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SENATE BILL NO. 1379

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-575, relating to Humane Cosmetics Act; civil penalties.

Patrons—Boysko and Stanley

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-575, as follows:

CHAPTER 52.

HUMANE COSMETICS ACT.

§ 59.1-571. Definitions.

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

"Cosmetic" has the meaning given such term in § 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321).

"Cosmetic animal testing" means the internal or external application or exposure of any cosmetic to the skin, eyes, or other body part of a live non-human vertebrate for purposes of evaluating the safety or efficacy of a cosmetic.

"Cosmetics manufacturer" means any person whose name appears on the label of a cosmetic product pursuant to the requirements of 21 C.F.R. § 701.12.

§ 59.1-572. Prohibited conduct.

A. No person shall conduct or contract for cosmetic animal testing that occurs in the Commonwealth on or after July 1, 2021.

B. Except as provided in subsection C, no cosmetics manufacturer shall sell, offer for sale, or transport within the Commonwealth on or after January 1, 2022, any cosmetic if the final product or any component thereof was developed or manufactured using cosmetic animal testing that was conducted or contracted for on or after July 1, 2021. Merely reviewing, assessing, or retaining evidence from a cosmetic animal test shall not constitute developing or manufacturing using cosmetic animal testing for purposes of this chapter.

C. The prohibitions in subsections A and B shall not apply to a cosmetic for which the cosmetics animal testing 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 that justifies the need to conduct the cosmetic animal testing and such testing is supported by a detailed research protocol proposed as the basis for the evaluation of the cosmetic or ingredient, and (iii) there does not exist a method of testing other than animal testing that is accepted for the relevant purpose by the federal or state regulatory agency.

2. Required by a foreign regulatory agency of a foreign jurisdiction and conducted outside the United States, so long as no evidence derived from such test was relied upon to substantiate the safety of a cosmetic sold within Virginia by the cosmetics manufacturer;

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

4. Required by a federal, state, or foreign regulatory agency for a purpose unrelated to cosmetics, provided that either no evidence derived from such testing was relied upon to substantiate the safety of the cosmetic or there is (i) no non-animal alternative method or strategy recognized by any federal agency or the Organisation for Economic Co-operation and Development for the relevant safety endpoints for such ingredient, (ii) documented evidence of a noncosmetic intent of the test, and (iii) a history of use of the ingredient outside of cosmetics for at least 12 months prior to such reliance.

§ 59.1-573. Investigation; trade secrets.

Any attorney for the Commonwealth may, upon a determination that there is a reasonable likelihood of a violation of this chapter, review the testing data upon which a cosmetics manufacturer has relied in the development or manufacturing of a cosmetic product sold in Virginia. Information provided under this chapter shall be protected as a trade secret as defined in § 59.1-336. Consistent with the procedures described in § 59.1-339, an attorney for the Commonwealth shall enter a protective order with a cosmetics manufacturer before receiving such information from the cosmetics manufacturer

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pursuant to this chapter and shall take other appropriate measures necessary to preserve the confidentiality of information provided pursuant to this chapter. Any such information received pursuant to this chapter shall not be subject to disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 59.1-574. Civil penalties.

The attorney for the Commonwealth in any jurisdiction in which a violation occurs may bring a civil action in the appropriate circuit court for injunctive relief to enforce the provisions of this chapter. Any person who violates any provision of this chapter shall be subject to a civil penalty of up to $5,000 and an additional $1,000 for each day the violation continues. Such civil penalty shall be paid to the entity that authorized bringing the civil action.

§ 59.1-575. Local regulation prohibited unless identical.

No locality may establish or continue any regulation relating to cosmetic animal testing that is not identical to the provisions set forth in this chapter.