Household and Commercial Products Association
INDA – the Association of the Nonwoven Fabrics Industry
Personal Care Products Council

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