

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 540
Finance

(Senator Lam, *et al.*)

Public Health - Prohibition on Testing Cosmetics on Animals

This bill prohibits a person (1) beginning October 1, 2020, from conducting or contracting for “cosmetic animal testing” in the development of a cosmetic and (2) beginning October 1, 2021, from selling, offering for sale, or transporting within the State, any cosmetic if the final product or any individual component of the final product was developed or manufactured using “cosmetic animal testing” on or after October 1, 2020. The bill establishes civil penalties for a violation of these provisions.

Fiscal Summary

State Effect: Assuming cases are heard in the District Court, general fund revenues increase minimally due to the bill’s penalty provisions. Assuming the bill’s prohibitions are primarily implemented by local law enforcement, the bill does not materially affect State expenditures.

Local Effect: Assuming the bill’s prohibitions are primarily implemented by local law enforcement on a complaint basis, local expenditures may increase minimally to enforce the bill’s prohibitions. Assuming cases are heard in the District Court, local revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Cosmetic animal testing” means the internal or external application or exposure of a cosmetic to the skin, eye, or any other body part of a live nonhuman vertebrate for purposes of evaluating the safety or efficacy of the cosmetic.

A person who violates the bill's provisions is subject to a civil penalty of up to \$10,000 and may be enjoined from continuing the violation. Each violation of the bill's provisions with respect to a separate animal and each day on which a violation occurs is a separate violation. In determining the amount of the civil penalty for a violation of the bill's prohibitions, the court must consider (1) the person's history of previous violations; (2) the seriousness of the violation; and (3) whether the person demonstrated good faith in attempting to comply after notification of a violation.

Current Law/Background: State law is silent regarding cosmetic animal testing.

The federal Food, Drug, and Cosmetics Act prohibits the distribution of cosmetics that are adulterated or misbranded in interstate commerce. The Maryland Department of Health (MDH) implements the Maryland Food, Drug, and Cosmetic Act, which conforms to the federal act. "Cosmetic" is defined in Maryland statute as any substance, or any component of a substance, that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearance. "Cosmetic" does not include soap.

Under the federal Animal Welfare Act, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) regulates commercial animal dealers, exhibitors (circuses, zoos, etc.), research facilities, and commercial businesses that transport animals. Research facilities that use or intend to use live animals in research, tests, or experiments must be registered with USDA and are inspected by APHIS at least once per year. A facility must also appoint an Institutional Animal Care and Use Committee (IACUC) consisting of at least three members, including a veterinarian and one person who is not in any way affiliated with the facility. IACUC is responsible for, among other things, reviewing the facility's program for humane care and use of animals and inspecting the research facility's animal facilities.

Research facilities must submit an annual report to APHIS providing information that includes the types and numbers of animals used for teaching, testing, experiments, research, or surgery, by specified categories, and the types and numbers of animals being bred, conditioned, or held for use in teaching, testing, experiments, research, or surgery, but not yet used for such purposes.

State/Local Fiscal Effect: The bill is silent with regard to enforcement authority and any mechanisms for enforcement. The bill's prohibition is outside the scope of MDH's regulatory activities under the Maryland Food, Drug, and Cosmetics Act, and MDH does not regulate the methods used to develop and test products, particularly since many affected products are not developed or manufactured in-state. Thus, it is unclear how MDH will determine whether a product violates the bill's prohibitions. MDH advises that, to the

extent the department must implement the bill's prohibitions, general fund expenditures increase significantly to develop a new program and hire staff.

Further, cosmetic animal testing laboratories fall under the jurisdiction of USDA inspectors, not State inspectors. The Department of Legislative Services does not have information about whether there are any affected laboratories or facilities in the State.

Thus, it is assumed that the bill is primarily enforced on a complaint basis by local law enforcement. Local expenditures may increase minimally, beginning as early as fiscal 2021, to enforce the bill's prohibitions.

The bill is silent with regard to where any cases litigating the bill's prohibition are heard. It is assumed that cases are heard in the District Court. Thus, general fund revenues increase from any penalties assessed under the bill beginning in fiscal 2021. Local revenues are not affected.

Small Business Effect: The bill's prohibition beginning October 1, 2021, against the sale or transportation of any cosmetic product if the final product or any individual component of the final product was developed or manufactured using cosmetic animal testing (on or after October 1, 2020) has a significant impact on any small business that sells, transports, or manufactures cosmetic products in the State. Since many affected products are likely manufactured outside of the State, and there are no requirements to label products as being tested on animals, it may be difficult for stores or transportation companies to determine whether or not a particular cosmetic violates the bill's prohibition. The bill likely results in a decrease in sales. Expenditures increase for any small business that violates the bill's prohibitions and must pay the civil penalty.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of Health; U.S. Department of Agriculture; National Institutes of Health; U.S. Department of Health and Human Services; Department of Legislative Services

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an/jc

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