

Amendment No. 967

Assembly Amendment to Senate Bill No. 197 Second Reprint	(BDR 52-746)
<b>Proposed by:</b> Assemblywoman Swank	
<b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.





## SENATE BILL NO. 197—SENATORS SCHEIBLE; PARKS AND RATTI

FEBRUARY 18, 2019

JOINT SPONSOR: ASSEMBLYMAN FUMO

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to trade practices. (BDR 52-746)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trade practices; prohibiting the importation and sale of cosmetics for which testing was performed on an animal; providing ~~for a~~ *civil penalty* ~~and~~ *penalties*; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

This bill prohibits, under certain circumstances, a manufacturer from importing, selling or offering for sale in this State any cosmetic for which testing was performed on certain animals. This bill provides certain exemptions to the prohibition for certain animal testing that is performed pursuant to federal, state or foreign regulatory requirements or before a certain date. This bill also ~~[(1) provides that a manufacturer that violates the prohibition is liable for certain civil penalties, punitive damages, costs and fees; and (2) authorizes any person to maintain an action against a manufacturer that violates the prohibition and to seek an injunction and reasonable attorney's fees and costs.]~~ *makes a violation of the prohibition a deceptive trade practice subject to the civil and criminal penalties applicable thereto. (NRS 598.0999).* If ~~such an~~ *a civil or criminal* action *which is brought for a violation of the prohibition* involves any trade secrets, existing law *also* provides protections for the trade secrets. (NRS 49.325, 600A.070)

Additionally, this bill prohibits any political subdivision of this State or agency thereof from establishing or continuing prohibitions that are not identical to the provisions of this bill. This bill also allows an inventory of cosmetics which is otherwise in violation of the prohibition on or relating to animal testing to be sold on or before June 30, 2020.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter ~~597~~ *598* of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in this section, a manufacturer shall not import for profit, sell or offer for sale in this State any cosmetic for which the*

1 manufacturer knew or reasonably should have known that animal testing was  
2 conducted or contracted by or on behalf of the manufacturer or any supplier of  
3 the manufacturer if the animal testing was conducted on or after January 1,  
4 2020.

5 2. The prohibition in subsection 1 does not apply to animal testing that is  
6 conducted:

7 (a) To comply with a requirement of a federal or state regulatory agency if:

8 (1) The cosmetic or ingredient in the cosmetic which is tested is in wide  
9 use and cannot be replaced by another ingredient which is capable of performing  
10 a similar function;

11 (2) A specific human health problem relating to the cosmetic or  
12 ingredient is substantiated and the need to conduct animal testing is justified and  
13 supported by a detailed protocol for research that is proposed as the basis for the  
14 evaluation of the cosmetic or ingredient; and

15 (3) There does not exist a method of testing other than animal testing  
16 that is accepted for the relevant purpose by the federal or state regulatory agency.

17 (b) To comply with a requirement of a regulatory agency of a foreign  
18 jurisdiction, if no evidence derived from such testing was relied upon to  
19 substantiate the safety of a cosmetic sold within this State by the manufacturer.

20 (c) On any product or ingredient in the cosmetic subject to the requirements  
21 of Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 351  
22 et seq.

23 (d) ~~For~~ Except as otherwise provided in this paragraph, for purposes  
24 unrelated to cosmetics pursuant to a requirement of a federal, state or foreign  
25 regulatory agency, if ~~provided that~~ no evidence derived from such testing was  
26 relied upon to substantiate the safety of a cosmetic sold within this State by the  
27 manufacturer. A manufacturer is not prohibited from reviewing, assessing or  
28 retaining evidence from animal testing which is conducted pursuant to this  
29 paragraph. If evidence from such testing was relied upon for that purpose, the  
30 prohibition in subsection 1 does not apply if:

31 (1) Documentary evidence exists of the intent of the test which was  
32 unrelated to cosmetics; and

33 (2) The ingredient that was the subject of the testing has been used for  
34 purposes unrelated to cosmetics for not less than 12 months before the earliest  
35 date of the testing.

36 3. This section does not apply to:

37 (a) A cosmetic if the cosmetic in its final form was tested on animals before  
38 January 1, 2020, even if the cosmetic is manufactured on or after that date; ~~for~~

39 (b) An ingredient in a cosmetic if the ingredient was sold in this State and  
40 was tested on animals before January 1, 2020, even if the ingredient is  
41 manufactured on or after that date ~~for~~; or

42 (c) A manufacturer of cosmetics that reviews, assesses or retains evidence  
43 obtained from animal testing.

44 4. ~~A manufacturer that violates the provisions of subsection 1 is liable for:~~  
45 ~~(a) A civil penalty of not more than:~~

46 ~~(1) For the first violation, \$2,500; and~~

47 ~~(2) For the second or subsequent violation, \$5,000 for each violation;~~

48 ~~(b) Punitive damages of not more than \$10,000, if the facts warrant; and~~

49 ~~(c) The costs incurred to recover the civil penalty and, if applicable, punitive~~  
50 ~~damages, including, without limitation:~~

51 ~~(1) The costs, if any, of conducting an investigation into the violation;~~

52 ~~(2) Reasonable costs specified in NRS 18.005; and~~

53 ~~(3) Reasonable attorney's fees.~~

~~5. An action to recover the civil penalty and, if applicable, punitive damages may be brought by any person, including, without limitation, a consumer, a governmental agency, the Attorney General, a district attorney, a city attorney or a nonprofit organization that has an interest in preventing a manufacturer from violating the provisions of subsection 1, as appropriate. The action may be instituted in any court of competent jurisdiction in the city or county in which:~~

- ~~(a) Either party resides;~~
- ~~(b) The defendant may be found; or~~
- ~~(c) The violation occurred.~~

~~6. Except as otherwise provided in this subsection, any money awarded by a court pursuant to this section must be awarded to the person or governmental entity that brought the action. If a court imposes punitive damages pursuant to paragraph (b) of subsection 4, the amount of punitive damages:~~

~~(a) Must be awarded to the county in which the action was brought and used for costs associated with the shelter, care and impoundment of mistreated animals; and~~

~~(b) Is separate from, and in addition to, any other penalty, costs or fees awarded to the person or governmental entity that brought the action.~~

~~7. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.~~

~~8. In addition to any other remedy provided by law, any person may maintain an action against a manufacturer that violates the provisions of subsection 1, seek to enjoin the importation for profit, sale or offer for sale in this State a cosmetic described in subsection 1 and seek reasonable attorney's fees and costs.~~

~~9. No county, city, local government or other political subdivision of this State or agency thereof may establish or continue any prohibition on or relating to animal testing that is not identical to the prohibitions set forth in this section and that does not include the exemptions contained in this section.~~

~~10. 5. A violation of this section constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.~~

~~6. As used in this section:~~

~~(a) "Animal testing" means the internal or external application of a cosmetic, either in its final form or any ingredient thereof, to the skin, eyes or other body part of a live, nonhuman vertebrate.~~

~~(b) "Consumer" means a natural person.~~

~~(c) "Cosmetic" means any article intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, including, without limitation, personal hygiene products such as deodorant, shampoo or conditioner.~~

~~(d) (c) "Ingredient" has the meaning ascribed to it in 21 C.F.R. § 700.3(e).~~

~~(e) (d) "Manufacturer" means any person whose name appears on the label of a cosmetic pursuant to the requirements of 21 C.F.R. § 701.12.~~

~~(f) (e) "Supplier" means any entity that supplies, directly or through a third party, any ingredient used by a manufacturer in the formulation of a cosmetic.~~

**Sec. 2.** An inventory of cosmetics which is otherwise in violation of section 1 of this act on January 1, 2020, may be sold on or before June 30, 2020.

**Sec. 3.** This act becomes effective on January 1, 2020.