

AMENDED IN ASSEMBLY APRIL 11, 2019

AMENDED IN ASSEMBLY MARCH 28, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1672

Introduced by Assembly Member Bloom

February 22, 2019

An act to add Part 9 (commencing with Section 49650) to Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1672, as amended, Bloom. Solid waste: flushable products.

~~Existing law establishes the California Environmental Protection Agency under the supervision of the Secretary for Environmental Protection, and vests the agency with authority over various environmental matters. Existing law—The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste.~~

This bill would, among other things, prohibit a covered entity, as defined, from labeling a covered product as safe to flush, safe for sewer systems, or safe for septic systems, unless the product is a flushable wipe that meets certain performance standards. The bill would require nonflushable products to be labeled clearly and conspicuously to communicate that they should not be flushed, as specified. The bill would ~~authorize the California Environmental Protection Agency to enforce these provisions and impose administrative penalties of up to \$500 per day for each violation, to be deposited in the Flushable Wipes Fund, which the bill would create. The bill would authorize the Attorney~~

~~General to enjoin a violation in a court of competent jurisdiction and seek the assessment of civil penalties, as specified; establish enforcement provisions, including authorizing a civil penalty not to exceed \$2,500 per violation to be imposed on a person who violates the bill's provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The intent of the Legislature in enacting this legislation is
4 to protect public health, the environment, water quality, and public
5 infrastructure used for the collection, transport, and treatment of
6 wastewater.

7 (b) Nonwoven disposable products are increasingly being
8 marketed by manufacturers as flushable and, as a result, are being
9 flushed down the toilet more frequently by consumers.

10 (c) Nonwoven disposable products often contain microplastics.

11 (d) Flushing these products presents a growing problem caused
12 by nonwoven disposable products not breaking down after being
13 flushed down the toilet. These products can entangle with tree
14 roots, fats, oils, grease, and other nondispersible products, causing
15 clogs in sewer pipes. These clogs damage public infrastructure
16 and can lead to costly and environmentally damaging sanitary
17 sewer overflows that are a threat to public health.

18 (e) Nonwoven disposable products that do not disperse rapidly
19 in the sewer can also cause damage to private sewer laterals that
20 result in sewage backups and overflow. These products can also
21 cause clogging in septic systems.

22 (f) Wastewater treatment plants are not designed to capture
23 microplastic materials, which can pass through sewage treatment
24 facilities into the natural environment. These microplastic materials
25 have been shown to have negative impacts on marine life.

26 (g) Consequently, nonwoven disposable products that contain
27 synthetic plastic fibers or other microplastic materials should not
28 be marketed as flushable or sewer and septic safe.

1 (h) The increased maintenance needed to clean accumulations
2 of flushed nonwoven disposable products from pipes and pumps
3 is very costly to the public.

4 (i) In June 2018, a group of international wastewater
5 infrastructure experts, known as the International Water Services
6 Flushability Group, adopted reliable criteria for the quality and
7 characteristics of products that can be appropriately disposed of
8 using sanitary sewer systems.

9 (j) In April 2017, a group of international nonwoven fabric
10 industry experts, known as the Association of the Nonwoven
11 Fabrics Industry and the European Disposables and Nonwovens
12 Association, adopted baseline labeling requirements for nonwoven
13 disposable products.

14 (k) To prevent nondispersable nonwoven disposable products
15 from entering sewer systems and potentially causing overflows,
16 it is the intent of the Legislature to create labeling requirements
17 that will enable consumers to easily identify which nonwoven
18 disposable products are safe to dispose of using sanitary sewer
19 systems.

20 (l) It is the intent of the Legislature in enacting this legislation
21 to provide clear direction to manufacturers by setting performance
22 requirements for nonwoven disposable products that are marketed
23 for disposal to the sanitary sewer system.

24 SEC. 2. Part 9 (commencing with Section 49650) is added to
25 Division 30 of the Public Resources Code, to read:

26
27 PART 9. FLUSHABLE WIPES
28

29 49650. For purposes of this part, the following definitions shall
30 apply:

31 (a) "Covered entity" means the manufacturer of a covered
32 product that is sold in this state or brought into the state for sale.
33 "Covered entity" does not include a wholesaler, supplier, or retailer
34 that is not responsible for the labeling or packaging of a covered
35 product.

36 (b) "Covered product" means a nonwoven disposable product
37 that is sold in this state or brought into the state for sale, and that
38 is constructed from nonwoven sheets, including moist toilet tissue
39 or cloth, that is designed, marketed, or commonly used for personal
40 hygiene or cleaning purposes, including, but not limited to, diaper

1 wipes, toilet wipes, household cleaning wipes, personal care wipes,
2 and facial wipes.

3 ~~(e) "Enforcing agency" means the California Environmental~~
4 ~~Protection Agency.~~

5 ~~(d)~~

6 (c) "Flushable wipe" means a nonwoven disposable product
7 that meets the performance standards set forth in subdivision ~~(g)~~.
8 ~~(f)~~.

9 ~~(e)~~

10 (d) "Labeling requirements" means the labeling standards
11 contained in the Code of Practice of the Association of the
12 Nonwoven Fabrics Industry and the European Disposables and
13 Nonwovens Association, titled Communicating Appropriate
14 Disposal Pathways for Nonwoven Wipes to Protect Wastewater
15 Systems, second edition, as published in April 2017.

16 ~~(f)~~

17 (e) "Nonflushable wipe" means a nonwoven disposable product
18 that does not meet the performance standards set forth in
19 subdivision ~~(g)~~. ~~(f)~~.

20 ~~(g)~~

21 (f) "Performance standards" means the International Water
22 Services Flushability Group testing methods and criteria for
23 flushability, as published in June 2018, as set forth in publicly
24 available specification (PAS) documents 1, 2, and 3, and as
25 summarized in chapters 6 and 7 of PAS document 1.

26 49651. (a) On and after January 1, 2020, a covered entity shall
27 not label a covered product as safe to flush, safe for sewer systems,
28 or safe for septic systems, unless the product is a flushable wipe.

29 (b) (1) Unless a product is a flushable wipe, a covered entity
30 shall not, in any manner, make any of the following representations
31 regarding a covered product:

32 (A) The product can be flushed.

33 (B) The product is safe for sewer systems.

34 (C) The product is safe for septic systems.

35 (D) The product breaks apart shortly after flushing.

36 (E) The product will not clog household plumbing systems.

37 (F) The product will not clog household septic systems.

38 (G) The product is safe for plumbing.

39 (H) The product is safe to flush.

1 (I) The product will dissolve or disperse in interaction with
2 water.

3 (2) For purposes of this subdivision, representations include,
4 among other things, product names, labels, endorsements,
5 depictions, illustrations, trademarks, and trade names.

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

10 49652. (a) (1) On and after January 1, 2020, a covered product
11 that does not meet the performance standards shall be labeled
12 clearly and conspicuously in adherence with the labeling
13 requirements to communicate that it should not be flushed, and
14 this label shall be in a high contrast font and color respective to
15 the surrounding wording and space on the packaging and shall be
16 in a location that is visible when individual wipes are dispensed
17 from the product packaging.

18 (2) For covered products sold in bulk at retail, both the package
19 purchased in the store and the individual packages contained within
20 shall comply with the requirements in paragraph (1).

21 (b) A covered entity, directly or through any corporation,
22 partnership, subsidiary, division, trade name, or association in
23 connection to the manufacturing, labeling, packaging, advertising,
24 promotion, offering for sale, sale, or distribution of a covered
25 product, shall not make any representation, in any manner,
26 expressly or by implication, including through the use of a product
27 name, endorsement, depiction, illustration, trademark, or trade
28 name, about the flushable attributes, benefits, performance, or
29 efficacy of a nonflushable wipe.

30 ~~49653. (a) On and after January 1, 2020, a covered entity shall~~
31 ~~test and maintain self-certification records that verify that its~~
32 ~~covered products meet the performance standards and comply with~~
33 ~~the labeling requirements specified in Section 49650.~~

34 ~~(b) The records demonstrating a flushable wipe's compliance~~
35 ~~with the performance standards shall be made available by the~~
36 ~~covered entity upon request of the enforcing agency, free of charge,~~
37 ~~within 30 days of the request.~~

38 ~~(c) Verification of a nonflushable wipe's compliance with the~~
39 ~~labeling requirements shall be made available by the covered entity~~

1 upon request of the enforcing agency, free of charge, within 30
2 days of the request.

3 (d) (1) A covered entity that does not properly label flushable
4 wipes or nonflushable wipes that will be sold in California, or are
5 reasonably expected to be sold in California, shall be issued a
6 notice of violation by the enforcing agency, providing 30 days for
7 the noncompliant products to be recalled. The covered entity may
8 be subject to an administrative penalty every day thereafter that
9 those products remain available for purchase at retail or otherwise
10 are distributed in the state.

11 (2) In issuing an administrative penalty pursuant to this
12 subdivision, the enforcing agency shall take into consideration the
13 nature, circumstances, extent, and gravity of the violation, the
14 violator's past and present efforts to prevent, abate, or clean up
15 conditions posing a threat to the public health or safety or the
16 environment, the violator's ability to pay the proposed penalty,
17 and the effect that the proposed penalty would have on the violator
18 and the community as a whole.

19 (3) The penalty imposed under this subdivision shall not exceed
20 five hundred dollars (\$500) per day.

21 (4) Penalties collected under this subdivision shall be deposited
22 into the Flushable Wipes Fund, which is hereby created. Moneys
23 in the fund shall be subject to appropriation by the Legislature for
24 purposes of enforcing this part.

25 (e) (1) A covered entity that violates or threatens to violate this
26 part may be enjoined by the Attorney General in any court of
27 competent jurisdiction, and civil penalties may be assessed and
28 recovered in a civil action brought in any court of competent
29 jurisdiction in an amount not to exceed two thousand five hundred
30 dollars (\$2,500) for each violation.

31 (2) Moneys collected by the Attorney General pursuant to this
32 subdivision shall be deposited into the Unfair Competition Law
33 Fund established pursuant to Section 17206 of the Business and
34 Professions Code.

35 (f) To the extent that there is an inconsistency between this
36 section and a local standard or an updated performance standard
37 that imposes greater restrictions, the greater restrictions shall
38 prevail.

39 (g) The provisions of this part are severable. If any provision
40 of this part or its application is held invalid, that invalidity shall

1 ~~not affect other provisions or applications that can be given effect~~
2 ~~without the invalid provision or application.~~

3 49653. (a) A person who violates this part may be enjoined
4 in any court of competent jurisdiction.

5 (b) (1) A person who violates this part may be liable for a civil
6 penalty not to exceed two thousand five hundred dollars (\$2,500)
7 for each violation. That civil penalty may be assessed and
8 recovered in a civil action brought in any court of competent
9 jurisdiction.

10 (2) In assessing the amount of a civil penalty for a violation of
11 this part, the court shall consider all of the following:

12 (A) The nature, circumstances, extent, and gravity of the
13 violation.

14 (B) The violator's past and present efforts to prevent, abate, or
15 clean up conditions posing a threat to the public health or safety
16 or the environment.

17 (C) The violator's ability to pay the proposed penalty.

18 (D) The effect that the proposed penalty would have on the
19 violator and the community as a whole.

20 (E) Whether the violator took good faith measures to comply
21 with this part and when these measures were taken.

22 (F) The deterrent effect that the imposition of the penalty would
23 have on both the violator and the regulated community as a whole.

24 (G) Any other factor that justice may require.

25 (c) Actions may be brought pursuant to this section by the
26 Attorney General in the name of the people of the state, by a district
27 attorney, by a city attorney, or by a city prosecutor in a city or city
28 and county having a full-time city prosecutor.

29 (d) (1) Civil penalties collected pursuant to this section shall
30 be paid to the office of the city attorney, city prosecutor, district
31 attorney, or Attorney General, whichever office brought the action.

32 (2) Moneys collected by the Attorney General pursuant to this
33 subdivision shall be deposited into the Unfair Competition Law
34 Fund established pursuant to Section 17206 of the Business and
35 Professions Code.

36 49654. The provisions of this part are severable. If any
37 provision of this part or its application is held invalid, that

- 1 *invalidity shall not affect other provisions or applications that can*
- 2 *be given effect without the invalid provision or application.*

O