

Chapter 773

(House Bill 611)

AN ACT concerning

Public Health – Prohibition on Testing Cosmetics on Animals

FOR the purpose of prohibiting a person from conducting or contracting for animal testing in the development of a cosmetic; prohibiting a manufacturer from selling or offering for sale in the State a cosmetic under certain circumstances beginning on a certain date; providing that certain provisions of this Act do not apply to certain animal testing; prohibiting a political subdivision from adopting or enforcing certain provisions of local law; establishing certain penalties for certain violations of this Act; requiring a certain person to provide certain evidence under certain circumstances; authorizing a local law enforcement agency to enforce certain provisions of this Act; authorizing a State’s Attorney to seek certain relief and review certain testing data under certain circumstances; providing that certain testing data are entitled to certain protection; providing that certain penalty provisions are not applicable to violations of certain provisions of this Act; providing for the construction of certain provisions of this Act; defining certain terms; requiring a manufacturer with a certain inventory to sell or otherwise dispose of the inventory on or before a certain date; providing for a delayed effective date; and generally relating to a prohibition on testing cosmetics on animals.

BY adding to

Article – Health – General
Section 21–259.2
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General
Section 21–1215
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health – General

21–259.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ANIMAL TESTING” MEANS THE INTERNAL OR EXTERNAL APPLICATION OR EXPOSURE OF A COSMETIC OR ANY COMPONENT OF A COSMETIC TO THE SKIN, EYE, OR ANY OTHER BODY PART OF A LIVE NONHUMAN VERTEBRATE.

(3) “INGREDIENT” HAS THE MEANING STATED IN 21 C.F.R. § 700.3(E).

(4) “MANUFACTURER” MEANS ANY PERSON WHOSE NAME APPEARS ON THE LABEL OF A COSMETIC IN ACCORDANCE WITH THE REQUIREMENTS OF 21 C.F.R. § 701.12.

(B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A PERSON MAY NOT CONDUCT OR CONTRACT FOR ANIMAL TESTING IN THE DEVELOPMENT OF A COSMETIC.

(2) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, BEGINNING JULY 1, 2022, A MANUFACTURER MAY NOT SELL OR OFFER FOR SALE IN THE STATE A COSMETIC IF THE MANUFACTURER KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT THE FINAL PRODUCT OR ANY INDIVIDUAL COMPONENT OF THE FINAL PRODUCT WAS DEVELOPED OR MANUFACTURED USING ANIMAL TESTING THAT WAS CONDUCTED OR CONTRACTED BY OR FOR THE MANUFACTURER OR ANY ENTITY THAT SUPPLIES, DIRECTLY OR THROUGH A THIRD PARTY, ANY INGREDIENT USED BY A MANUFACTURER IN THE FORMULATION OF A COSMETIC ON OR AFTER JANUARY 1, 2022.

(C) THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION DO NOT APPLY TO ANIMAL TESTING THAT IS:

(1) CONDUCTED OR CONTRACTED TO COMPLY WITH A REQUIREMENT OF A FEDERAL OR STATE REGULATORY AGENCY IF:

(i) THE COSMETIC OR INGREDIENT IN THE COSMETIC THAT IS TESTED IS IN WIDE USE AND CANNOT BE REPLACED BY ANOTHER INGREDIENT THAT IS CAPABLE OF PERFORMING A SIMILAR FUNCTION IN THE PRODUCT;

(ii) A SPECIFIC HUMAN HEALTH PROBLEM RELATING TO THE COSMETIC OR AN INGREDIENT IN THE COSMETIC IS SUBSTANTIATED AND THE NEED TO CONDUCT ANIMAL TESTING IS JUSTIFIED AND SUPPORTED BY A DETAILED PROTOCOL FOR RESEARCH THAT IS PROPOSED AS THE BASIS FOR THE EVALUATION OF THE COSMETIC OR INGREDIENT IN THE COSMETIC; AND

(iii) ANIMAL TESTING IS THE ONLY METHOD OF TESTING THAT

IS ACCEPTED FOR THE RELEVANT PURPOSE BY THE FEDERAL OR STATE REGULATORY AGENCY;

(2) CONDUCTED OR CONTRACTED TO COMPLY WITH THE REQUIREMENT OF A REGULATORY AGENCY OF A FOREIGN JURISDICTION IF:

(I) NO EVIDENCE DERIVED FROM THE TESTING WAS RELIED ON TO SUBSTANTIATE THE SAFETY OF A COSMETIC SOLD BY THE MANUFACTURER WITHIN THE STATE; AND

(II) THE TESTING WAS NOT CONDUCTED IN THE STATE;

(3) PERFORMED ON A COSMETIC OR AN INGREDIENT IN A COSMETIC SUBJECT TO THE REQUIREMENTS OF SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT;

(4) CONDUCTED OR CONTRACTED TO COMPLY WITH A REQUIREMENT OF A FEDERAL, STATE, OR FOREIGN REGULATORY AGENCY FOR PURPOSES UNRELATED TO COSMETICS TESTING IF:

(I) NO EVIDENCE DERIVED FROM THE TESTING WAS RELIED ON TO SUBSTANTIATE THE SAFETY OF A COSMETIC SOLD BY THE MANUFACTURER WITHIN THE STATE; OR

(II) 1. DOCUMENTARY EVIDENCE DEMONSTRATES THAT THE INTENT OF THE TEST THAT WAS PERFORMED WAS UNRELATED TO COSMETICS TESTING; AND

2. THE INGREDIENT THAT WAS THE SUBJECT OF THE TESTING HAS BEEN USED FOR PURPOSES UNRELATED TO COSMETICS FOR AT LEAST 12 MONTHS; OR

(5) PERFORMED ON:

(I) A COSMETIC THAT, IN ITS FINAL FORM, WAS TESTED ON ANIMALS BEFORE JANUARY 1, 2022, WHETHER OR NOT THE COSMETIC IS MANUFACTURED ON OR AFTER JANUARY 1, 2022; OR

(II) A COSMETIC INGREDIENT THAT WAS SOLD IN THE STATE AND TESTED ON ANIMALS BEFORE JANUARY 1, 2022, WHETHER OR NOT THE INGREDIENT IS MANUFACTURED ON OR AFTER JANUARY 1, 2022, IF ANY ANIMAL TESTING OF THE COSMETIC INGREDIENT AFTER JANUARY 1, 2022, IS CONDUCTED OR RELIED ON IN ACCORDANCE WITH THIS SECTION.

(D) THIS SECTION MAY NOT BE CONSTRUED TO PREVENT A COSMETICS MANUFACTURER FROM REVIEWING, ASSESSING, OR RETAINING DATA RESULTING FROM ANIMAL TESTING.

(E) A POLITICAL SUBDIVISION OF THE STATE MAY NOT ADOPT OR ENFORCE A PROVISION OF A LOCAL LAW RELATING TO ANIMAL TESTING ON COSMETICS OR ANIMAL TESTING ON INGREDIENTS USED IN COSMETICS.

(F) (1) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY:

(I) NOT EXCEEDING \$5,000 FOR THE FIRST OFFENSE; AND

(II) NOT EXCEEDING \$1,000 FOR EACH SUBSEQUENT OFFENSE.

(2) EACH VIOLATION OF THIS SECTION WITH RESPECT TO A SEPARATE ANIMAL AND EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SECTION.

(3) IF A PERSON WHO IS ALLEGED TO HAVE VIOLATED THIS SECTION CLAIMS THE PROHIBITION IN SUBSECTION (B) OF THIS SECTION DOES NOT APPLY BECAUSE THE TESTING FALLS UNDER SUBSECTION (C)(1)(II) OF THIS SECTION, THE PERSON SHALL PROVIDE CLEAR, DOCUMENTED EVIDENCE OF THE DATE ON WHICH THE DATA WERE GENERATED.

(G) (1) A LOCAL LAW ENFORCEMENT AGENCY MAY ENFORCE THE PROVISIONS OF THIS SECTION.

(2) (I) THE STATE'S ATTORNEY FOR EACH COUNTY MAY SEEK APPROPRIATE RELIEF FOR VIOLATIONS OF THIS SECTION.

(II) A STATE'S ATTORNEY, IN DETERMINING WHETHER A VIOLATION OF THIS SECTION OCCURRED, MAY REVIEW ANY TESTING DATA ON WHICH A MANUFACTURER HAS RELIED IN DETERMINING THE SAFETY OF A COSMETIC OR AN INGREDIENT IN A COSMETIC SOLD IN THE STATE.

(III) ANY TESTING DATA REVIEWED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH IS ENTITLED TO PROTECTION AS A TRADE SECRET.

21-1215.

(a) This section does not apply to a violation of § 21-220(b)(4) OR § 21-259.2 of this title.

(b) A person who violates any provision of Subtitle 2 of this title or any regulation adopted under Subtitle 2 of this title is guilty of a misdemeanor and on conviction is subject to:

(1) A fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both; or

(2) If the person has been convicted once of violating Subtitle 2 of this title, a fine not exceeding \$25,000 or imprisonment not exceeding 3 years or both.

(c) In addition to any criminal penalties imposed under this section, a person who violates any provision of Subtitle 2 of this title, any rule or regulation adopted under Subtitle 2 of this title, or any term, condition, or limitation of any license or registration issued under Subtitle 2 of this title:

(1) Is subject to a civil penalty not exceeding \$5,000, in an action in any District Court; and

(2) May be enjoined from continuing the violation.

(d) Each day on which a violation occurs is a separate violation under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That a manufacturer with inventory that would violate § 21–259.2 of the Health – General Article, as enacted by Section 1 of this Act, shall sell or otherwise dispose of the inventory on or before June 30, 2022.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2022.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.