

OFFICE OF INFORMATION PRACTICES

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To: Senate Committees on Judiciary and on Commerce
and Consumer Protection

From: Cheryl Kakazu Park, Director

Date: February 24, 2021, 9:16 a.m.
Via Videoconference

Re: Testimony on S.B. No. 345, S.D. 1
Relating to Cosmetics

Thank you for the opportunity to submit testimony on this bill, which would ban animal-tested cosmetics. The Office of Information Practices (OIP) takes no position on the substance of this bill, but **has concerns about a confusing provision** relating to protection of disclosed information and has **suggested an amendment**.

Subsection 321-__(f) beginning on bill page 5 provides protection “as a trade secret” for “information disclosed under this section.” First, the proposed section does not require disclosure of information, so it’s not entirely clear what information the provision refers to. Another subsection, (e), allows a prosecutor to review testing information, which may be the information referred to, but subsection (e) does not actually require the manufacturer to disclose that or any other information. Second, protection “as a trade secret” is an unsuitable standard since “trade secret” is a term with a specifically defined meaning in the Uniform Trade Secrets Act, chapter 482B, of "information, including a formula, pattern, compilation, program device, method, technique, or process that . . . [d]erives

independent economic value . . . from not being generally known to . . . other persons who can obtain economic value from its disclosure or use[.]” In other words, unless a manufacturer is using a secret testing method that other manufacturers could benefit from stealing, testing information is not likely a trade secret. A more suitable form of protection for testing information and other manufacturer-provided information would be to require it to be kept confidential to the extent it qualifies as confidential business information protected under the Uniform Information Practices Act.

OIP recommends that this Committee: **(1) add in a disclosure provision so it will be clear what information must be disclosed** under the new section, **and (2) amend the protection to clearly reflect the context in which the Committee intends** the information is intended to be protected – e.g., protected from public disclosure vs. from being used in evidence. If subsection (f) was intended to refer to testing information reviewed by prosecutors under subsection (e), and was not intended to protect that testing information from being used as evidence in a subsequent prosecution, then **OIP recommends amending subsection (e) to specifically require disclosure of that information, as follows:**

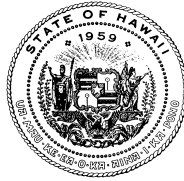
A prosecuting attorney may, upon a determination that there is a reasonable likelihood that a violation has occurred under this section, require a cosmetic manufacturer to disclose for the prosecuting attorney’s review the testing data upon which [a] the cosmetic manufacturer has relied . . .

and replacing the first sentence of subsection (f) with the following:

To the extent testing data disclosed under this section may be withheld from public disclosure as confidential business information or

otherwise under section 92F-13, it shall be treated as confidential and shall not be disclosed except to the extent necessary for enforcement of this section.

Thank you for considering OIP's concerns and suggested amendments.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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WRITTEN
TESTIMONY ONLY

**Testimony COMMENTING on SB 0345 SD1
RELATING TO COSMETICS**

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Hearing Date: 2/24/2021

Room Number: 229

- 1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities.
- 4 **Department Testimony:** The Department appreciates the opportunity to provide testimony
5 offering comments on SB0345 SD1. While the intent to prohibit sale of cosmetics that rely on
6 safety data derived from animal testing is clear, the Department has concerns about how the
7 current language seeks to achieve such a prohibition.
- 8 • It is unclear how responsibility for enforcing this measure is to be shared as this measure
9 proposes to amend Hawaii Revised Statute (HRS) Chapter 328 – a statute which directs the
10 Department to ensure that food, drugs and cosmetics are safe, effective, and properly
11 labeled, and to remove products from sale when necessary to protect human health – yet
12 this measure seems to presume that county prosecutors will investigate, determine
13 compliance and collect fines for the counties. If the intent of this measure is to encourage
14 criminal investigation and prosecution, the substance may be better suited for the
15 criminal code than chapter 328.
 - 16 • The applicability of a substantial portion of the exceptions is unclear because there is no
17 federal or state requirement that cosmetics be animal tested prior to sale. U.S. Food and

1 Drug Administration (FDA) is responsible for importation of cosmetics into the U.S. and
2 the Federal Food, Drug, and Cosmetic Act does not specifically require the use of
3 animals in testing cosmetics for safety, nor does it subject cosmetics to FDA premarket
4 approval. FDA has consistently advised cosmetic manufacturers to employ whatever
5 testing is appropriate and effective for substantiating the safety of their products, however
6 it remains the responsibility of the manufacturer to substantiate the safety of both
7 ingredients and finished cosmetic products prior to marketing. Thus, to the extent the
8 exemptions to the prohibitions relate back to federal or state requirements for animal
9 testing of some kind, their inclusion in the bill is questionable.

- 10 • Finally, the Department would like to note a typographical error. Page 4, line 18 refers to
11 “prohibition in paragraph (1)”. The prohibitions, however, are found in subsection (a) on
12 page 2, line 18. It appears the intent was to refer to the prohibitions found in subsection
13 (a) and for consistency and accuracy should be referenced as such.

14 The Department agrees with FDA’s public support for development and use of alternatives to
15 whole-animal testing as well as adherence to the most humane methods available within the
16 limits of scientific capability when animals are used for testing the safety of cosmetic products.
17 However, the subject of the bill is not designed to address the safety or labeling of the cosmetic
18 sold to the consumer but rather the manner in which it was developed for market. Chapter 328,
19 HRS, is directed at product quality control and consumer protection and is not an ideal fit for
20 provisions seeking to address animal cruelty. Nor, arguably, is the Department the appropriate
21 agency to investigate into, and to enforce, quasi-criminal prohibitions.

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23
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25 **Offered Amendments:** None.

26 Thank you for the opportunity to testify on this measure.

February 24, 2021

Senate Judiciary & Commerce and Consumer Protection Committees

RE: SUPPORT FOR SB345 SD1; RELATING TO COSMETICS

Submitted By: Inga Gibson, Pono Advocacy, on behalf of Cruelty Free International
PonoAdvocacy@gmail.com, 808.922.9910

Dear Honorable Chair Rhoads, Chair Baker and Members of the Senate Judiciary and Commerce and Consumer Protection Committees,

We respectfully urge your **support on SB345 SD1** which would prohibit the import for profit, sale, and offer for sale of any cosmetic in the State if the final product or any component of the final product was developed or manufactured using animal testing performed on or after 1/1/2022. Effective 1/1/2022.

Modern cosmetic safety testing standards and practices no longer require the use of animals. These new testing methods are also more reliable, effective and efficient. Four states, California, Nevada, Virginia and Illinois have already enacted this same legislation, along with more than 30 countries. Manufacturers have therefore already discontinued the cosmetic testing of new ingredients on animals. This measure would simply formally align Hawaii with this national trend.

Please see below letters of support from the Personal Care Products Council, representing more than 500 cosmetic companies and manufacturers nationwide, and an additional letter of support from The Body Shop, who is one of the hundreds of companies who have long discontinued the sale of cosmetic products tested on animals,

Please note that this bill:

Does NOT prohibit medical or research testing, only testing for cosmetics, and provides additional exemptions to prevent any potential conflict with any federal laws;

Does NOT impact retailers, only cosmetic manufacturers, who fully support this legislation.

Fortunately, there is currently no animal testing of cosmetics being performed on animals in Hawaii.

Thank you for your consideration of this testimony.



STATEMENT IN SUPPORT OF CFI/PCPC ANIMAL TESTING BAN AGREEMENT

In 2019, Cruelty Free International¹(CFI) and the Personal Care Products Council² (PCPC) forged a compromise agreement on state animal testing legislation. The model legislation will ban cosmetics products from being sold in states if those products or their ingredients have been tested on animals. The legislation makes necessary exceptions if, for example, the testing is mandated by federal, state or foreign regulators, and allows companies to rely on existing data from testing that was done to address regulatory requirements for non-cosmetic purposes under specific conditions.

Cosmetics and personal care products companies have been strong leaders in the search for and development of alternative cosmetics testing methods for safety assessments, and have worked with regulators in the U.S. and globally to gain acceptance of these methods. For nearly four decades, PCPC member companies have been at the forefront in significantly reducing the use of animals in product safety testing.

The legislation reflects months of discussions between PCPC and CFI, and represents a shared commitment to address the safety of humans and animals, while preserving access to so many products that consumers trust and rely on every day.

The cosmetics industry has long worked toward eliminating the use of animal testing, and this legislation is an effective measure that balances our common goal to make cosmetics animal testing obsolete globally.

Reviewed 1/13/2021

¹ Cruelty Free International is the leading organization working to create a world where nobody wants or believes we need to experiment on animals. Our dedicated team are experts in their fields, combining award-winning campaigning, political lobbying, pioneering undercover investigations, scientific and legal expertise and corporate responsibility. Educating, challenging and inspiring others across the globe to respect and protect animals, we investigate and expose the reality of life for animals in laboratories, challenge decision-makers to make a positive difference for animals, and champion better science and cruelty free living.

² Based in Washington, D.C., the Personal Care Products Council (PCPC) is the leading national trade association representing the global cosmetic and personal care products companies. Founded in 1894, PCPC's 600 member companies manufacture, distribute and supply the vast majority of finished personal care products marketed in the U.S. As the makers of a diverse range of products millions of consumers rely on and trust every day – from sunscreens, toothpaste and shampoo to moisturizer, lipstick and fragrance – personal care products companies are global leaders committed to product safety, quality and innovation.



January 27, 2021

Honorable Senate President Ronald Kouchi

cc. Honorable Committee Chair Senator Baker, Chang, Misalucha, Nishihara, Riviere, Buenaventura, Fevella.

RE: Strong Support for SB 345 Hawaii Cruelty Free Cosmetics Act

Aloha Senator Kouchi,

The Body Shop is pleased to support the Hawaii Cruelty Free Cosmetics Act (SB 345)

SB 345 will prohibit the sale of any cosmetic product that has been tested on animals after the date January 1, 2022 thus bringing Hawaii in line with California, Nevada and Illinois as well as with over 40 countries which already prohibit the sale of new animal-tested cosmetics.

As a company that has relied on non-animal safety tests to ensure our products meet cosmetic safety needs, we have direct experience with the utility and success of these modern approaches. With a plethora of ingredients available that have already been proven safe as well as the growth in modern non-animal safety tests available, there is no reason to test cosmetic products or ingredients on animals. Moreover, we know that being cruelty free is deeply important to our customers.

Eliminating the sale of animal tested cosmetics in Hawaii is a move that is welcomed by our company and one that will help the move the US in the right direction helping to ensure that animals are no longer harmed for the sake of cosmetics anywhere in the world.

We respectfully urge your support for SB 345.

Sincerely,

Nicolas Debray
President, Americas
The Body Shop



February 22, 2021

JDC/CPN
Hawaii State Capitol

RE: Support for SB 345 (SD1) [Gabbard] Cruelty Free Cosmetics

Aloha Chairs Rhodes and Baker and Committee members.

On behalf of Cruelty Free International, I am pleased to support SB 345 Hawaii Cruelty Free Cosmetics Act, which will prohibit cosmetic manufactures from selling any cosmetic in the state if it was developed or manufactured using an animal test performed after the date of enactment.

The legislation makes exceptions for special safety concerns, drugs used in cosmetics, foreign testing requirements, and allows companies to rely on existing data from testing that was done to address regulatory requirements for non-cosmetic purposes under specific conditions. We worked very hard with industry stakeholders to reach an agreement on these points that consider the complexities of the industry while achieving a primary and shared goal of ensuring that cosmetics are not the cause of new animal testing.

For ethical, scientific, and economic reasons, the development and utilization of non-animal methods “alternatives” is now a burgeoning field. Non-animal testing methods spare significant numbers of animals from pain, distress, and death. And crucially, non-animal testing methods have higher relevance for humans compared to tests in animals, and thus to ensure a better protection of human health. Not only do companies have these modern tests at their disposal they also have thousands of existing cosmetic ingredients with histories of safe use and existing safety data that can be utilized without further testing.

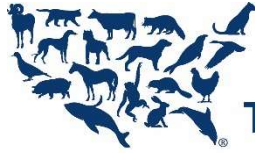
Passage of SB 345 would bring Hawaii in line with nearly 40 countries and three US states [California, Illinois, and Nevada] that already prohibit the sale of new animal-tested cosmetics. Moreover, ending animal testing for cosmetics is an issue that unites Americans across generations and political affiliations. A 2019 SurveyUSA poll revealed that nearly 8 out of 10 of poll respondents said that they would support a law that would prohibit animal testing for cosmetics. When broken down by self-reported party affiliation 83% of Democrats, 72% of Republicans, and 80% of Independents support or strongly support a law. Likewise, the poll revealed that there is no generational divide: 76% of those aged 50-64 said they are against animal testing for cosmetics, followed by 75% of those 65 and over, 72% of 34- to 49-year-olds and 65% of those aged 18-34.

History has shown that state activity often leads to changes at the federal level. State efforts on this issue have already and helped inform a way forward for the national approach as the agreements reached on state legislation were adopted into the federal Humane Cosmetics Act. The Hawaii Cruelty Free Cosmetics Act reflects the interests of industry, consumers and animal protection organizations and would make Hawaii one of the first states to create a cruelty free cosmetics market and help to move the rest of the nation in the right direction.

Mahalo,

A handwritten signature in black ink, appearing to read "Monica Emberton", written in a cursive style.

Head of Public Affairs -North America
Cruelty Free International



THE HUMANE SOCIETY
OF THE UNITED STATES

To: Senator Rosalyn Baker, Chair
Members of the Committee on Commerce and Consumer Protection

Senator Karl Rhoads, Chair
Members of the Committee on Judiciary

Date: February 23, 2021

Re: Support SB 345, Relating to Cosmetics

Dear Chair Baker, Chair Rhoads, Vice Chairs, and Members of the Committees on CPN/JDC,

I appreciate the opportunity to submit this written testimony on behalf of our Hawaii members and supporters urging the committees to pass SB 345, which prohibits a manufacturer from importing for profit, selling, or offering for sale in Hawaii any cosmetic, for which an animal test was conducted or contracted by or on behalf of the manufacturer, or any supplier of the manufacturer, on or after January 1, 2022.

There is strong corporate support for ending animal testing for cosmetics. HB 1088 has received letters of support from 3 companies based in Hawaii (please see attached): Ao Organics Hawaii (Honoka 'a), O'o Hawaii (Oahu), and Pure Mana Hawaii (Kealakekua). In addition, the Humane Cosmetics Act, federal legislation to end the production and sale of animal-tested cosmetics, has been endorsed by more than 325 individual companies in the cosmetics industry and was introduced with the full support of the Personal Care Products Council, the largest cosmetics trade association representing approximately 600 companies in the United States.

In traditional animal tests, rabbits, guinea pigs, mice, and rats have substances forced down their throats, dripped into their eyes, or smeared onto their skin before they are killed. These test methods are unreliable predictors of human safety. Different species can respond differently when exposed to the same chemicals. Consequently, animal tests may under- or over-estimate real-world hazards to people. In addition, results from animal tests can be quite variable and difficult to interpret.

Fortunately, animal testing for cosmetics is completely unnecessary. There are no animal testing requirements for cosmetic safety substantiation in the United States. Companies can already create great products using thousands of available ingredients that have a history of

safe use and do not require new testing. For new ingredients where animal testing may currently be used, many non-animal methods have been, and continue to be, developed. Non-animal methods can combine human cell-based tests and sophisticated computer models to deliver human-relevant results at less cost and in less time than the animal tests.

SB 345 contains some exceptions that allow for sale of products with new animal testing under certain conditions including testing: (1) Required by a federal or state agency when there is a specific human health concern and there is no available alternative test or alternative ingredient; (2) Required by a foreign regulatory authority, if no evidence derived from such test was relied upon to substantiate the safety of a cosmetic sold within Hawaii; (3) Conducted on a product or ingredient classified as a drug by the Federal Food, Drug, and Cosmetic Act; and (4) Conducted for non-cosmetic purposes if no evidence derived from such test was relied upon to substantiate the safety of a cosmetic sold within Hawaii without documented evidence that the testing was done to satisfy non-cosmetic testing requirements and the ingredient was in use in a non-cosmetic product for at least 12 months. These limited exceptions recognize the realities of chemical testing laws around the globe while also creating the incentive for cosmetic companies to push for the development and acceptance of additional non-animal test methods.

There has been a global trend toward eliminating cosmetic animal testing. In 2019, California became the first state in the country to ban the sale of cosmetics newly tested on animals followed by Nevada and Illinois in 2019. All these laws went into effect on January 1, 2020. Historically, the European Union (EU) began the trend in 2013 by finalizing a ban on the sale of cosmetics tested on animals, creating the world's largest cruelty-free cosmetics marketplace. This ban compelled cosmetic companies around the world to end animal testing and invest in the development of non-animal alternatives instead. Similar bans have also been enacted in Israel, Norway, India, and Switzerland and are under consideration in several other countries. In order to sell their products in any of these countries, cosmetic companies must already comply with bans on animal testing.

Thank you for your consideration on this important topic. The Humane Society of the United States respectfully urges the committees to pass SB 345 and help bring about an end to the use of animal testing in cosmetics.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay Vierheilg". The signature is fluid and cursive, with the first name "Lindsay" being more prominent than the last name "Vierheilg".

Lindsay Vierheilg
Hawaii State Director
The Humane Society of the United States
lvierheilg@humanesociety.org

The Honorable Mark J. Hashem
Chair, House Committee on Agriculture
The Honorable members of the House Committee on Agriculture

Hawaii State Capitol
415 S Beretania St.
Honolulu, HI 96813

February 3, 2021

RE: Support HB 1088 and SB 345

Dear Chairman Hashem and the members of the House Committee on Agriculture:

My name is Chelsa Davis and I am the owner, founder, and formulator of Ao Organics Hawai'i. We are a company located in Honoka'a that produces natural and organic skincare and body products. We would like to express our strong support of HB 1088 and SB 345 which would prohibit the sale of cosmetic products that have been tested on animals.

As a formulator, I can create innovative products using ingredients that have already been proven to be safe. In addition, for new ingredients, there are many non-animal methods available, which are more relevant to humans, faster and cheaper, that can be used for safety evaluations.

Hawaii has the opportunity to be a leader in creating a cruelty-free cosmetics market. Please support HB 1088 and SB 345.

Thank you.

Sincerely,

Chelsa Davis

A handwritten signature in black ink, appearing to read 'Chelsa Davis', with a large, stylized initial 'C' and a long, sweeping horizontal stroke at the end.



hawaii

www.oohawaii.com

(808) 341-0143

The Honorable Mike Gabbard
Chair, Senate Committee on Agriculture and Environment
The Honorable Clarence K. Nishihara
Vice-Chair, Senate Committee on Agriculture and Environment
The Honorable members of the Senate Committee on Agriculture and Environment

Hawaii State Capitol
415 S Beretania St.
Honolulu, HI 96813

January 31, 2021

RE: Please Support HB 1088 SB 345

Dear Chairman Gabbard Vice-Chair Nishihara, and the members of the Senate Committee on Agriculture and Environment:

My name is Holly Harding and I am the CEO of O'o Hawaii. We are a company that produces high quality, skincare products without the need for animal testing. We export our products all over the world including Korea, Japan, Hong Kong, Europe, Israel, India and Canada. I am writing to express my strong support of HB 1088 and SB 345 which would prohibit the sale of cosmetic products that have been tested on animals.

Animal testing for cosmetics is completely unnecessary. Cosmetics products can be created using thousands of ingredients that have already been proven to be safe. In addition, there are many non-animal test methods available that can be used for safety evaluations of new ingredients. These alternatives provide data that is more relevant to humans and offer savings in time and cost from traditional animal tests. In addition, most animals have a skin pH that is more neutral than humans at roughly a 7. Human skin is more acidic, thus making testing of human products on animals irrelevant.

More than 30 countries including the European Union, India, Israel, Norway and Switzerland have already banned production and sale of animal-tested cosmetics, and international companies must already be in compliance with bans in those countries. Laws to end the sale of animal-tested cosmetics have also passed in California, Nevada and Illinois. Passage of HB 1088 and SB 345 would help push for harmonization of U.S. cosmetic policy with these states and countries and facilitate the trade of safe and humane cosmetic products worldwide.



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(808) 341-0143

Hawaii can be at the forefront of establishing a cruelty-free cosmetics market in the United States. Please support HB 1088 and SB 345.

Sincerely,

Holly Harding

CEO

PURE MANA HAWAII

The Honorable Mark J. Hashem
Chair, House Committee on Agriculture
The Honorable members of the House Committee on Agriculture

Hawaii State Capitol
415 S Beretania St.
Honolulu, HI 96813

February 3, 2021

RE: Please Support HB 1088 and SB 345

Dear Chairman Hashem and the members of the House Committee on Agriculture:

I am writing on behalf of Pure Mana Hawaii located in Kealahou. We are a company that produces organic, cruelty-free skincare products. We would like to express our strong support of HB 1088 and SB 345 which would prohibit the sale of cosmetic products that have been tested on animals.

Animal testing for cosmetics is outdated and completely unnecessary. There are thousands of ingredients that have already been proven to be safe that companies can use to formulate new products. In addition, for new ingredients, there are many non-animal methods available, which are more relevant to humans, faster and cheaper, that can be used for safety evaluations.

Now is the time for Hawaii to lead the way in establishing a cruelty-free cosmetics market in the United States. We urge you to support HB 1088 and SB 345.

Thank you.

Sincerely,

Susan Mandini
Co-Founder
Pure Mana Hawaii

SB-345-SD-1

Submitted on: 2/20/2021 8:09:41 PM

Testimony for JDC on 2/24/2021 9:16:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Individual	Support	No

Comments:

I totally support this bill.

Michael Golojuch, Jr.

SB-345-SD-1

Submitted on: 2/22/2021 5:48:11 PM

Testimony for JDC on 2/24/2021 9:16:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support SB345.

Thank you,

Andrea Quinn