

Enrolled
House Bill 3213

Sponsored by Representative NERON, Senators THATCHER, GORSEK; Representatives CHAICHI, DEXTER, FAHEY, GAMBA, GOMBERG, GRAYBER, HOLVEY, HUDSON, NOSSE, Senators CAMPOS, PATTERSON, SOLLMAN

CHAPTER

AN ACT

Relating to testing cosmetics on animals; creating new provisions; and amending ORS 180.095.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2023 Act:

(1) “Animal” means a live, nonhuman vertebrate.

(2)(a) “Cosmetic” means a product intended to be rubbed, poured, sprinkled, sprayed on, introduced into or otherwise applied to the human body, or any part thereof, for cleansing, beautifying, promoting attractiveness or altering an individual’s appearance.

(b) “Cosmetic” does not include soap.

(3) “Cosmetic animal test” means the internal or external application or exposure of any cosmetic, cosmetic ingredient or nonfunctional constituent to the skin, eyes, or any other body part, organ or extremity, of an animal.

(4) “Cosmetic ingredient” means an ingredient, as that term is defined in 21 C.F.R. 700.3(e).

(5) “Manufacturer” means a person whose name appears on the label of a cosmetic pursuant to the requirements of 21 C.F.R. 701.12.

(6) “Nonfunctional constituent” means an incidental ingredient described in 21 C.F.R. 701.3(l).

(7) “Supplier” means a person that supplies, directly or through a third party, any cosmetic ingredient used by a manufacturer in the formulation of a cosmetic.

SECTION 2. (1) A manufacturer may not sell or offer to sell in this state a cosmetic that was, on or after January 1, 2024, developed or manufactured using cosmetic animal tests conducted or contracted for by the manufacturer or any supplier of the manufacturer.

(2) This section does not apply to a cosmetic that has been developed through use of a cosmetic animal test if the cosmetic animal test was conducted:

(a) Pursuant to a requirement of a federal or state agency and all of the following apply:

(A) A specific human health problem in relation to the cosmetic ingredient or nonfunctional constituent is substantiated;

(B) The need to conduct a cosmetic animal test is:

(i) Justified; and

(ii) Supported by a detailed research protocol, proposed as the basis for evaluation of the cosmetic ingredient or nonfunctional constituent;

(C) There is no nonanimal alternative method or strategy recognized by any federal or state agency or the Organization for Economic Cooperation and Development for the relevant safety endpoints for the cosmetic ingredient or nonfunctional constituent; and

(D) The cosmetic ingredient or nonfunctional constituent is in wide use and, in the case of a cosmetic ingredient, cannot be replaced by another ingredient capable of performing a similar function.

(b) Outside of the United States, pursuant to a legal requirement of a foreign regulatory authority, provided that evidence derived from the testing was not relied upon to substantiate the safety of the cosmetic or cosmetic ingredient.

(c) Pursuant to a requirement established by 21 U.S.C. 351 to 360fff-8.

(d) For a cosmetic ingredient or nonfunctional constituent intended to be used in a product that is not a cosmetic and conducted pursuant to a requirement of a federal, state or foreign regulatory authority, provided that evidence from the cosmetic animal test is not relied upon to substantiate the safety or efficacy of the cosmetic or cosmetic ingredient unless all of the following apply:

(A) There is documented evidence of the noncosmetic intent of the test; and

(B) There is a history of use of the ingredient outside of cosmetics at least one year prior to any reliance on the cosmetic animal test to substantiate the safety or efficacy of the cosmetic or cosmetic ingredient.

(3) Nothing in this section prohibits a manufacturer or supplier from retaining, reviewing or assessing evidence from a cosmetic animal test.

(4) A city or county may not adopt or enforce any ordinance, rule or regulation establishing a prohibition on the sale of cosmetics that have been developed or manufactured using cosmetic animal tests unless the prohibition is identical to the provisions of this section.

SECTION 3. Section 2 of this 2023 Act does not apply to a cosmetic that:

(1) Has not been developed through use of a cosmetic animal test in violation of section 2 of this 2023 Act but was developed through use of a cosmetic animal test before the effective date of this 2023 Act, even if the cosmetic was manufactured after the effective date of this 2023 Act.

(2) Does not contain an ingredient that has been used in a cosmetic animal test in violation of section 2 of this 2023 Act but contains an ingredient that was used in a cosmetic animal test before the effective date of this 2023 Act, even if the ingredient was manufactured after the effective date of this 2023 Act.

SECTION 4. Notwithstanding section 2 of this 2023 Act:

(1) A cosmetic that does not meet the requirements of section 2 of this 2023 Act may be donated to a food bank, homeless shelter, hospital, animal shelter, corrections facility or emergency shelter.

(2) An entity described in subsection (1) of this section that receives a cosmetic donated pursuant to subsection (1) of this section may distribute the cosmetic to an individual who is receiving services from the entity.

SECTION 5. (1) If it appears to the Attorney General that a manufacturer has possession, custody or control of any information, document or other material that is relevant to an investigation of a violation of section 2 of this 2023 Act, or that could lead to the discovery of relevant information in an investigation of a violation of section 2 of this 2023 Act, the Attorney General may execute an investigative demand and may cause an investigative demand to be served upon the manufacturer. The investigative demand may require the person:

(a) To appear and testify under oath at the time and place stated in the investigative demand;

(b) To answer written interrogatories; or

(c) To produce relevant documentary material or physical evidence for examination at the time and place stated in the investigative demand.

(2) An investigative demand under this section shall be served in the manner provided by ORS 646.622 and may be enforced in the manner provided by ORS 646.626.

(3) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause including privileged material, may be filed in the appropriate court.

(4) Information submitted to the Attorney General under this section that is a trade secret, as defined in ORS 192.345, is confidential and is not subject to public disclosure under ORS 192.311 to 192.478.

SECTION 6. (1) The Attorney General may bring a civil action in the name of the state in any court of appropriate jurisdiction to:

(a) Impose a civil penalty under section 7 of this 2023 Act for violations of section 2 of this 2023 Act; or

(b) Obtain an injunction to restrain violations of section 2 of this 2023 Act.

(2) Civil penalties recovered under this section shall be deposited in the Department of Justice Protection and Education Revolving Account created under ORS 180.095.

SECTION 7. In addition to any other penalty provided by law, a manufacturer that sells or offers for sale a cosmetic in violation of section 2 of this 2023 Act incurs a civil penalty of not more than \$5,000 for the first day of the violation and not more than \$1,000 for each day that the violation continues.

SECTION 8. ORS 180.095 is amended to read:

180.095. (1) The Department of Justice Protection and Education Revolving Account is created in the General Fund. All moneys in the account are continuously appropriated to the Department of Justice and may be used to pay for only the following activities:

(a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;

(b) Consumer and business education relating to the laws governing antitrust and unlawful trade practices; and

(c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the department in investigating, preparing, commencing and prosecuting the following actions and suits, and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising out of the following actions and suits:

(A) Actions and suits under the state and federal antitrust laws;

(B) Actions and suits under ORS 336.184 and 646.605 to 646.656;

(C) Actions commenced under ORS 59.331; [and]

(D) Actions and suits under ORS 180.750 to 180.785[.]; and

(E) Actions and suits under section 6 of this 2023 Act.

(2) Moneys in the Department of Justice Protection and Education Revolving Account are not subject to allotment. Upon request of the Attorney General, the State Treasurer shall create sub-accounts within the account for the purposes of managing moneys in the account and allocating those moneys to the activities described in subsection (1) of this section.

(3) Except as otherwise provided by law, all sums of money received by the Department of Justice under a judgment, settlement, compromise or assurance of voluntary compliance, including damages, restitution, refunds, attorney fees, costs, disbursements and other recoveries, but excluding civil penalties under ORS 646.642, in proceedings described in subsection (1)(c) of this section shall, upon receipt, be deposited with the State Treasurer to the credit of the Department of Justice Protection and Education Revolving Account. However, if the action or suit was based on an expenditure or loss from a public body or a dedicated fund, the amount of such expenditure or loss, after deduction of attorney fees and expenses awarded to the department by the court or agreed to by the parties, if any, shall be credited to the public body or dedicated fund and the remainder thereof credited to the Department of Justice Protection and Education Revolving Account.

(4) If the Department of Justice recovers restitution or refunds in a proceeding described in subsection (1)(c) of this section, and the department cannot determine the persons to whom the

restitution or refunds should be paid or the amount of the restitution or refund payable to individual claimants is de minimis, the restitution or refunds may not be deposited in the Department of Justice Protection and Education Revolving Account and shall be deposited in the General Fund.

(5) Before April 1 of each odd-numbered year, the Department of Justice shall report to the Joint Committee on Ways and Means:

(a) The department's projection of the balance in the Department of Justice Protection and Education Revolving Account at the end of the biennium in which the report is made and at the end of the following biennium;

(b) The amount of the balance held for restitution and refunds;

(c) An estimate of the department's anticipated costs and expenses under subsection (1)(b) and (c) of this section for the biennium in which the report is made and for the following biennium; and

(d) Any judgment, settlement, compromise or other recovery, the proceeds of which are used for purposes other than:

(A) For deposit into the Department of Justice Protection and Education Revolving Account;

or

(B) For payment of legal costs related to the judgment, settlement, compromise or other recovery.

(6) The Joint Committee on Ways and Means, after consideration of recommendations made by the Department of Justice, shall use the information reported under subsection (5) of this section to determine an appropriate balance for the revolving account.

Passed by House April 18, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 22, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State