

REPUBLIC OF SOUTH AFRICA

ANIMALS PROTECTION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 43702 of
11 September 2020)*
(The English text is the official text of the Bill)

(MR. S N SWART, MP)

[B 1—2021]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Animals Protection Act, 1962, so as to insert a definition for “cosmetic”; to provide for a new offence related to the testing of a cosmetic, or part of or ingredient of a cosmetic, on an animal; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

Amendment of section 1 of Act 71 of 1962, as amended by section 12 of Act 7 of 1991

1. Section 1 of the Animals Protection Act, 1962 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of “animal” of the following definition: 5

“‘cosmetic’ means any article, preparation or substance, except a medicine as defined in the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), intended to be rubbed, poured, sprinkled, injected or sprayed on or otherwise applied to the human body, including the epidermis, hair, teeth, mucous membranes of the oral cavity, lips and external genital organs, for purposes of cleansing, perfuming, correcting body odours, conditioning, beautifying, protecting, promoting attractiveness or improving or altering the appearance, and includes any part or ingredient of any such article, preparation or substance;” 10

Amendment of section 2 of Act 71 of 1962, as amended by section 21 of Act 102 of 1972, section 3 of Act 54 of 1983, section 5 of Act 20 of 1985, section 13 of Act 7 of 1991, section 2 of Act 42 of 1993 and section 2 of Act 33 of 1997 15

2. Section 2 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (n) of the following paragraph: 20

“(nA) tests a cosmetic on an animal; or”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of—

(a) sub-section (1), the owner of any animal shall be deemed to have permitted or procured the commission or omission of any act in relation to that animal if by the exercise of reasonable care and supervision in respect of that animal he could have prevented the commission or omission of such act; and 25

(b) sub-section (1)(nA), the testing on an animal of an ingredient that may be included in a cosmetic, shall not constitute an offence where that testing is for a purpose unrelated to the use of that ingredient in a cosmetic.”.

Amendment of law

5

3. The law mentioned in the Schedule is hereby amended to the extent indicated in the third column thereof.

Short title

4. This Act is called the Animals Protection Amendment Act, 2021.

Schedule

Law amended

No. and year of Act	Short title	Extent of repeal or amendment
54 of 1972	Foodstuffs, Cosmetics and Disinfectants Act, 1972	<p>1. The amendment of section 2—</p> <p>(a) by the deletion in subsection (1)(c) of the full stop at the end of subparagraph (iv) and substituting “; or”;</p> <p>(b) by the addition in subsection (1) after paragraph (c) of the following paragraph: <u>“(d) if he sells, or manufactures any cosmetic, which has been tested on an animal in the Republic.”; and</u></p> <p>(c) by the insertion after subsection (2) of the following subsection: <u>“(2A) The provisions of subsection (1)(d) shall not apply to an ingredient that may be included in a cosmetic, but which was tested on an animal for a purpose that was not related to the use of that ingredient in a cosmetic.”.</u></p> <p>2. The amendment of section 6—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words: <u>“(1) No person shall be convicted—”;</u> and</p> <p>(b) by the addition after paragraph (c) of the following subsection: <u>“(2) The special defence referred to in subsection (1)(a) does not apply to the offence contemplated in section 2(1)(d).”.</u></p>

**MEMORANDUM ON THE OBJECTS OF THE ANIMALS
PROTECTION AMENDMENT BILL, 2021**

1. INTRODUCTION

Cameron JA in a minority judgment in the case of *NCSPCA v Openshaw [2008] ZASCA 78* noted that the Animals Protection Act, 1962, may not be conferring rights on animals, but it is designed to promote their welfare and it recognises that animals are sentient beings that are capable of suffering and of experiencing pain. In the case of *Lemthongthai v S [2014] ZASCA 131* (“*Lemthongthai*”) Navsa ADP (as he then was) reminded us “the duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect. Constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.” A culture of caring for and protecting non-human animals has significant benefits for the wellbeing of a society. Indeed, studies have shown that efforts to reduce cruelty to animals are likely to reduce the tolerance that communities have for interpersonal violence (Regan Jules-Macquet BA). The above and similar court cases were mentioned with approval by the Constitutional Court in the matter of *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another [2016] ZACC* (paragraphs 54 to 58). In paragraph 56 the Court referred to a “unanimous Full Bench (,which) found that canned hunting of lions is “abhorrent and repulsive” due to the animals’ suffering.” It concludes in paragraph 57 that “the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals.” It further, in paragraph 58, stressed the findings in *Lemthongthai* that link animal welfare and biodiversity and conservation “and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values.”

It is necessary for the South African government to step in and not only give effect to the recognition of sentience of animals by our judiciary, but also to improve the level of protection that animals are afforded in South Africa. South Africa, a country that is on the forefront when it comes to the recognition and protection of human rights, was scored an “E” by the World Animal Protection with “A” being the best score that a country could be awarded. This international NGO has done a comparison of the animal welfare laws of 50 countries and found South Africa lacking in respect of its commitment to improve and allocate resources to animal welfare, as well as in respect of developing laws to provide for sufficient protection of animals. The recommendations to South Africa included increased protection for animals used in scientific research by enacting legislation, which would protect all animals used in scientific research from unnecessary pain and suffering and by banning the testing of cosmetic products and their ingredients on animals.

Although the people of South Africa, and indeed our highest courts, recognise the plight of animals and the need to protect them from abuses by humans, some practices persist globally: Animal tests for cosmetics include rubbing substances into their shaved backs, dripping substances into their eyes and painting substances into their ears. Other tests involve forced inhalation of substances and force-feeding at levels that cause illness or death. If these animals do not die during testing, they are subsequently killed. Driven by regulatory change around the world, research into technologies to replace animal testing in the cosmetics industry means that there are now non-animal methods for the most commonly required safety tests (in respect of cosmetics ingredients), many of which are internationally recognised. It is now common practice not to test these ingredients on animals. The safety of a cosmetic product relies on information about the ingredients. For products made up of existing ingredients, there is already established and accepted safety data — the European Union’s database, for example, includes safety data on approximately 30,000 ingredients.

The European Union (27 States), the United Kingdom, India, Israel, Norway, Turkey, Switzerland and Serbia have prohibitions in place of the testing of cosmetic products and ingredients on animals, as well as the sale of cosmetic

products and products containing ingredients tested on animals outside of their borders for the purpose of complying with cosmetic regulations; six Brazilian states have enacted cosmetic animal testing bans, as have New Zealand, South Korea, Taiwan and Guatemala; the US states of California, Nevada and Illinois have restricted the sale of animal tested cosmetics; Australia has banned the use of newly derived animal test data for ingredients in cosmetics, and Canada, Brazil, the USA, Mexico and Columbia are in the process of passing laws in this regard. This means that one of the BRICS partners (India) already has legislation in place to ban the testing of cosmetics on animals, and another (Brazil) has legislation in six of its states and a bill in progress. In China, a new Cosmetic Supervision and Administration Regulation (CSAR) is being put in place and consultation is underway on lifting requirements for pre-market animal tests which would bring domestically produced and imported cosmetics into alignment. South Africa should lead Africa in this area.

Although there are no known laboratories in South Africa where animal testing for cosmetics is currently taking place, it is worth noting that a similar situation applied in New Zealand in 2015 when the then Primary Industries Minister Nathan Guy said of the country's decision to end animal testing for cosmetics ingredients: "To the best of our knowledge there never has been any animal testing for cosmetics in New Zealand, but this amendment will send an important message that this kind of testing is unacceptable to New Zealanders and will never happen here".

Similar prohibitions have also resulted in economic growth in the European Union and United Kingdom, where local cosmetic businesses and entrepreneurs thrived once the prohibition came into effect and created spin-off jobs in various sectors.

2. OBJECTS OF THE BILL

The purpose of the Bill is to amend two Acts with the intention to prohibit the sale and manufacturing of cosmetics that were tested on an animal in the Republic and to criminalise the testing of cosmetics on animals. The Bill amends the definitions section in the Animals Protection Act, 1962 (Act No. 71 of 1962) (hereinafter referred to as the principal Act), and furthermore amends—

- the principal Act to provide for a new offence related to the testing of a cosmetic on an animal; and
- the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), to create an offence for the selling or manufacturing of a cosmetic that has been tested on an animal in the Republic. This Act is amended by way of a Schedule as it is administered by the Department of Health.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends section 1 of the principal Act to insert a definition for "cosmetic".
- 3.2 Clause 2 amends section 2 of the principal Act to provide for a new offence related to the testing of a cosmetic on an animal. It also provides for an exception where an ingredient that may be included in a cosmetic, is tested on an animal for a purpose unrelated to the use of that ingredient in a cosmetic.
- 3.3 Clause 3 provides for a Schedule that sets out the amendments to the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972). These amendments are in respect of:
 - 3.3.1 section 2, so as to create an offence for the selling or manufacturing of a cosmetic that has been tested on an animal in the Republic. It also provides for an exception where an ingredient that may be used in a cosmetic, is tested on an animal for a purpose unrelated to the use of that ingredient in a cosmetic; and

- 3.3.2 section 6, so that the special defence created in this section does not apply to the offence of selling or manufacturing any cosmetic, which has been tested on an animal in the Republic.

3.4 Clause 4 provides the short title.

4. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill does not hold any financial implications for the State. There are existing structures already in place that inspect the welfare of animals with various institutions.

5. DEPARTMENTS, BODIES OR PERSONS CONSULTED

The following stakeholders were consulted:

- Animal rights organisations;
- Animal welfare organisations;
- Academia; and
- Lawyers dealing with animal rights, environment, and health and safety.

The following papers and documents were considered in the development of this Bill:

- Austria, (2004) Federal Act on the Protection of Animals (Animal Protection Act TSchG).pdf;
- Bilchitz D, (2010) “Does transformative constitutionalism require the recognition of animal rights?” (2010) SAPL 24;
- Department of Agriculture, Forestry and Fisheries (Oct 2015) “South African Veterinary Strategy (2015-2020)”;
- Department of Agriculture, Forestry and Fisheries (June 2015) “Animal Welfare Strategic Implementation Plan to the Veterinary Strategy”;
- Humane Society International (2004) “About Animal Testing” available at http://www.hsi.org/campaigns/end_animal_testing/qa/about.html—last accessed on 2017.04.06;
- Jules-Macquet, Regan BA (Hons) (UCT) (2014) “Link between animal cruelty and human abuse: A review of the literature” [2014] DEREBUS 106;
- *Lemthongthai v S (849/2013) [2014] ZASCA 131*;
- *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another [2016] ZACC 46*;
- *NCSPCA v Openshaw (462/07) [2008] ZASCA 78 (RSA)*;
- SABS “The South African National Standard—The care and use of animals for scientific purposes” (SANS 10386:2008 Edition 1) ISBN 978-0-626-22296-3 available at https://store.sabs.co.za/catalog/product/view/_ignore_category/1/id/220028/s/sans-10386-2008-ed-1-00/—Last accessed 2020.04.17;
- Schmitt G, Barrow P, Stephan-Gueldner M (2015) “The Nonhuman Primate in Nonclinical Drug Development and Safety Assessment (Chapter 17)—Alternatives to the Use of Nonhuman Primates in Regulatory Toxicology” available at <http://www.sciencedirect.com/science/article/pii/B9780124171442000172>—last accessed 2020.04.17;

- World Animal Protection (2020) “Animal Protection Index” 2020 <https://www.worldanimalprotection.org/>—last accessed on 2020.04.17;
- Cruelty Free International and The Body Shop (2017) “Meeting the global challenge: A guide to assessing the safety of cosmetics without using animals”; and
- <https://eveningreport.nz/2015/03/31/law-change-to-ban-cosmetic-testing-on-animals/>—last accessed 2020.04.17.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as it affects “Animal Control”, “Consumer Protection”, and “Trade”.
- 6.2 The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.