

October 26, 2017

MEMBER BRIEF

Bill S-214: Cruelty-Free Cosmetics Act

1. Bill Provisions & Analysis:

- Prohibit “cosmetic animal testing” in Canada (*Analysis: overly broad definition that requires intent for all uses of an ingredient before testing which is not always known*);
- Prohibit evidence derived from animal testing conducted after the coming into force of the bill to be submitted or used to establish the safety of a cosmetic or an ingredient of a cosmetic (*Analysis: no animal testing data could be used to demonstrate the safety of a new ingredient or new use of an existing ingredient, even if the data was generated for purposes other than the use of the ingredient in a cosmetic, and even if such use did not require the use of one additional animal*);
- Authorize the Minister to approve animal testing or the use of animal testing data where there is no alternative method to evaluate “substantiated specific human health problems associated with a cosmetic or ingredient of a cosmetic that is in wide use and cannot be replaced by another cosmetic capable of a similar function” (*Analysis: This definition for an exemption is too restrictive and, as improvements are often incremental, could be expected to limit innovation in important areas like new sunscreen actives or product preservatives*);
- For the Minister to provide such approval, the Minister must undertake public consultations before giving approval (*Analysis: This process can be expected to generate organized opposition and likely negative publicity to the applicant*);
- The Government may designate by regulation certain drugs that are to be treated as cosmetics, i.e. sunscreens or cosmetics with an SPF claim, oral care products, etc. (*Analysis: This will provide the government with the discretion to include in the ban “cosmetic-like” products that are currently classified as “drugs” or “NHP’s”*).

2. Our Objectives & Messages

- Cosmetics Alliance Canada and our member companies are supportive of affirming in legislation what is today, in fact, the reality - that the use of animal testing with respect to cosmetics is virtually non-existent in Canada, as well as most of the world.
- We appreciate the efforts of the bill’s sponsor Senator Stewart Olsen, the Humane Society, and Animal Alliance, all of whom we have met with regarding the bill.
- Our goal is the same – to reduce and ultimately eliminate the use of animals in safety or product testing. This is evident in the fact that the cosmetics industry internationally, including ingredient suppliers, have been leaders in the research and development of alternatives to animal testing and have made greater advances in their development and use than other sectors.
- Given the complexities of the current Canadian *Food & Drugs Act*, and the interplay with Environment Protection and Workplace Health & Safety regulatory requirements, we believe that amendments to S-214 are required to ensure clarity and avoid unintended consequences.

- **Problems with Bill S-214 as currently drafted:**

- it ignores the practical reality that most ingredients used in cosmetics are also used in other products, and that there are, in fact, few ingredients used exclusively in cosmetics
- it would not allow for the use of a new ingredient in a cosmetic (for example, a preservative) if animal testing data was required by Health Canada to demonstrate safety or efficacy, but at the same time it would allow the ingredient to be used in other consumer products such as foods, drugs, natural health products, household products, and more
- it prohibits a company who makes animal grooming products from testing, for example, a dog shampoo on a dog to evaluate how well it lathered and cleaned
- it does not clarify who is legally responsible for complying with the bill and inadvertently includes retailers, who are not responsible “manufacturers” as defined in the *Cosmetics Regulations*
- it limits Health Canada’s discretion to require or allow testing to protect human health and safety and significantly limits the ability of the Minister to exempt a new substance for use in cosmetics even if it is a safer alternative
- We believe there is opportunity to “get this right” under Health Canada’s major “Self-Care Products” regulatory reform now underway.
- It is critical that any amendments have the full engagement of Health Canada to avoid a host of further inconsistencies and unintended consequences that are now part of the current regulatory framework for cosmetics.
- We look forward to the opportunity to work with legislators, Health Canada, as well as other stakeholders like the Humane Society and Animal Alliance to produce a clear and functional bill that we all can support.

3. Progression of the Bill through the Legislative Process:

- Canada’s *Cruelty-Free Cosmetics Act* was first introduced to the Senate on June 18, 2015, spearheaded by Senator Stewart Olsen in consultation with Humane Society International/Canada and Animal Alliance of Canada as part of the #BeCrueltyFree campaign.
- The original bill died on the order paper with the dissolution of the 41st Parliament, but it was re-introduced on Dec. 10, 2015 as Bill S-214 (First Reading).
- The bill underwent Second Reading on Dec. 13, 2016 and was referred to Committee.
- On Oct. 5, 2017 the Senate Standing Committee presented their Report in the Senate with an amendment to the bill. The amendment extended the period of time to comply to four years after the bill’s coming into effect.
- On Oct. 17, 2017 the Senate proceeded to consideration of the Report of the Committee (*Bill S-214, An Act to amend the Food and Drugs Act (cruelty-free cosmetics), with amendments*). On motion of Senator Ringuette, the debate was adjourned.
- Once the Committee Report is adopted by the full Senate, the bill will then move to Third Reading in the Senate at which time amendments may still be possible.
- The Senate bill will then be sent to the House of Commons, which examines it in a similar three-reading process before being ready for Royal Assent. This will be a lengthy process with further opportunity for MP’s to amend the bill, defeat the bill, or introduce a new bill that works for all stakeholders including industry and Health Canada.
- If the bill is amended in the House, it will then go back to the Senate.

4. Our Actions to Date:

- CA has been actively engaged in this file since its introduction and has met with the bill's sponsor Senator Stewart Olsen and Senator Carrignon (Conservative Senate Leader) on multiple occasions, as well as many MPs. CA has also met with the Humane Society and Animal Alliance, and has corresponded with the Health Minister, the Prime Minister's Office, and others.
- CA's objectives in our outreach efforts is to convey industry's support for affirming in legislation what is today, in fact, the reality - that the use of animal testing with respect to cosmetics is virtually non-existent, while making the case that amendments to Bill S-214 are required to ensure clarity and avoid unintended consequences.
- CA secured a legal analysis of the bill which clearly conveys the many issues with how the bill is currently worded; CA has also drafted bill language that industry can support.
- CA met again with Senator Stewart Olsen on October 4, 2017 with the objective of presenting our proposed amendments. CA then presented to the Senate Committee later that same afternoon.
- CA has repeatedly offered to work with Senator Stewart Olsen, Health Canada as well as other stakeholders like the Humane Society and Animal Alliance to produce a clear and functional Bill that we can all support.

5. Going Forward:

- CA will continue to meet with Senators, MPs, and key stakeholders to pursue our objective of securing a bill that is workable for our members.