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THIRD READING

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Bill No: SB 1249  
Author: Galgiani (D)  
Amended: 4/30/18  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 5-1, 4/24/18  
AYES: Jackson, Hertzberg, Monning, Stern, Wieckowski  
NOES: Anderson  
NO VOTE RECORDED: Moorchach

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/25/18  
AYES: Lara, Beall, Bradford, Hill, Wiener  
NOES: Bates, Nielsen

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**SUBJECT:** Animal testing: cosmetics

**SOURCE:** Physicians Committee for Responsible Medicine  
Social Compassion in Legislation

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**DIGEST:** This bill makes it unlawful for a manufacturer of cosmetic products to knowingly import for profit, sell at retail, or offer for sale or promotional purposes at retail in this state, any cosmetic if the final product or any component thereof was tested on animals for any purpose after January 1, 2020, as specified. This bill provides that violations are punishable by an initial \$5,000 fine and an additional \$1,000 for each day the violation continues, as specified. The provisions of the bill take effect on January 1, 2020.

**ANALYSIS:** Existing law prohibits manufacturers and contract testing facilities from using traditional animal testing methods within this state when an appropriate alternative test method has been scientifically validated and recommended by the Inter-Agency Coordinating Committee for the Validation of Alternative Methods or other specified agencies. However, this does not prohibit the use of animal tests to comply with requirements of: state agencies; or federal agencies when the federal agency has approved an alternative nonanimal test, as specified above, and

the federal agency staff concludes that the alternative nonanimal test does not assure the health or safety of consumers. (Civ. Code Sec. 1834.9.)

This bill:

- 1) Provides that notwithstanding any other law, it is unlawful for a manufacturer to knowingly import for profit, sell at retail, or offer for sale or promotional purposes at retail in this state, any cosmetic if the final product or any component thereof was tested on animals for any purpose after January 1, 2020.
- 2) Specifies that the above prohibitions do not apply to a cosmetic or component of the cosmetic under any of the following circumstances:
  - animal testing of the cosmetic or component of the cosmetic is required by the federal Food and Drug Administration or the Department of Toxic Substances Control, and there is no alternative method to evaluate a substantiated and serious specific human health problem associated with the cosmetic or component of the cosmetic that is in wide use and cannot be replaced with another cosmetic or component capable of performing a similar function; or
  - only until January 1, 2023, animal testing of a cosmetic or component of the cosmetic is conducted to comply with a formal requirement of a foreign regulatory authority if the requirement was in place prior to January 1, 2020.
- 3) Provides the following definitions:
  - “animal testing” means the internal or external application of a cosmetic to the skin, eyes, or other body part of a live, nonhuman vertebrate.
  - “cosmetic” means both of the following: any article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, including, but not limited to, personal hygiene products such as deodorant, shampoo, or conditioner; or any article intended for use as a component of an article described above.
  - “manufacturer” means any person whose name appears on the label of a cosmetic product pursuant to the requirements of Section 701.12 of Title 21 of the Code of Federal Regulations.
  - “tested on animals” means that a cosmetic or component of the cosmetic has been subject to animal testing.

- 4) Provides that a violation of its provisions shall be punishable by a \$5,000 fine in addition to \$1,000 for each day the violation continues.
- 5) Provides that a violation of this section may be enforced by the district attorney of the county in which the violation occurred, or by the city attorney of the city in which the violation occurred.
- 6) Provides that the civil fine shall be paid to the entity that is authorized to bring the action.
- 7) Provides that a district attorney or city attorney may, but is not required to, review the testing data upon which a cosmetic manufacturer has relied in the development or manufacturing of any cosmetic products sold in the state.
- 8) Specifies that the provisions of the bill do not apply to a cosmetic if the cosmetic, or any component of the cosmetic, was tested on animals prior to January 1, 2020, even if the cosmetic is manufactured after that date.
- 9) Provides that it becomes operative on January 1, 2020.

## **Background**

In 2000, California became the first state in the nation to make it unlawful to use animals for testing cosmetics. Specifically, SB 2082 (O'Connell, Chapter 476, Statutes of 2000) prohibited manufacturers and contract testing facilities from using traditional animal testing methods within this state when an appropriate alternative test method has been scientifically validated and recommended by the Inter-Agency Coordinating Committee for the Validation of Alternative Methods or other specified agencies. In 2014, the California Legislature passed the Cruelty Free Cosmetics Resolution, SJR 22 (Block, Resolution Chapter 73, Statutes of 2014), urging Congress to prohibit animal testing for cosmetics and to phase out marketing animal-tested cosmetics.

As detailed in SJR 22, animals have been used in tests to assess the safety of chemicals used in cosmetic products for over 50 years. However, modern alternatives to animal testing exist. In fact, the European Union now prohibits the importation and sale of cosmetics that have been tested on animals.

This author seeks to enact the toughest cruelty-free bill in the nation. Specifically, this bill would make it unlawful for a manufacturer of cosmetic products to knowingly import for profit, sell at retail, or offer for sale or promotional purposes

at retail in this state, any cosmetic if the final product or any component thereof was tested on animals for any purpose after January 1, 2020, as specified. This bill would provide that violations are punishable by an initial \$5,000 fine and an additional \$1,000 for each day the violation continues.

### **Comments**

*Exceptions to liability.* There are instances under which animal testing of the cosmetic or component is arguably reasonable. In recognition of this, the bill sets forth exceptions under which the manufacturer would not be liable for the animal tested cosmetic or component under the bill. The first is when animal testing of the cosmetic or component of the cosmetic is required by the federal Food and Drug Administration (FDA) or the Department of Toxic Substances Control (DTSC) and there is no alternative method to evaluate a substantiated and serious specific human health problem associated with the cosmetic or component of the cosmetic that is in wide use and cannot be replaced with another cosmetic or component capable of performing a similar function. This is arguably an appropriate exception since the testing was *required* by these governmental entities.

A second exception in the bill is when animal testing of a cosmetic or component of the cosmetic is conducted to comply with a formal *requirement* of a foreign regulatory authority if the requirement was in place prior to January 1, 2020. According to the proponents, this exception exists to help those manufacturers who sell products in China. This exception would sunset on January 1, 2023.

With regard to the example of DTSC's mandated tests, the bill provides that the manufacturers would not be in violation of this law if the animal testing on the product or component was required by the DTSC or the FDA.

Staff has heard from opposition that China requires animal testing on cosmetic products and component parts if a cosmetic company seeks to sell cosmetic products in China. Staff has not been able to confirm that China *requires* animal testing on cosmetics. Staff has asked for a copy of the Chinese regulatory documents regarding the testing. Staff has not been furnished with a copy that staff can read. The copy provided to staff was in Chinese. If, in the future, the Legislature is able to confirm that China requires animal testing on cosmetics and if the Legislature is able to ascertain with certainty when these tests are required, the author may wish to consider amendments to the bill that are tailored to the actual regulations.

*Additional consideration.* As currently drafted, the bill would subject manufacturers to civil fines if a component in their cosmetic was tested on animals after January 1, 2020. There may be instances where ethical cosmetic manufacturers inadvertently use a component that was tested on animals. They may have no knowledge for a number of years and then gain the knowledge when they are fined. Even though the manufacturer had no knowledge and was led to believe the component was not tested on animals, the manufacturer would be subject to fines. One might argue that this is an unfair result. However, a manufacturer could contract with her or his supplier of components in such a way that the supplier would be responsible for any fines or fees that arise if the component turns out to have been tested on animals after January 1, 2020.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Committee on Appropriations:

Unknown, potentially-significant cost pressures to the court to adjudicate actions filed for importing, selling, or offering for sale a cosmetic product that was tested on animals, as specified. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. (General Fund\*)

\*Trial Court Trust Fund

**SUPPORT:** (Verified 5/25/18)

Physicians Committee for Responsible Medicine (co-source)

Social Compassion in Legislation (co-source)

American Anti-Vivisection Society

Animal Legal Defense Fund

Beauty Without Cruelty

Coastal Classic Creations

Creations

e.l.f. Cosmetics, Inc.

Educate. Advocate.

Empower Family California

Gaffer&Child

The Humane Society of the United States

New England Anti-Vivisection Society

Purity Cosmetics

Roots The Beauty Underground

Supervisor Katy Tang, City and County of San Francisco, District 4  
Over four thousand individuals

**OPPOSITION:** (Verified 5/25/18)

American Chemistry Council  
California Chamber of Commerce  
California Manufacturers and Technology Association  
California Retailers Association  
Chemical Industry Council of California  
House Cleaning Products Association  
Infra North America  
Personal Care Products Council

**ARGUMENTS IN SUPPORT:** The author writes:

For more than 50 years animals have been used in painful tests to assess the safety of chemicals used in cosmetics products. Thankfully, today, modern approaches that are cheaper, faster, and can better predict human reactions are widely available. In fact, more than 30 countries around the world now require their use. Non-animal approaches use engineered three-dimensional human skin tissues or other types of cells and sophisticated computer models. These tests ensure the safety of cosmetics and their ingredients without animals. Many have been approved by the Organization for Economic Co-operation and Development as official Test Guidelines.

More and more countries around the world are moving away from cruel animal testing. The European Union ended importation and sale of any new cosmetics that have been tested on animals in 2013. India and Israel have since followed suit, and more are on the way. Americans also want cosmetic products that are cruelty free. Multiple polls show that US consumers support ending animal testing for cosmetics, and a 2015 Nielsen poll found that “not tested on animals” was the most important consumer packaging claim for respondents across all age groups. Unfortunately, inaction at the federal level now compels California to lead the way in ensuring a cruelty-free cosmetics market for all Californians.

By prohibiting the sale or promotion of any cosmetic if the final product or any components thereof have been tested on animals after the date of enactment, SB 1249 will bring California humane standards in line with the world’s highest. Still, the Act allows for two exceptions to the ban. The

first exception is allowed where the animal testing was done as a requirement of the Federal Drug Administration or Department of Toxic Substances Control and there is no alternative method to evaluate a substantiated and serious specific human health problem associated with the cosmetic or component thereof that is in wide use and cannot be replaced with another cosmetic or component capable of performing a similar function. The second exception, which allows animal testing of the cosmetic or component thereof that is conducted to comply with a formal requirement of a foreign regulatory authority and where such foreign regulatory authority requirements were in place prior to January 1, 2020, shall sunset on January 1, 2023, leaving California as the world leader in manufacturing and marketing of cruelty-free cosmetics.

In fact, California has long been a leader in promoting modern alternatives to animal tests. In 2000, California became the first state to make it unlawful to use animals for testing cosmetics when an appropriate alternative method is available. In 2014, the California Legislature passed the Cruelty Free Cosmetics Resolution urging Congress to prohibit animal testing for cosmetics and to phase out marketing animal-tested cosmetics. SB 1249 is simply the next step in California's path of leadership on animal testing issues.

In support of the bill, e.l.f. Cosmetics, Inc., explains:

In the United States, there is no law or regulatory framework requiring these products to be tested on animals to demonstrate product safety. While some countries, such as China, require animal testing for cosmetics and other products, many companies like ours pursue strategies for avoiding these animal testing requirements.

**ARGUMENTS IN OPPOSITON:** The American Chemistry Council, California Chamber of Commerce, California Manufacturers and Technology Association, California Retailers Association, Chemical Industry Council of California, House Cleaning Products Association, Infra North America, and Personal Care Products Council, in opposition to the bill, assert:

Companies now only consider animal testing when mandated by government bodies or, in rare cases, for safety evaluations of new ingredients when no viable alternative is available. Despite this progress, we are continually challenged by state and federal mandates requiring

specific animal tests – such as those required by California’s Department of Toxic Substances Control - which are a condition for placing products on the market.

The American Chemistry Council, California Chamber of Commerce, California Manufacturers and Technology Association, California Retailers Association, Chemical Industry Council of California, House Cleaning Products Association, Infra North America, and Personal Care Products Council, in opposition to the bill, also assert:

As written, the bill would make a cosmetic manufacturer liable for animal testing done on any component or ingredient by anyone, anywhere, for any reason- except when required by the federal Food and Drug Administration or the Department of Toxic Substances Control, or when there is no alternative method to evaluate a serious human health problem. These exemptions would not cover testing by an accredited lab or university testing an ingredient for potential reproductive toxicity or carcinogenicity. It is common for independent studies to be conducted on individual chemicals, without any involvement of the manufacturer. For example, the state’s qualified experts under the Office of Environmental Health Hazard Assessment (OEHHA) rely on carcinogenicity, developmental and reproductive toxicity studies conducted on rodents when determining whether or not a substance should be added to the Proposition 65 list. In addition, OEHHA uses animal studies when determining the No Significant Risk Levels or Maximum Allowable Dose Levels for listed chemicals, which helps responsible parties determine when a Prop. 65 warning must be provided.

To place liability on a manufacturer to pull products from sale in California, the moment an ingredient is tested on an animal, regardless of the conclusion of the test or the manufacturers’ knowledge of the testing, would be unworkable.

Prepared by: Margie Estrada / JUD. / (916) 651-4113  
5/26/18 14:42:21

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