

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 611

(Delegate Hill)

Health and Government Operations

Finance

Public Health - Prohibition on Testing Cosmetics on Animals

This bill prohibits a manufacturer, beginning July 1, 2022, from selling or offering for sale in the State, a cosmetic if the manufacturer knows or reasonably should have known that the final product or its individual components were developed or manufactured using animal testing conducted on or after January 1, 2022, as specified. The bill establishes a number of exemptions to this prohibition and establishes civil penalties. A local law enforcement agency may enforce the bill, and the State's Attorney for each county may seek appropriate relief for violations of the bill. A manufacturer with inventory that violates the bill must sell or otherwise dispose of the inventory by June 30, 2022. **The bill takes effect January 1, 2022.**

Fiscal Summary

State Effect: Assuming cases are heard in the District Court, general fund revenues increase minimally due to the bill's penalty provisions beginning as early as FY 2023. Assuming the bill's prohibitions are primarily implemented by local law enforcement, the bill does not materially affect State operations or finances.

Local Effect: Local expenditures may increase for any local jurisdiction that chooses to enforce the bill beginning as early as FY 2023. Assuming cases are heard in the District Court, local revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill's prohibition does not apply to animal testing that is (1) conducted or contracted to comply with a requirement of a State or federal regulatory agency if specified circumstances apply; (2) conducted or contracted to comply with a requirement of a regulatory agency of a foreign jurisdiction if no evidence derived from the testing was relied on to substantiate the safety of a cosmetic sold by the manufacturer within the State and 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, as specified; (5) performed on a cosmetic that, in its final form, was tested on or before January 1, 2022, whether or not the cosmetic is manufactured on or after that date; or (6) performed on a cosmetic ingredient that was sold in the State and tested on or before January 1, 2022, whether or not the ingredient is manufactured on or after that date, if any animal testing of the cosmetic ingredient after that date, is conducted or relied on in accordance with the bill.

The bill cannot be construed to prevent a cosmetics manufacturer from reviewing, assessing, or retaining data resulting from animal testing on cosmetics. The bill prohibits a political subdivision of the State from adopting or enforcing a provision of local law relating to animal testing on cosmetics or ingredients used in cosmetics.

A person who violates the bill's provisions is subject to a civil penalty of up to \$5,000 for the first offense and up to \$1,000 for each subsequent offense. Each violation to a separate animal, and on each day on which a violation occurs, is a separate violation. A person must provide clear, documented evidence of the date on which the data was generated in order to claim a specified exemption. The bill establishes review authority for a State's Attorney enforcing the bill and establishes certain protections for trade secrets.

Current Law: 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 implements the Maryland Food, Drug, and Cosmetic Act, which conforms to the federal act. Under § 21-101 Health-General Article, "cosmetic" means 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 research purposes during a particular year.

State Fiscal Effect: 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 as early as fiscal 2023.

Since the bill authorizes local law enforcement agencies to enforce the bill, it is assumed that the bill's enforcement primarily happens at the local level. However, the Department of Legislative Services (DLS) notes that cosmetic animal testing laboratories fall under the jurisdiction of USDA inspectors, not the State. DLS does not have information about whether there are any affected laboratories or facilities in the State.

Local Fiscal Effect: It is assumed that the bill is primarily enforced on a complaint basis by local law enforcement. Thus, local expenditures may increase minimally, beginning as early as fiscal 2023, to enforce the bill's prohibitions. Since it is assumed that cases are heard in the District Court, local revenues are not affected.

Small Business Effect: The bill's prohibition, beginning July 1, 2022, against selling or offering for sale any cosmetic product if the final product or any individual component of the final product was developed or manufactured using cosmetic animal testing, as specified and unless exempted, has a significant impact on any small business that sells or manufactures affected 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 manufacturing companies to determine whether or not a particular cosmetic violates the bill's prohibition. The bill may result 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: SB 729 of 2020, a nearly identical bill, passed the Senate with amendments and received a hearing in the House Health and Government Operations Committee, but no further action was taken. SB 540 of 2019, a related bill, received a hearing in the Senate Finance Committee, but no further action was taken.

Designated Cross File: SB 282 (Senator Lam) - Finance.

Information Source(s): Baltimore, Carroll, Harford, and St. Mary's counties; Maryland Association of County Health Officers; Maryland Association of Counties; City of Salisbury; Maryland Municipal League; towns of Bel Air and Leonardtown; Maryland State's Attorneys' Association; Maryland Department of Agriculture; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2021
an/jc Third Reader - March 18, 2021

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