

March 7, 2023

Senator Robert Rodriguez, Chair
Senate Committee on Business, Labor, & Technology
Colorado General Assembly
200 E Colfax
RM 346
Denver, CO 80203

RE: Comments by INDA, the Association of the Nonwoven Fabrics Industry Regarding SB 150

Dear Chair Rodriguez and Committee Members:

On behalf of INDA, the Association of the Nonwoven Fabrics Industry, thank you for the opportunity to provide input on SB 150. INDA's member companies include almost all wipes fabric makers, wipes manufacturers, and some brand owners operating in North America. Our members are committed to the design and marketing of wipes products to meet the expectations of consumers, while minimizing post-consumer impacts on municipal wastewater infrastructure and the environment.

INDA and its members recognize that municipal wastewater treatment facilities are having difficulties with consumers flushing certain wipes that were not designed nor labeled to be disposed of in the toilet and we are committed to being a part of the solution to that challenge. As such, we support efforts to decrease the amount of non-flushable products being flushed by consumers. We are very supportive of the goal of SB 150 and respectfully suggest a few amendments to align the legislation with other states from a definition and enforcement standpoint.

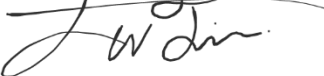
Given that the inappropriate consumer disposal of non-flushable wipes is a primary source of sewer system challenges, our industry has made a concerted effort to work cooperatively with wastewater treatment stakeholders throughout the country to jointly develop legislation that focuses on mandating enhanced Do Not Flush labeling of non-flushable wipes to enhance consumer understanding of proper disposal habits.

This industry-wastewater collaboration to date has been productive and we are pleased to report that Washington state adopted such a consensus law in March 2020, while similar measures were signed into law in Oregon ([HB 2344](#)), Illinois ([SB 294](#)) and California ([AB 818](#)) in 2021. These measures have enjoyed such strong support throughout numerous states because they represent the collaboration of and consensus among wastewater and industry stakeholders and are broadly recognized as a common-sense solution to address the problem at hand as documented by these forensic studies.

INDA has supported labeling requirements similar to SB 150 in multiple states such as Oregon and Illinois and we appreciate the great effort that went into crafting this legislation. We respectfully wanted to share a few suggested amendments related to the definition of covered products, label registration with EPA and the Colorado Department of Agriculture, preemption of local ordinances, and enforcement that would align this bill with what has been successful in other states. Our suggested amendment language is attached.

Thank you for the opportunity to provide input on this important legislation. If you or other members of the Committee have any questions about our position, please do not hesitate to call.

Sincerely,



Wes Fisher
Director of Government Affairs
INDA, Association of the Nonwoven Fabrics Industry

First Regular Session Seventy-fourth General Assembly STATE OF
COLORADO INTRODUCED

LLS NO. 23-0338.01 Yelana Love x2295

SENATE BILL 23-150

SENATE SPONSORSHIP

Roberts and Will, Kolker

HOUSE SPONSORSHIP

Froelich and Frizell, Lukens

Senate Committees House Committees Business, Labor, & Technology

*A BILL FOR AN ACT CONCERNING A REQUIREMENT THAT CERTAIN PERSONS LABEL
DISPOSABLE WIPES.*

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Starting December 31, 2023, the bill requires each entity described below to label packages of premoistened, nonwoven disposable wipes (covered product) with the phrase "Do Not Flush":

! A manufacturer of a covered product that is sold or offered for sale in this state; and

! A wholesaler, supplier, or retailer that is responsible for the labeling or packaging of a covered product.

The bill specifies that a knowing or reckless violation of the requirements of the bill is a deceptive trade practice under the "Colorado Consumer Protection Act".

Be it enacted by the General Assembly of the State of Colorado:SECTION1.

In Colorado Revised Statutes, add article 18.9 to title 25 as follows:

ARTICLE 18.9 Disposable Wipes 25-18.9-101. Legislative
declaration.

(1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) OVER THE PAST SEVERAL YEARS, CONSUMER DEMAND FOR PREMOISTENED, DISPOSABLE WIPE PRODUCTS, INCLUDING BABY WIPES, SURFACE CLEANING WIPES, HAND SANITIZING WIPES, AND MAKEUP REMOVAL WIPES, HAS SIGNIFICANTLY INCREASED;

(b) THESE WIPE PRODUCTS ARE COMPOSED, ENTIRELY OR IN PART, OF PETROCHEMICAL-DERIVED FIBERS THAT WERE NEVER DESIGNED TO BE FLUSHED DOWN TOILETS;

(c) CONSUMER CONFUSION HAS RESULTED IN MILLIONS OF THESE NONFLUSHABLE WIPES BEING IMPROPERLY DISPOSED OF BY BEING FLUSHED DOWN TOILETS;

(d) WIPES THAT WERE NOT DESIGNED TO BE FLUSHED DO NOT BREAK DOWN LIKE TOILET PAPER, SO WHEN IMPROPERLY DISPOSED OF IN TOILETS, THE WIPES OFTEN CAUSE SEWER BLOCKAGE AND OVERFLOW, CLOG PIPES AND MECHANICAL EQUIPMENT, RELEASE PLASTIC MATERIALS AND WASTEWATER INTO WATERWAYS, AND BLOCK PRIVATE DRAIN LINES, WHICH CAN RESULT IN FLOODED HOMES AND BUSINESSES;

(e) THE NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES HAS DETERMINED THAT UNITED STATES MUNICIPALITIES AND WASTEWATER TREATMENT PROVIDERS INCUR COSTS IN EXCESS OF ONE BILLION DOLLARS ANNUALLY ON MAINTENANCE TO REMOVE CLOGS CAUSED BY WIPES; AND

(f) CLEAR "DO NOT FLUSH" LABELING ON THE PACKAGES FOR WIPES THAT ARE NOT DESIGNED TO BE FLUSHED IS A CRITICAL STEP IN HELPING CONSUMERS PRACTICE RESPONSIBLE FLUSHING HABITS, WHICH IN TURN LEADS TO HEALTHIER HOMES AND COMMUNITIES AND THE PROTECTION OF THE ENVIRONMENT, WATERWAYS, AND PUBLIC INFRASTRUCTURE USED FOR THE COLLECTION, TRANSPORT, AND TREATMENT OF WASTEWATER.

25-18.9-102.Definitions.

AS USED IN THIS ARTICLE 18.9:

(1) "COVERED ENTITY" MEANS:

(a) THE MANUFACTURER OF A COVERED PRODUCT THAT IS SOLD OR OFFERED FOR SALE IN THIS STATE; AND

(b) A WHOLESALER, SUPPLIER, OR RETAILER THAT IS RESPONSIBLE FOR THE LABELING OR PACKAGING OF A COVERED PRODUCT.

(2) (a) "COVERED PRODUCT" MEANS A CONSUMER PRODUCT SOLD OR OFFERED FOR SALE IN THIS STATE THAT IS:

(I) A PREMOISTENED, NONWOVEN DISPOSABLE WIPE MARKETED AS A BABY WIPE OR DIAPERING WIPE; OR

(II) A PREMOISTENED, NONWOVEN DISPOSABLE WIPE THAT IS:

(A) COMPOSED ENTIRELY OF OR IN PART OF PETROCHEMICAL-DERIVED FIBERS; AND

(B) LIKELY TO BE USED IN A BATHROOM WITH SIGNIFICANT POTENTIAL TO BE FLUSHED;

~~(b) "COVERED PRODUCT" INCLUDES, INCLUDING~~ BABY WIPES, BATHROOM CLEANING WIPES, TOILET CLEANING WIPES, HARD SURFACE CLEANING WIPES, DISINFECTING WIPES, HAND SANITIZING WIPES, ANTIBACTERIAL WIPES, FACIAL CLEANSING WIPES, 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.

(3) "HIGH CONTRAST" MEANS:

(a) TONAL CONTRAST THAT IS SHOWN BY EITHER A LIGHT SYMBOL ON A SOLID DARK BACKGROUND OR A DARK SYMBOL ON A SOLID LIGHT BACKGROUND; AND

(b) HAVING AT LEAST SEVENTY PERCENT CONTRAST BETWEEN THE SYMBOL ARTWORK AND BACKGROUND USING THE FORMULA $[(B1!B2) \div B1] \times 100$, WHERE:

(I) B1 IS THE LIGHT REFLECTANCE VALUE OF THE RELATIVELY LIGHTER AREA; AND

(II) B2 IS THE LIGHT REFLECTANCE VALUE OF THE RELATIVELY DARKER AREA.

(4) "LABEL" MEANS A REPRESENTATION MADE BY STATEMENT, WORD, PICTURE, DESIGN, OR EMBLEM ON A COVERED PRODUCT PACKAGE, WHETHER AFFIXED TO OR WRITTEN DIRECTLY ON THE PACKAGE.

(5) "LABEL NOTICE" MEANS:

(a) THE PHRASE "DO NOT FLUSH" IN A SIZE EQUAL TO AT LEAST TWO PERCENT OF THE SURFACE AREA OF THE PRINCIPAL DISPLAY PANEL;

(b) FOR COVERED PRODUCTS REGULATED PURSUANT TO THE "FEDERAL HAZARDOUS SUBSTANCES ACT", 15 U.S.C. SEC. 1261 ET SEQ., AS AMENDED, BY THE FEDERAL CONSUMER PRODUCT SAFETY COMMISSION UNDER 16 CFR 1500.121, THAT IF AT LEAST TWO PERCENT OF THE SURFACE AREA OF THE PRINCIPAL DISPLAY PANEL WOULD RESULT IN A TYPE SIZE LARGER THAN FIRST AID INSTRUCTIONS PURSUANT TO THE "FEDERAL HAZARDOUS SUBSTANCES ACT", THEN, TO THE EXTENT PERMITTED BY FEDERAL LAW, THE PHRASE "DO NOT FLUSH" IN TYPE SIZE EQUAL TO OR GREATER THAN THE TYPE SIZE REQUIRED FOR THE FIRST AID INSTRUCTIONS; AND

(c) FOR COVERED PRODUCTS REQUIRED TO BE REGISTERED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY UNDER THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", 7 U.S.C. SEC. 136 ET SEQ., AS AMENDED, THAT IF AT LEAST TWO PERCENT OF THE SURFACE AREA OF THE PRINCIPAL DISPLAY PANEL WOULD RESULT IN A TYPE SIZE ON THE PRINCIPAL DISPLAY PANEL LARGER THAN A WARNING PURSUANT TO THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", THEN, TO THE EXTENT PERMITTED BY FEDERAL LAW, THE PHRASE "DO NOT FLUSH" IN A TYPE SIZE EQUAL TO OR GREATER THAN THE TYPE SIZE REQUIRED FOR THE "KEEP OUT OF REACH OF CHILDREN" STATEMENT REQUIRED UNDER 40 CFR 156.66.

(6) "PRINCIPAL DISPLAY PANEL" MEANS THE SIDE OF A PRODUCT PACKAGE THAT IS MOST LIKELY TO BE DISPLAYED, PRESENTED, OR SHOWN UNDER CUSTOMARY CONDITIONS OF DISPLAY FOR RETAIL SALE.

(7) "SYMBOL" MEANS THE "DO NOT FLUSH" SYMBOL, OR A SYMBOL THAT IS EQUIVALENT, 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, WHICH IS IN A SIZE EQUAL TO AT LEAST TWO PERCENT OF THE SURFACE AREA OF THE PRINCIPAL DISPLAY PANEL, EXCEPT AS SPECIFIED IN SECTION 25-18.9-104 (1)(a)(II)(C).

25-18.9-103.Determination of surface area of a principal display panel.

(1) FOR A CYLINDRICAL OR NEARLY CYLINDRICAL PACKAGE, THE SURFACE AREA OF THE PRINCIPAL DISPLAY PANEL CONSTITUTES FORTY PERCENT OF THE PRODUCT PACKAGE AS MEASURED BY MULTIPLYING THE HEIGHT OF THE CONTAINER BY THE CIRCUMFERENCE.

(2) FOR A FLEXIBLE FILM PACKAGE IN WHICH A RECTANGULAR PRISM OR NEARLY RECTANGULAR PRISM STACK OF WIPES IS HOUSED WITHIN THE FILM, THE SURFACE AREA OF THE PRINCIPAL DISPLAY PANEL IS MEASURED BY MULTIPLYING THE LENGTH BY 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.

25-18.9-104.Labeling requirements - exceptions.

(1) EXCEPT AS PROVIDED IN SUBSECTIONS (2), (3), (4), AND (6) OF THIS SECTION, A COVERED PRODUCT MANUFACTURED ON OR AFTER DECEMBER 31, 2023, SHALL BE LABELED CLEARLY IN ADHERENCE TO THE FOLLOWING REQUIREMENTS:

(a) FOR CYLINDRICAL OR NEAR CYLINDRICAL PACKAGING INTENDED TO DISPENSE INDIVIDUAL WIPES, A COVERED ENTITY SHALL:

(I) PLACE THE SYMBOL AND LABEL NOTICE ON THE PRINCIPAL DISPLAY PANEL IN A LOCATION REASONABLY VIEWABLE EACH TIME A WIPE IS DISPENSED; OR

(II) 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:

(A) IF THE LABEL NOTICE DOES NOT APPEAR ON THE FLIP LID, THE LABEL NOTICE SHALL BE PLACED ON THE PRINCIPAL DISPLAY PANEL;

(B) 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 SUBSECTION (1)(f) OF THIS SECTION; AND

(C) THE SYMBOL OR LABEL NOTICE, OR THE SYMBOL AND LABEL NOTICE IN COMBINATION, ON THE FLIP LID MUST COVER A MINIMUM OF EIGHT PERCENT OF THE SURFACE AREA OF THE FLIP LID.

(b) (I) FOR FLEXIBLE FILM PACKAGING INTENDED TO DISPENSE INDIVIDUAL WIPES, A COVERED ENTITY SHALL:

(A) PLACE THE SYMBOL ON BOTH THE PRINCIPAL DISPLAY PANEL AND THE DISPENSING SIDE PANEL; AND

(B) PLACE THE LABEL NOTICE ON EITHER THE PRINCIPAL DISPLAY PANEL OR DISPENSING SIDE PANEL IN A PROMINENT LOCATION REASONABLY VISIBLE TO THE USER EACH TIME A WIPE IS DISPENSED.

(II) IF THE PRINCIPAL DISPLAY PANEL IS ON THE DISPENSING SIDE OF THE PACKAGE, TWO SYMBOLS ARE NOT REQUIRED.

(c) FOR 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.

(d) FOR 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.

(e) A COVERED ENTITY SHALL ENSURE THAT THE PACKAGING SEAMS, FOLDS, OR OTHER PACKAGE DESIGN ELEMENTS DO NOT OBSCURE THE SYMBOL OR THE LABEL NOTICE.

(f) A COVERED ENTITY SHALL ENSURE THAT THE SYMBOL AND LABEL NOTICE HAVE SUFFICIENTLY HIGH CONTRAST WITH THE IMMEDIATE BACKGROUND OF THE PACKAGING TO RENDER THE SYMBOL AND LABEL NOTICE LIKELY TO BE SEEN AND READ BY AN ORDINARY INDIVIDUAL UNDER CUSTOMARY CONDITIONS OF PURCHASE AND USE.

(2) FOR COVERED PRODUCTS SOLD IN BULK AT RETAIL, BOTH THE OUTER PACKAGE VISIBLE AT RETAIL AND THE INDIVIDUAL PACKAGES CONTAINED WITHIN MUST COMPLY WITH THE LABELING REQUIREMENTS IN THIS SECTION APPLICABLE TO THE PARTICULAR PACKAGING TYPES, EXCEPT FOR:

(a) INDIVIDUAL PACKAGES CONTAINED WITHIN THE OUTER PACKAGE THAT ARE NOT INTENDED TO DISPENSE INDIVIDUAL WIPES AND CONTAIN NO RETAIL LABELING; AND

(b) OUTER PACKAGES THAT DO NOT OBSCURE THE SYMBOL AND LABEL NOTICE ON INDIVIDUAL PACKAGES CONTAINED WITHIN.

(3) IF A COVERED PRODUCT IS PROVIDED WITHIN THE SAME PACKAGING AS ANOTHER CONSUMER PRODUCT FOR USE IN COMBINATION WITH THE OTHER CONSUMER PRODUCT, THE OUTSIDE RETAIL PACKAGING OF THE OTHER CONSUMER PRODUCT DOES NOT NEED TO COMPLY WITH THE LABELING REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION.

(4) 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 RESPONSIBLE FOR THE LABELING OR PACKAGING OF THE COVERED PRODUCT MAY COMPLY WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION BY PLACING THE SYMBOL AND LABEL NOTICE IN A PROMINENT LOCATION REASONABLY VISIBLE TO THE USER OF THE COVERED PRODUCT.

(5) A COVERED ENTITY, DIRECTLY OR THROUGH A CORPORATION, PARTNERSHIP, SUBSIDIARY, DIVISION, TRADE NAME, OR ASSOCIATION IN CONNECTION WITH 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.

(6) (a) IF A COVERED PRODUCT IS REQUIRED TO BE REGISTERED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY UNDER THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", 7 U.S.C. SEC. 136 ET SEQ., AS AMENDED, AND THE DEPARTMENT OF AGRICULTURE UNDER THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35, THEN THE COVERED ENTITY, TO THE EXTENT PERMITTED UNDER FEDERAL LAW, SHALL SUBMIT A LABEL COMPLIANT WITH THE LABELING REQUIREMENTS OF THIS SECTION NO LATER THAN DECEMBER 31, 2023, TO THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND, UPON ITS APPROVAL, TO THE DEPARTMENT OF AGRICULTURE, WHICH SHALL REVIEW THE LABEL OF THE COVERED PRODUCT IN THE MANNER AUTHORIZED UNDER THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35 AND ADMINISTRATIVE RULES ADOPTED UNDER THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35-

(b) IF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY DOES NOT APPROVE A PRODUCT LABEL THAT OTHERWISE COMPLIES WITH THE LABELING REQUIREMENTS OF THIS SECTION, THE COVERED ENTITY SHALL USE A LABEL THAT COMPLIES WITH AS MANY OF THE REQUIREMENTS OF THIS SECTION AS THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY HAS APPROVED.

(7) 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 SECTION.

(8) EXCEPT AS EXPRESSLY AUTHORIZED BY STATE LAW, THIS SECTION SUPERSEDES AND PREEMPTS ANY ORDINANCE OR OTHER REGULATION ENACTED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS ACT BY THE GOVERNING BODY OF A CITY, COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT GOVERNS LABELING REQUIREMENTS FOR COVERED PRODUCTS.

25-18.9-105.Enforcement.

(1) A COVERED ENTITY THAT KNOWINGLY OR RECKLESSLY VIOLATES THE LABELING REQUIREMENTS OR ANY OTHER REQUIREMENT OR PROHIBITION SPECIFIED IN SECTION 25-18.9-104 ENGAGES IN A DECEPTIVE TRADE PRACTICE PURSUANT TO SECTION 6-1-105 (1)(e).

(2) THE ATTORNEY GENERAL SHALL HAVE EXCLUSIVE AUTHORITY TO ENFORCE THIS LAW.

SECTION 2.Act subject to petition - effective date.

This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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