

HB 2344-5
(LC 1178)
4/5/21 (TSB/ps)

Requested by HOUSE COMMITTEE ON WATER (at the request of Representative Ken Helm)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2344**

1 On page 1 of the printed bill, line 2, delete “creating new provisions;
2 amending ORS 646.607;”.

3 Delete lines 5 through 28 and delete pages 2 through 5 and insert:

4 **“SECTION 1. (1) As used in sections 1 to 3 of this 2021 Act:**

5 **“(a) ‘Covered entity’ means:**

6 **“(A) The manufacturer of a covered product that is sold or offered
7 for sale in this state; and**

8 **“(B) A wholesaler, supplier or retailer that has contractually
9 undertaken responsibility to a manufacturer for labeling or packaging
10 a covered product.**

11 **“(b) ‘Covered product’ means a consumer product that is sold or
12 offered for sale in this state and that is:**

13 **“(A) A premoistened nonwoven disposable wipe marketed as a baby
14 wipe or diapering wipe; or**

15 **“(B) A premoistened nonwoven disposable wipe that is:**

16 **“(i) Composed partly or entirely of petrochemical-derived fibers; and**

17 **“(ii) Likely to be used in or near a bathroom and has significant
18 potential to be flushed, including baby wipes, bathroom cleaning
19 wipes, toilet cleaning wipes, hard surface cleaning wipes, disinfecting
20 wipes, hand sanitizing and other sanitizing wipes, antibacterial wipes,
21 facial and makeup removal wipes, general purpose cleaning wipes,**

1 personal care wipes for use on the body, feminine hygiene wipes, adult
2 incontinence wipes, adult hygiene wipes and body cleansing wipes.

3 “(c) ‘High contrast’ means:

4 “(A) Provided by either a light symbol on a solid dark background
5 or a dark symbol on a solid light background; and

6 “(B) Having at least 70 percent contrast between the symbol art-
7 work and background using the formula $[(B1 - B2) / B1] * 100$, where
8 B1 is the light reflectance value of the relatively lighter area and B2
9 is the light reflectance value of the relatively darker area.

10 “(d) ‘Label notice’ means the phrase ‘Do Not Flush’ displayed at a
11 size that is equal to at least two percent of the surface area of the
12 principal display panel, except as follows:

13 “(A) For a covered product regulated under the Federal Hazardous
14 Substances Act, 15 U.S.C. 1261 et seq., and regulations of the United
15 States Consumer Product Safety Commission in 16 C.F.R. 1500.121, if
16 the label notice requirements in this paragraph would result in a type
17 size larger than first aid instructions required under the Federal Haz-
18 ardous Substances Act or regulations of the United States Consumer
19 Product Safety Commission, the type size for the label notice must,
20 to the extent permitted under federal law, be equal to or greater than
21 the type size required for the first aid instructions; and

22 “(B) For covered products required to be registered by the United
23 States Environmental Protection Agency under the Federal
24 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., if the
25 label notice requirements in this paragraph would result in a type size
26 on the principal display panel that is larger than a warning required
27 under the Federal Insecticide, Fungicide, and Rodenticide Act, the
28 type size for the label notice must, to the extent permitted under fed-
29 eral law, be equal to or greater than the type size required for the
30 ‘Keep out of reach of children’ statement.

1 “(e) ‘Principal display panel’ means the side of the product package
2 that is most likely to be displayed, presented or shown under custom-
3 ary conditions of display for retail sale and that:

4 “(A) For a cylindrical or nearly cylindrical product package, con-
5 stitutes 40 percent of the product package, as measured by multiplying
6 the height of the container by the circumference; or

7 “(B) For a flexible film package in which a rectangular or nearly
8 rectangular prism stack of wipes is housed within the film, the surface
9 area of the principal display panel is measured by multiplying the
10 length by the width of the side of the package when the flexible
11 packaging film is pressed flat against the stack of wipes on all sides
12 of the stack.

13 “(f) ‘Special district’ means a special district, as defined in ORS
14 197.015, that provides wastewater services.

15 “(g) ‘Symbol’ means the ‘Do Not Flush’ symbol or its equivalent,
16 as depicted in the INDA/EDANA Code of Practice, Second Edition, and
17 published within ‘Guidelines for Assessing the Flushability of Dispos-
18 able Nonwoven Products,’ as in effect on the effective date of this 2021
19 Act. The symbol must be sized equal to at least two percent of the
20 surface area of the principal display panel, except as specified in sub-
21 section (2)(a)(B)(iii) of this section.

22 “(2) Except as otherwise provided in this section, a covered product
23 that is manufactured after July 1, 2022, must be labeled clearly and
24 conspicuously in accordance with the following requirements:

25 “(a) For cylindrical or nearly cylindrical packaging intended to
26 dispense individual wipes, a covered entity shall:

27 “(A) Place the symbol and label notice on the principal display
28 panel in a location that is reasonably viewable each time a wipe is
29 dispensed; or

30 “(B) Place the symbol on the principal display panel and either the

1 symbol or label notice, or the symbol and label notice in combination,
2 on the flip lid subject to the following requirements:

3 “(i) If the label notice does not appear on the flip lid, the label no-
4 tice must be placed on the principal display panel.

5 “(ii) The symbol or label notice, or the symbol and label notice in
6 combination, on the flip lid may be embossed, in which case the sym-
7 bol or label notice, or the symbol and label notice in combination, do
8 not need to comply with the requirement set forth in paragraph (f) of
9 this subsection.

10 “(iii) The symbol or label notice, or the symbol and label notice in
11 combination, on the flip lid must cover a minimum of eight percent
12 of the surface area of the flip lid.

13 “(b) For flexible film packaging intended to dispense individual
14 wipes, a covered entity shall place the symbol on the principal display
15 panel and dispensing side panel and place the label notice on either the
16 principal display panel or dispensing side panel, in a prominent lo-
17 cation reasonably visible to the user each time a wipe is dispensed. If
18 the principal display panel is on the dispensing side of the package,
19 two symbols are not required.

20 “(c) For refillable tubs or other rigid packaging intended to dispense
21 individual wipes and be reused by the consumer for that purpose, a
22 covered entity shall place the symbol and label notice on the principal
23 display panel in a prominent location reasonably visible to the user
24 each time a wipe is dispensed.

25 “(d) For packaging not intended to dispense individual wipes, a
26 covered entity shall place the symbol and label notice on the principal
27 display panel in a prominent and reasonably visible location.

28 “(e) A covered entity shall ensure that the packaging seams, folds
29 or other package design elements do not obscure the symbol or the
30 label notice.

1 “(f) A covered entity shall ensure that the symbol and the label
2 notice have sufficiently high contrast with the immediate background
3 of the packaging to render them more likely to be seen and read by
4 the ordinary individual under customary conditions of purchase and
5 use.

6 “(3) For covered products sold in bulk at retail, both the outer
7 package visible at retail and the individual packages contained within
8 must comply with the labeling requirements set forth in subsection (2)
9 of this section that apply to the particular packaging types, except the
10 following:

11 “(a) Individual packages contained within the outer package that
12 are not intended to dispense individual wipes and contain no retail
13 labeling; and

14 “(b) Outer packages that do not obscure the symbol and label notice
15 on individual packages contained within.

16 “(4) If a covered product is provided within the same packaging as
17 another consumer product for use in combination with the other
18 product, the outside retail packaging of the other consumer product
19 does not need to comply with the labeling requirements of subsection
20 (2) of this section.

21 “(5) If a covered product is provided within the same packaging as
22 another consumer product for use in combination with the other
23 product and is in a package smaller than three inches by three inches,
24 the covered entity may comply with the requirements of subsection (2)
25 of this section by placing the symbol and label notice in a prominent
26 location reasonably visible to the user of the covered product.

27 “(6) A covered entity, directly or through a corporation, partner-
28 ship, subsidiary, division, trade name or association in connection to
29 the manufacturing, labeling, packaging, advertising, promotion, of-
30 fering for sale, sale or distribution of a covered product, may not make

1 any representation, in any manner, expressly or by implication, in-
2 cluding through the use of a product name, endorsement, depiction,
3 illustration, trademark or trade name, about the flushable attributes,
4 flushable benefits, flushable performance or flushable efficacy of a
5 covered product.

6 “(7) If a covered product is required to be registered by the United
7 States Environmental Protection Agency under the Federal
8 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and
9 the State Department of Agriculture under ORS chapter 634, the cov-
10 ered entity, to the extent permitted under federal law, shall submit a
11 label compliant with the labeling requirements of subsection (2) of this
12 section no later than July 1, 2023, to the United States Environmental
13 Protection Agency and, upon its approval, to the State Department
14 of Agriculture, which shall review the label of the covered product in
15 the manner authorized under ORS chapter 634 and administrative
16 rules adopted under ORS chapter 634. Compliance with the labeling
17 requirements of subsection (2) of this section is not a requirement for
18 pesticide registration under ORS chapter 634.

19 “(8) If the United States Environmental Protection Agency and the
20 State Department of Agriculture do not approve a product label that
21 otherwise complies with the labeling requirements of subsection (2)
22 of this section, the covered entity shall use a label with as many of
23 the requirements of this section as the agency and the department
24 have approved.

25 “(9) A covered entity may include on a covered product words or
26 phrases in addition to those required for the label notice if the words
27 or phrases are consistent with purposes of this section.

28 “(10) Except as expressly authorized by state law, this section su-
29 persedes and preempts any ordinance or other regulation enacted be-
30 fore, on or after the effective date of this 2021 Act by the governing

1 body of a city, county or other political subdivision of this state that
2 governs labeling requirements for covered products.

3 **“SECTION 2. Within 90 days after receiving a request from a city,**
4 **county or special district that provides wastewater service, a covered**
5 **entity shall submit to the city, county or special district business in-**
6 **formation and documentation that is not confidential and that dem-**
7 **onstrates compliance with section 1 of this 2021 Act. The information**
8 **must be written and organized for ease of comprehension.**

9 **“SECTION 3. (1) A city, county or special district that provides**
10 **wastewater service has exclusive and concurrent authority to enforce**
11 **compliance with the requirements of section 1 of this 2021 Act. Selling,**
12 **or displaying for sale, a product package that does not comply with**
13 **the requirements of section 1 of this 2021 Act is a violation for which**
14 **the city, county or special district may bring an action to recover a**
15 **civil penalty in the amounts set forth in subsection (2)(b) of this sec-**
16 **tion. Selling, or displaying for sale, multiple units of the same**
17 **noncompliant product package is part of the same violation.**

18 **“(2)(a) Except as provided in paragraph (c) of this subsection, before**
19 **bringing an action to recover a civil penalty for a violation, a city,**
20 **county or special district that provides wastewater services shall send**
21 **to the alleged violator a written notice of violation, dated with the**
22 **date of mailing, and shall include a copy of the provisions of section**
23 **1 of this 2021 Act.**

24 **“(b) If a covered entity sells or displays for sale a product package**
25 **that does not comply with the requirements of section 1 of this 2021**
26 **Act after receiving the notice described in paragraph (a) of this sub-**
27 **section, the city, county or special district may bring an action to re-**
28 **cover:**

29 **“(A) A civil penalty of not more than \$2,000 for a first violation that**
30 **occurs between 90 days and 120 days after the date of the notice;**

1 **“(B) An additional civil penalty of not more than \$5,000 for a second**
2 **violation or for a first violation that continues for more than 120 days**
3 **after the date of the notice; and**

4 **“(C) An additional civil penalty of not more than \$10,000 for a third**
5 **and any subsequent violation or for a first violation that continues**
6 **during any part of each 30-day period that follows the period described**
7 **in subparagraph (B) of this paragraph.**

8 **“(c) For the purposes of the notice requirement set forth in para-**
9 **graph (a) of this subsection, a product package is the same product**
10 **package, and the city, county or special district need not send a sep-**
11 **arate notice of violation, if within 90 days after the date of the notice**
12 **the covered entity changes the product package in a manner that is**
13 **unrelated to compliance with the requirements of section 1 of this 2021**
14 **Act.**

15 **“(d) If a covered entity has paid a previous penalty for the same**
16 **violation to another jurisdiction that has enforcement authority under**
17 **this section, the penalty imposed on the covered entity must be re-**
18 **duced by the amount of the covered entity’s previous payment.**

19 **“(3) A covered entity shall pay any civil penalty imposed under this**
20 **section to the city, county or special district that brought the action**
21 **to recover the civil penalty.**

22 **“(4) In addition to the amount of any civil penalty imposed, a city,**
23 **county or special district may recover reasonable enforcement costs**
24 **and attorney fees.**

25 **“SECTION 4. Sections 1 to 3 of this 2021 Act become operative on**
26 **July 1, 2022.**

27 **“SECTION 5. This 2021 Act takes effect on the 91st day after the**
28 **date on which the 2021 regular session of the Eighty-first Legislative**
29 **Assembly adjourns sine die.”.**

30 _____