FINAL BILL REPORT
ESHB 1097

C 107 L 24
Synopsis as Enacted

Brief Description: Concerning the sale of cosmetics tested on animals.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Walen, Goodman, Leavitt, Ramel, Peterson, Fitzgibbon, Macri, Simmons, Reeves, Thai, Gregerson, Stonier, Pollet, Kloba, Santos and Ormsby).

House Committee on Consumer Protection & Business
Senate Committee on Business, Financial Services, Gaming & Trade

Background:

The federal Food and Drug Administration is responsible for ensuring cosmetics are safe and properly labeled through enforcement of the Federal Food, Drug, and Cosmetic Act (FDCA). The FDCA does not require cosmetics to be tested on animals, and advises cosmetic manufacturers to employ whatever testing is appropriate and effective for substantiating the product's safety. It is the manufacturer's responsibility to substantiate safety.

Washington regulates intrastate commerce in drugs and cosmetics, including regulations prohibiting adulterated or misbranded cosmetics.

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. Persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees.

The Attorney General may also bring an action against any person to enjoin violations of the CPA and obtain restitution. The prevailing party may, at the discretion of the court, recover costs and attorney's fees. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Summary:

Beginning January 1, 2025, it is unlawful for manufacturers to sell or offer for sale in Washington a cosmetic that was developed or manufactured using cosmetic animal testing conducted or contracted for by the manufacturer or its supplier.

Definitions.
The following terms are defined:

- "Cosmetic" is defined as any article intended to be rubbed, poured, sprinkled, or sprayed on or otherwise applied to the human body for cleansing, promoting attractiveness, or altering the appearance, but does not include soap.
- "Cosmetic animal testing" is defined as the internal or external application or exposure of any cosmetic product or cosmetic ingredient to the skin, eyes, or other body part of a live, nonhuman vertebrate.
- "Cosmetic product" means a finished cosmetic, the manufacture of which has been completed, and "cosmetic ingredient" means any single chemical entity or mixture used as a component in the manufacture of a cosmetic, as defined in Food and Drug Administration federal regulations on January 1, 2025.
- "Manufacture" has the same meaning as "to manufacture" in the Washington business and occupancy tax chapter.

Exceptions.
Manufacturers may sell a cosmetic developed or manufactured using cosmetic animal testing conducted or contracted for by the manufacturer or its supplier when such cosmetic animal testing is:

- conducted outside of the United States to comply with a foreign regulatory authority's requirement, if evidence derived from the testing was not relied upon to substantiate the safety of the cosmetic ingredient or cosmetic product sold by a manufacturer in Washington;
- conducted for any cosmetic or cosmetic ingredient subject to regulation under applicable portions of the FDCA;
- conducted for a cosmetic ingredient intended to be used in a noncosmetic product, and is conducted under a federal, state, or foreign regulatory authority regulation, if evidence derived from the testing was not relied upon to substantiate the safety of a cosmetic sold in Washington, unless:
    - there is documented evidence of the noncosmetic intent of the test; and
    - there is history of the ingredient's use outside of cosmetics at least 12 months before the reliance; or
- requested, required, or conducted by a federal or state regulatory authority and the following additional criteria are satisfied:
    - there is no nonanimal alternative method or strategy recognized by any federal or state agency or organization;
    - the cosmetic ingredient or nonfunctional constituent poses a risk of causing a specific human health problem that is substantiated, and the need to conduct

animal testing is justified and supported by a detailed research protocol; and
- the cosmetic ingredient is in wide use and cannot be replaced by another cosmetic ingredient capable of performing a similar function.

The prohibition on manufacturers selling a cosmetic developed or manufactured using cosmetic animal testing conducted or contracted for by the manufacturer or its supplier does not apply when:

- a cosmetic in its final form, or ingredient in a cosmetic, was tested on animals before January 1, 2025, even if the cosmetic or ingredient is manufactured after January 1, 2025, provided that no new animal testing occurs after that date by or on the manufacturer's behalf; or
- a cosmetic manufacturer reviews, assesses, or retains evidence from a cosmetic animal test.

Enforcement and Preemption.
Manufacturers in violation of these regulations commit a civil violation punishable by a fine up to $5,000 for each violation.

No political subdivision may establish or continue any prohibition on or relating to cosmetic animal testing that is not identical to the prohibition established.

Votes on Final Passage:

House	90	3
Senate	48	1

Effective: January 1, 2025