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SENATE BILL NO. 1642

Senate Amendments in [] - January 22, 2019

A *BILL to amend and reenact § 3.2-6591 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 65 of Title 3.2 a section numbered 3.2-6594, relating to cosmetics; animal testing; prohibition; penalty.*

Patrons Prior to Engrossment—Senators Boysko, Stanley, Ebbin, Locke, Marsden, McPike, Saslaw, Spruill and Surovell; Delegates: Delaney, Hope, Kory and Simon

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-6591 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 65 of Title 3.2 a section numbered 3.2-6594 as follows:

§ 3.2-6591. Definitions.

As used in this article, unless the context requires a different meaning:

"Alternative test method" means a test method that (i) provides information of equivalent or better scientific quality and relevance than animal test methods, (ii) has been identified by a validation body and adopted by the relevant federal agency or program within an agency responsible for regulating the specific product or activity for which the test is being conducted, and (iii) does not use animals, or, when there is no test method available that does not use animals, uses the fewest animals possible and reduces the level of suffering or stress, to the greatest extent possible, of an animal used for testing. "Alternative test method" includes computational toxicology and bioinformatics, high-throughput screening methods, testing of categories of chemical substances, tiered testing methods, ~~in vitro~~ *in vitro* studies, and systems biology and new or revised methods.

"Animal" means any live vertebrate nonhuman animal.

"Animal test method" means a process or procedure that uses animals to obtain information on the characteristics of a chemical or agent or the biological effect of exposure to a chemical or agent under specified conditions.

"Contract testing facility" means any partnership, corporation, association, or other legal relationship that tests chemicals, ingredients, product formulations, or products on behalf of another entity.

"Cosmetic" means 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 personal hygiene products such as deodorant, shampoo, or conditioner.

"Cosmetics animal test" means the internal or external application of a cosmetic, either in its final form or any ingredient thereof, to the skin, eyes, or other body part of an animal on or before January 1, 2020.

"Cosmetics manufacturer" means any person whose name appears on the label of a cosmetic product pursuant to the requirements of 21 CFR 701.12 [and that produces such cosmetic product in the Commonwealth] .

"Cosmetics supplier" means any entity that supplies, directly or through a third party, any ingredient used in the formulation of a cosmetic.

"Manufacturer" means any partnership, corporation, association, or other legal entity that produces chemicals, ingredients, product formulations, or products.

"Validation body" means an organization that seeks to facilitate development, validation, and regulatory acceptance of new and revised regulatory test methods that reduce, refine, or replace the use of animals in testing, such as the Interagency Coordinating Committee on the Validation of Alternative Methods or other similar organizations.

§ 3.2-6594. Cosmetic products animal testing.

A. No cosmetics manufacturer shall import for profit, sell, or offer for sale any cosmetic for which a cosmetics animal test was conducted by or contracted for or on behalf of such cosmetics manufacturer or cosmetics supplier.

B. Such prohibition shall not apply to a cosmetic for which the cosmetics animal test was:

1. Required by a federal or state regulatory authority and (i) the tested ingredient is in wide use and cannot be replaced by another ingredient capable of performing a similar function, (ii) a specific human health problem is substantiated and the need to conduct animal tests is justified and is supported by a detailed research protocol proposed as the basis for the evaluation, and (iii) there is no alternative test

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58 *method accepted for the relevant endpoint by the relevant federal or state regulatory authority;*

59 *2. Conducted to comply with a requirement of a foreign regulatory authority, if no evidence derived*
60 *from such test was relied upon to substantiate the safety of a cosmetic sold within Virginia by the*
61 *cosmetics manufacturer;*

62 *3. Conducted on any product or ingredient subject to the requirements of Chapter V of the Federal*
63 *Food, Drug, and Cosmetic Act (21 U.S.C. § 351 et seq.); or*

64 *4. Conducted for a noncosmetic purpose in response to a formal requirement of a federal, state, or*
65 *foreign regulatory authority, if no evidence derived from the test was relied upon to substantiate the*
66 *safety of a cosmetic sold in Virginia by a cosmetics manufacturer. Nothing in this subdivision shall*
67 *prohibit a cosmetics manufacturer from reviewing, assessing, or retaining evidence from a cosmetics*
68 *animal test.*

69 *C. Any retailer found to be selling a cosmetic for which a cosmetics animal test was conducted shall*
70 *be permitted to sell any remaining stock of such product for 180 days after learning that a cosmetics*
71 *animal test was conducted for the product, but shall not restock, purchase, or acquire any additional*
72 *inventory of such cosmetic.*

73 *D. A district or city attorney may, upon a determination that there is a reasonable likelihood of a*
74 *violation of this section, review the testing data upon which a cosmetics manufacturer has relied in the*
75 *development or manufacturing of a cosmetic product sold in Virginia. Information provided under this*
76 *subsection shall be protected as a trade secret as defined in § 59.1-336. Consistent with the procedures*
77 *described in § 59.1-339, a district or city attorney shall enter a protective order with a cosmetics*
78 *manufacturer before receiving such information from the cosmetics manufacturer pursuant to this section*
79 *and shall take other appropriate measures necessary to preserve the confidentiality of information*
80 *provided pursuant to this subsection. Any such information received pursuant to this subsection shall not*
81 *be subject to disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

82 *E. The attorney for the Commonwealth in any jurisdiction in which a violation occurs may bring a*
83 *civil action in the appropriate circuit court for injunctive relief to enforce the provisions of this section.*
84 *Any cosmetics manufacturer who violates any provision of this section, upon such finding by an*
85 *appropriate circuit court, shall be subject to a civil penalty of up to \$5,000 and an additional \$1,000*
86 *for each day the violation continues. Such civil fine shall be paid to the entity that authorized bringing*
87 *the civil action.*

88 **2. That the provisions of this act shall become effective on January 1, 2020.**