

Animal Cruelty—“Because You’re Worth It”: Advocating for the Passage of Cruelty-Free Cosmetics Laws

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ABSTRACT: Animals have been used in testing for hundreds of years; in cosmetics, the justification for the use of animal testing is providing safe and effective products to consumers. However, animal models do not provide accurate, useful data that can be translated to provide information on how humans will respond to certain products or ingredients. There are a wide variety of alternatives available that do provide accurate information and are cheaper, provide faster results, and are more humane. Despite these options, many cosmetics companies continue to perform tests on animals, in part due to animal testing requirements in countries with large consumer markets like China. States can create change by continuing to pass cruelty-free laws, which will encourage passing similar legislation at the federal level. In addition to reducing unnecessary animal testing, cruelty-free laws also function as a consumer protection measure, by preventing cosmetics companies from misrepresenting that their products are cruelty-free due to the current lack of standardization and regulation of cosmetic labeling claims. Passing and enforcing cruelty-free laws in Iowa and other states will align the United States with the many other countries that have measures in place, influence and motivate change at the manufacturer and international level, provide consumer protection, and prevent the unnecessary suffering and cruel treatment of countless animals.

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INTRODUCTION

“Because You’re Worth It.”¹ For years, cosmetics companies have advertised and sold their products with catchy, feel-good slogans intended to appeal to consumers. However, these lighthearted slogans belie the ugly methods that many cosmetics companies use in developing and perfecting their products. Cosmetics testing on animals developed out of a need for greater scrutiny and standards for consumer products.² Animal testing started in the 1930s and 1940s when there were no viable alternatives, and the tests produced unreliable and cruel results.³ Even though there are less cruel, more reliable methods of testing today, many companies continue to use the same testing methods. The United States currently lacks any meaningful federal legislation to stop the

1. *Because You’re Worth It: 50 Years of Celebrating Women’s Worth*, L’ORÉAL PARIS, <https://www.lorealparisusa.com/because-youre-worth-it> [<https://perma.cc/WK48-V5GY>].

2. See, e.g., Alice T. Gasch, *Lash Lure and Paraphenylenediamine: Toxic Beauty Past and Present*, AM. ACAD. OPHTHALMOLOGY (Nov. 2, 2017), <https://www.aao.org/senior-ophthalmologists/scope/article/lash-lure-paraphenylenediamine-toxic-beauty> [<https://perma.cc/67K8-RXN9>].

3. See discussion *infra* Part I.

use of animal testing for cosmetics products where it is cruel, unreliable, and unnecessary.⁴ Individual states in the United States have begun to pass their own cruelty-free legislation, prohibiting the sale of cosmetics that have been tested on animals.⁵ Cruelty-free legislation should be passed at both the state and federal level to ban cruel animal testing practices, promote the shift to cheaper, more reliable alternatives, and reduce consumer harm from cosmetics products that are misleading and mislabeled as being cruelty-free when they are not.

This Note argues that Iowa should join other states and countries in passing a cruelty-free cosmetics law. Part I provides a background on the history of animal testing and current viable alternatives to animal tests. Part II analyzes existing cruelty-free laws domestically, with a specific focus on Iowa and its lack thereof, as well as the current status of cruelty-free laws globally. Part III expands on the importance of cruelty-free laws for consumer protection and current problems with regulating cruelty-free products in the United States. Part III also evaluates the current programs that certify cruelty-free cosmetics and skincare and touch on the wide, bipartisan support in the United States for cruelty-free cosmetics laws. Finally, Part IV of this Note examines why Iowa needs a cruelty-free cosmetics law to provide greater consumer protection and to put Iowa at the forefront of animal protection.

I. A HISTORY OF ANIMAL TESTING

In America during the 1920s and 1930s, the use of cosmetics became more commonplace.⁶ At the time, there were no standards in place to regulate the production of cosmetics, which resulted in the creation of many harmful products.⁷ Perhaps one of the most famous of these harmful products, Lash Lure, served as an eyebrow and lash dye.⁸ The product caused dermatitis, corneal ulceration and necrosis, and even resulted in one death.⁹ In the aftermath of Lash Lure and other product safety disasters, the U.S. Department of Agriculture and the Food and Drug Administration (“FDA”) supported revisions of the current Food and Drug Act to provide more comprehensive protections and to cover cosmetics.¹⁰

In 1938, the United States passed the Food, Drug, and Cosmetic Act (“FDCA”), the first law to cover cosmetics.¹¹ The FDCA did not require

4. See discussion *infra* Section II.A.

5. See discussion *infra* Section II.A.

6. Gasch, *supra* note 2.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Part II: 1938, Food, Drug, Cosmetic Act*, U.S. FOOD & DRUG ADMIN. (Nov. 27, 2018), <https://www.fda.gov/about-fda/changes-science-law-and-regulatory-authorities/part-ii-1938-food-drug-cosmetic-act> [<https://perma.cc/ZWP5-UQ65>].

that cosmetics be subject to FDA approval like drugs, but “it [did] h[o]ld manufacturers of cosmetics legally responsible for the safety of their products, set standards for ingredients of cosmetics[,] and mandated a list of ‘harmless and suitable’ coal-tar-derived colors that could be used in cosmetics.”¹² While the FDCA has never required testing on animals for cosmetics, unlike its animal testing requirement for drugs,¹³ the Act’s product safety requirements for cosmetics prompted companies to begin animal testing.¹⁴ Cosmetics are broadly defined “as ‘articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body . . . for cleansing, beautifying, promoting attractiveness, or altering the appearance.’”¹⁵ The FDA’s current list of products that are “included in this definition are skin moisturizers, perfumes, lipsticks, fingernail polishes, eye and facial makeup, cleansing shampoos, permanent waves, hair colors, and deodorants, as well as any substance intended for use as a component of a cosmetic product.”¹⁶

In the 1940s, J.H. Draize, a toxicologist at the FDA,¹⁷ created a way to assess irritation caused by substances placed in rabbits’ eyes.¹⁸ The animals’ heads and bodies were restricted in holding devices so that they could not scratch or rub their eyes to alleviate the pain.¹⁹ A “substance (such as bleach, shampoo, or ink) is then placed in one eye” and their “eye is then held closed.”²⁰ The test can last as long as three weeks and cause severe reactions such as ulceration, infection, bleeding, and the “eye[] los[ing] all distinguishing characteristics” and

12. Gasch, *supra* note 2.

13. *Animal Testing & Cosmetics*, U.S. FOOD & DRUG ADMIN. (Mar. 4, 2022), <https://www.fda.gov/cosmetics/product-testing-cosmetics/animal-testing-cosmetics> [<https://perma.cc/NPM2-EHL3>]. The FDA’s official statement as of March 4, 2022, is:

The FD&C Act does not specifically require the use of animals in testing cosmetics for safety, nor does the Act subject cosmetics to FDA premarket approval. However, the agency has consistently advised cosmetic manufacturers to employ whatever testing is appropriate and effective for substantiating the safety of their products. It remains the responsibility of the manufacturer to substantiate the safety of both ingredients and finished cosmetic products prior to marketing.

Id. And as of March 4, 2022, the FDA’s statement on animal testing alternatives is: “We will continue to be a strong advocate of methodologies for the refinement, reduction, and replacement of animal tests with alternative methodologies that do not employ the use of animals.” *Id.*

14. *Timeline: Cosmetics Testing on Animals*, HUMANE SOC’Y INT’L, <https://www.hsi.org/news-media/timeline-cosmetics-testing-on-animals> [<https://perma.cc/27W7-6LAW>].

15. *FDA Authority over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated*, U.S. FOOD & DRUG ADMIN. (Mar. 2, 2022) (quoting 21 U.S.C. § 321 (i) (1) (2018)), <https://www.fda.gov/cosmetics/cosmetics-laws-regulations/fda-authority-over-cosmetics-how-cosmetics-are-not-fda-approved-are-fda-regulated> [<https://perma.cc/7BQH-6Q67>].

16. *Id.*

17. John Parascandola, *The Development of the Draize Test for Eye Toxicity*, 33 PHARMACY HIST. 111, 111–13 (1991).

18. PETER SINGER, *ANIMAL LIBERATION: THE DEFINITIVE CLASSIC OF THE ANIMAL MOVEMENT* 97 (40th Anniversary ed. 2015).

19. *Id.*

20. *Id.*

becoming “one massive infection.”²¹ There is no anesthetic provided to alleviate the pain.²² This test is still used today and “is still the official model for eye irritation and toxicology studies worldwide.”²³ Another test relevant to cosmetics are dermal toxicity studies, where the animals’ fur is removed so there is direct access to the skin.²⁴ These studies “are generally poor predictors of human-skin reactions” and do not produce reliable results.²⁵

These inhumane tests do not provide reliable, useful information on how humans will react to cosmetic and skincare products, and “[t]here is sufficient existing safety data” that is adequate for companies to use.²⁶ The Draize eye irritation test is especially unreliable because rabbits “produce a smaller volume of tears than humans, allowing chemicals and other irritants placed in rabbit eyes to linger longer and cause more irritation.”²⁷ This results in incredible pain to the rabbits, as well as an incorrect estimate of the way that humans would react to such a substance.²⁸

Other inhumane ways that animals are used that seem unlikely to provide useful data are the practice of feeding hair dye to rats to examine toxicity and chemical effects,²⁹ as well as force-feeding animals bleach or soap for toxicity studies.³⁰ Continuing to force animals to endure painful tests when there is already adequate data on human reactions to cosmetic products is unnecessary and cruel from ethical, scientific, and economic standpoints.³¹ Additionally,

21. *Id.* at 98.

22. *See id.*

23. Leandro Teixeira & Richard R. Dubielzig, *Eye*, in 3 HASCHECK AND ROUSSEAU’S HANDBOOK OF TOXICOLOGIC PATHOLOGY 2095, 2128 (Wanda M. Hascheck, Colin G. Rousseaux & Matthew A. Wallig eds., 3d ed. 2013).

24. SINGER, *supra* note 18, at 98–99; *Skin Irritation and Corrosion*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://www.peta.org/issues/animals-used-for-experimentation/skin-irritation> [<https://perma.cc/RB2G-KQB5>].

25. *Skin Irritation and Corrosion*, *supra* note 24; John P. Rooney et al., *Analysis of Variability in the Rabbit Skin Irritation Assay*, REGUL. TOXICOLOGY & PHARMACOLOGY, June 2021, at 1, 2–3; Aysha Akhtar, *The Flaws and Human Harms of Animal Experimentation*, 24 CAMBRIDGE Q. HEALTHCARE ETHICS 407, 407–08 (2015).

26. *Does the Law Require Animal Testing for Cosmetics and Household Products?*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://www.peta.org/about-peta/faq/does-the-law-require-animal-testing-for-cosmetics-and-household-products> [<https://perma.cc/XN5H-22ZC>].

27. WAYNE PACELLE, THE HUMANE ECONOMY: HOW INNOVATORS AND ENLIGHTENED CONSUMERS ARE TRANSFORMING THE LIVES OF ANIMALS 180 (2016).

28. *Id.*

29. ALIX FANO, LETHAL LAWS: ANIMAL TESTING, HUMAN HEALTH AND ENVIRONMENTAL POLICY 24 (1997). The argument for this practice is that “hair dyes can enter the circulatory system through either the scalp or digestive tract; and since distribution of the substance throughout the animal’s body is the goal of the test, feeding may be chosen as an appropriate method.” *Id.*

30. LYNDY DICKINSON, VICTIMS OF VANITY: ANIMAL TESTING OF COSMETICS AND HOUSEHOLD PRODUCTS AND HOW TO STOP IT 13 (1989).

31. *See Cruelty in Animal Testing Laboratories*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://www.peta.org/issues/animals-used-for-experimentation/cosmetic-household-products-animal-testing> [<https://perma.cc/8F53-TLPT>].

there are a wide variety of alternative tests and methods available.³² The FDA and other international agencies permit multiple alternatives to animal testing, such as computer modeling, *in vitro* testing, human volunteers, and alternative organisms, all of which are more humane, cheaper, more effective, and provide faster results.³³

Over the years, as the viability of alternatives to animal testing improved, resistance to animal testing has increased, spurred on by animal welfare advocates' efforts, scientific findings and improvements, and public knowledge.

32. The alternatives to animal testing are many and include computer modeling (*in silico* models), *in vitro* testing, human volunteers, and alternative organisms. See *Alternatives to Animal Testing*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://www.peta.org/issues/animals-used-for-experimentation/alternatives-animal-testing> [<https://perma.cc/A4CN-5A6P>]; Sonali K. Doke & Shashikant C. Dhawale, *Alternatives to Animal Testing: A Review*, 23 SAUDI PHARM. J. 223, 225–26 (2015). In contrast with animal models that provide unreliable data that is not well translated to humans, these alternatives are useful for human health indications.

Computer modeling and simulations can “predict the various possible biological and toxic effects of a chemical” without using animals. *Id.* at 225. Quantitative structure-activity relationships (“QSARs”) are one common computer modeling tool that provides an extremely useful and informative alternative to animal testing. See *id.*; *Alternatives to Animal Testing*, *supra*. QSARs estimate the probability of a substance being harmful based on comparisons to existing substances. See *Alternatives to Animal Testing*, *supra*.

In vitro models use real and artificial human cells and tissues. *What Are the Differences Between In Vitro and Ex Vivo Models?*, QIMA LIFE SCIS., <https://qima-lifesciences.com/en/ex-vivo-vs-in-vitro> [<https://perma.cc/B433-CUB4>]. Some current *in vitro* models that are relevant for cosmetic testing include MatTek Life Sciences' EpiDerm Tissue Model and bovine corneal organ cultures. See *id.*; *EpiDerm*, MATTEK, <https://www.mattek.com/products/epiderm> [<https://perma.cc/ZH67-D5QC>]; Doke & Dhawale, *supra*, at 226; Ke-Ping Xu, Xin-Fang Li & Fu-Shin X. Yu, *Corneal Organ Culture Model for Assessing Epithelial Responses to Surfactants*, 58 TOXICOLOGICAL SCIS. 306, 306 (2000). The EpiDerm Tissue Model is a “3D tissue model consisting of normal, human-derived” skin cells. *EpiDerm*, *supra*. Epidermal models such as MatTek's are well-suited to replace the painful tests that use chemicals to corrode or irritate animals' skin. See, e.g., *id.* The bovine corneal organ cultures are particularly useful as a replacement for animals in the Draize eye irritancy tests. Doke & Dhawale, *supra*, at 226; Xu et al., *supra*, at 306. Artificial skin produced with 3-D printers or created from human skin cells have been shown to be more accurate indicators of human responses to substances than testing the substances on animals. See PACELE, *supra* note 27, at 182.

Human volunteers and human simulators have increased in popularity as alternatives to animal testing. See *Alternatives to Animal Testing*, *supra*. Similarly, people can donate tissue to provide samples that are used in testing in place of animals. *Human Tissue Research*, PHYSICIANS COMM. FOR RESPONSIBLE MED., <https://www.pcrm.org/ethical-science/animal-testing-and-alternatives/human-tissue-research> [<https://perma.cc/DMP7-EAUG>].

Alternative organisms such as prokaryotes, fungi, bacteria, invertebrates, and others are frequently proposed in lieu of using animal models. See Doke & Dhawale, *supra*, at 226–27. However, alternative organisms are not well-suited as test models for cosmetic testing due to the difficulty of performing tests on the smaller alternative organisms as well as the lack of physical similarities such as comparable skin and eyes. Therefore, the other alternatives discussed above are superior options and provide ample options for models to replace the use of animals in cosmetic testing.

33. See *Alternative Methods Accepted by US Agencies*, U.S. DEPT. HEALTH & HUM. SERVS., NAT'L TOXICOLOGY PROGRAM, <https://ntp.niehs.nih.gov/whatwestudy/niceatm/accept-methods/index.html> [<https://perma.cc/RV8B-M7TG>].

Over sixty years ago, researchers developed the “3Rs” program, which aims to replace, reduce, or refine the use of animals for research and testing purposes.³⁴ The replacement tenet of the 3Rs advocates for “[a] test method that substitutes traditional animal models with non-animal systems such as computer models or biochemical or cell-based systems, or replaces one animal species with a less developed one (for example, replacing a mouse with a worm).”³⁵ The reduction tenet advocates for “[a] test method that decreases the number of animals required for testing to a minimum while still achieving testing objectives.”³⁶ And the final tenet, refinement, suggests use of “[a] test method that eliminates pain or distress in animals, or enhances animal well-being, such as by providing better housing or enrichment.”³⁷

Henry Spira, one of the most well-known animal rights activists, successfully developed and used a strategy of “reintegrative shaming,” which focused on aligning people with opposing views on animal rights rather than disparaging and alienating them.³⁸ This approach allowed him to work with scientists and industries to promote change in the animal testing realm.³⁹ In 1996, animal welfare activists from eight protection groups formed the Coalition for Consumer Information on Cosmetics (“CCIC”), which developed the Leaping Bunny certification program used in the United States and Canada.⁴⁰ The Leaping Bunny certification program provides “a single comprehensive standard and an internationally recognized Leaping Bunny Logo.”⁴¹ The program created “The Corporate Standard of Compassion For Animals (‘The Standard’)” which requires companies to prove that they do not conduct animal testing, do not use ingredients or products from a third party that uses animal testing, and do not permit animal testing to be used in foreign countries, among other requirements, in exchange for being certified as a Leaping Bunny product.⁴² The Leaping Bunny certification program is particularly useful from a

34. W.M.S. RUSSELL & R.L. BURCH, *THE PRINCIPLES OF HUMANE EXPERIMENTAL TECHNIQUE* 64 (1959).

35. *Alternatives to Animal Testing*, NAT’L INSTS. HEALTH, NAT’L INST. ENV’T HEALTH SCIS., <https://www.niehs.nih.gov/health/topics/science/sya-iccvam/index.cfm> [<https://perma.cc/P5WU-44AU>].

36. *Id.*

37. *Id.*

38. Lyle Munro, *The Animal Activism of Henry Spira (1927-1998)*, 10 *SOC’Y & ANIMALS* 173, 175-76, 183 (2002).

39. See M.A. Mehlman, *Henry Spira (1927-1998) an Advocate for Animal Rights: A 20th Century Man of La Mancha*, 14 *TOXICOLOGY & INDUS. HEALTH* 783, 783-84 (1998). For example, Henry Spira successfully convinced Revlon, one of the largest cosmetics companies, to stop using the Draize eye irritancy test. See *Timeline: Cosmetics Testing on Animals*, *supra* note 14.

40. See *About Leaping Bunny*, LEAPING BUNNY PROGRAM, <https://www.leapingbunny.org/about/about-leaping-bunny> [<https://perma.cc/M43C-6JE3>]; *Timeline: Cosmetics Testing on Animals*, *supra* note 14.

41. *About Leaping Bunny*, *supra* note 40.

42. *The Corporate Standard of Compassion for Animals (“The Standard”)*, LEAPING BUNNY PROGRAM, <https://www.leapingbunny.org/about/corporate-standard-compassion-animals-standard> [<https://perma.cc/5EYV-LB3V>].

consumer protection standpoint because there is currently no regulation of cosmetics labeling claims and no legal definition of “Cruelty-Free” and “Not Tested on Animals” for cosmetic labels.⁴³

Despite the Leaping Bunny Program and other certification programs, there is still a lack of standardization across certification requirements. As a result of these discrepancies and the lack of legal definitions, it can be difficult for consumers to determine whether the products they are purchasing are truly cruelty-free. The passage of cruelty-free cosmetics laws can provide additional consumer protection advantages because consumers will know what they are purchasing and that the claims on the labels are true and not simply on the product to induce customers to purchase them.

II. THE CURRENT STATUS OF CRUELTY-FREE LAWS ACROSS THE WORLD

Despite the clear advantages in using alternative methods, animal testing is still not fully phased out of use, especially in areas where it is completely unnecessary, like cosmetics and skincare. Although there has been some movement against the use of animal testing both domestically and internationally, there is still much progress needed on both levels to result in a comprehensive and effective end to the use of animal testing in cosmetics. The United States is far behind other countries in terms of animal protection and cruelty-free cosmetics laws specifically, with over forty-four countries having laws limiting or banning cosmetic testing on animals.⁴⁴ This Part will analyze the presence and absence of cruelty-free laws in the United States and internationally and discuss the positive and negative changes in cruelty-free laws. This Part will also discuss the failed attempts at passing cruelty-free legislation at the federal level and the success at the state level, ultimately indicating that the states must lead in creating legislation in this area.

A. CRUELTY-FREE LAWS IN THE UNITED STATES

Cruelty-free cosmetics laws, both at the federal and state level, have seen a significant transformation in recent years, reflecting the evolving concerns of consumers and the growing momentum of animal welfare advocates. This Section will first examine cruelty-free laws at the federal level. Next, this Section will examine cruelty-free laws at the state level.

43. “Cruelty Free”/“Not Tested on Animals,” U.S. FOOD & DRUG ADMIN. (Feb. 25, 2022), <https://www.fda.gov/cosmetics/cosmetics-labeling-claims/cruelty-freenot-tested-animals> [<https://perma.cc/46KN-A5VV>].

44. *Cosmetics Animal Testing FAQ*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/resources/cosmetics-testing-faq> [<https://perma.cc/6E6L-V74Z>].

1. Cruelty-Free Laws at the Federal Level

Cruelty Free International—an organization founded in 1898 to advocate for animals and oppose animal testing⁴⁵—estimates that the United States, among all countries, uses the third highest number of animals in animal tests in a year.⁴⁶ Despite the extraordinarily high number of animals used each year, the Animal Welfare Act (“AWA”) is the sole “[f]ederal law in the United States that regulates the treatment of animals in research, teaching, testing, exhibition, [and] transport,” as well as the treatment of animals by dealers⁴⁷ who buy, sell, or exchange animals.⁴⁸ It has been estimated that “[f]ive hundred thousand to one million of these animals are sacrificed each year to test new cosmetics alone.”⁴⁹ There is bipartisan support among voters for laws that would end cosmetic animal testing.⁵⁰ A 2015 Nielsen survey indicated that consumers considered “not tested on animals” or “cruelty-free” to be the most important cosmetic claim when deciding whether to purchase a product.⁵¹ Despite popular support, there is a lack of uniform coverage across the United States regarding cosmetic testing on animals because there are no federal laws on point, and because many states do not have cruelty-free cosmetics laws or laws that address the practice of animal testing. Federal policy has always been “unclear and contradictory” on the use of animal testing in cosmetics and other non-medical products, and therefore offers no decisive guidance on the use of animal testing for these products for either “animal protection activists

45. *About Cruelty Free International*, CRUELTY FREE INT’L, <https://crueltyfreeinternational.org/about-cruelty-free-international> [<https://perma.cc/F3LP-AJRH>].

46. *Facts and Figures on Animal Testing*, CRUELTY FREE INT’L, <https://crueltyfreeinternational.org/about-animal-testing/facts-and-figures-animal-testing> [<https://perma.cc/WAA3-CTAH>]. The United States is estimated to use around 15.6 million animals per year. *Id.* This figure includes animals used in cosmetic and biomedical testing. The United States is listed as number two in the top ten users of dogs and number one in the top ten users of monkeys. *Id.*

47. *Animal Welfare Act*, U.S. DEP’T AGRIC., NAT’L AGRIC. LIBR., <https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-act> [<https://perma.cc/AUJ4-F9Q9>]. The AWA has significant exceptions that render it relatively narrow, such as its exclusion of “roughly 95 percent of the animals tested upon—such as rats, mice, birds, fish, and reptiles—and provides only minimal protections for the rest. Labs are not required to report non-AWA protected animals.” *Federal Laws and Agencies Involved with Animal Testing*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/federal-laws-and-agencies-involved-with-animal-testing> [<https://perma.cc/EPX9-LULP>].

48. *Apply for a License or Registration*, U.S. DEP’T AGRIC., ANIMAL & PLANT HEALTH INSPECTION SERV., <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/apply/licensing-and-registration-application-packets> [<https://perma.cc/XM7S-RGWY>].

49. DICKINSON, *supra* note 30, at 13; *Ending Cosmetics Animal Testing*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/all-our-fights/ending-cosmetics-animal-testing> [<https://perma.cc/4NFV-P4PK>].

50. *See New Poll Reveals US United Against Cosmetics Animal Tests*, CRUELTY FREE INT’L (Sept. 12, 2019), <https://crueltyfreeinternational.org/latest-news-and-updates/new-poll-reveals-us-united-against-cosmetics-animal-tests> [<https://perma.cc/SEL6-FLXK>].

51. *See Decoding Cosmetics Claims: ‘Not Tested on Animals,’ ‘Cruelty Free,’* TRUTH ADVERTISING (Nov. 26, 2019), <https://truthinadvertising.org/articles/decoding-cosmetics-claims-not-tested-on-animals-cruelty-free> [<https://perma.cc/5NC4-AWD6>].

[or] industry professionals.”⁵² There have been various federal bills introduced over the years that take aim at the use of animal testing in some capacity, but none of them have passed.

One of those failed federal proposals is the Humane and Existing Alternatives in Research and Testing Sciences Act of 2019 (“HEARTS Act”),⁵³ which focused on the use of animal testing in scientific research. Representatives Roybal-Allard and Calvert first introduced the HEARTS Act in 2019⁵⁴ and recently re-introduced it in 2021⁵⁵ and 2023.⁵⁶ The HEARTS Act focused on the National Institutes of Health (“NIH”) and instructed them to encourage the use of alternative and non-animal methods in scientific research.⁵⁷ There has been no recent movement on the HEARTS Act since its re-introduction, and it is unlikely to pass successfully.⁵⁸

A federal act that targets animal testing in cosmetics specifically is the Humane Cosmetics Act of 2021. The Humane Cosmetics Act has bipartisan support and the current version of the bill at the Senate is intended “[t]o substantially restrict the use of animal testing for cosmetics.”⁵⁹ The bill prohibits “any person . . . to knowingly conduct or contract for cosmetic animal testing that occurs in the United States.”⁶⁰ The Act also forbids the use of evidence from animal testing “to establish the safety of a cosmetic, cosmetic ingredient, or nonfunctional constituent under the Federal Food, Drug, and Cosmetic Act” with various exceptions.⁶¹ There is a current version of the Humane Cosmetics Act in the House with identical language that also has bipartisan support, but that version has not made progress since its introduction in 2021.⁶² Representative Moran from Virginia presented the first version of the Humane Cosmetics Act to the House in 2014, and it has since been re-

52. HEIDI J. WELSH, ANIMAL TESTING AND CONSUMER PRODUCTS 25 (1990).

53. Humane and Existing Alternatives in Research and Testing Sciences Act of 2019, H.R. 1209, 116th Cong. (2019).

54. *Id.*

55. Press Release, Benjamin Bryant, Reps. Roybal-Allard & Calvert Introduce HEARTS Act to Prioritize Non-Animal Testing Methods in NIH Research (June 23, 2021), <https://web.archive.org/web/20220626045940/https://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=401844> (on file with the *Iowa Law Review*).

56. *Reps. Pappas & Calvert Introduce HEARTS Act to Prioritize Non-Animal Testing Methods in NIH Research*, SAN BERNARDINO AM. NEWSPAPER (Feb. 15, 2023), <https://sb-american.com/2023/02/15/rep-pappas-calvert-introduce-hearts-act-to-prioritize-non-animal-testing-methods-in-nih-research/> [<https://perma.cc/FWR5-6XDR>].

57. H.R. 1209.

58. *H.R. 1024: HEARTS Act of 2022*, GOVTRACK, <https://www.govtrack.us/congress/bills/118/hr1024> [<https://perma.cc/W7P2-XD53>] (giving the bill a “6 [percent] chance of being enacted”).

59. Humane Cosmetics Act of 2021, S. 3357, 117th Cong. (2021).

60. *Id.*

61. *Id.*

62. Humane Cosmetics Act of 2021, H.R. 6207, 117th Cong. (2021).

introduced and modified multiple times unsuccessfully.⁶³ Unfortunately, there has been little progress on any iteration of the bill at either the House or the Senate level, and any progress on the Act appears to have stalled.⁶⁴ Because of the federal government’s inability to pass legislation pertaining to animal testing in cosmetics, it is necessary for the individual states to act and legislate to provide protection.

A newer piece of federal legislation that seems promising is the Food and Drug Administration Safety and Landmark Advancements Act of 2022 (“FDASLA”). The FDASLA requires greater FDA oversight and regulation of cosmetics in the United States but does not provide any restrictions or prohibitions on animal testing.⁶⁵ The FDASLA previously had problematic language in section 614: preemption in section 802, which provides amendments to the cosmetic requirements in the Federal Food, Drug, and Cosmetic Act.⁶⁶ Section 614, the provision of Section 802 of the FDASLA, preempted state laws and prohibited states from enforcing or passing cruelty-free cosmetics laws.⁶⁷ Fortunately, in October 2022, in response to backlash, the Senate removed the preemption language,⁶⁸ allowing state cruelty-free laws to remain enforceable. The removal of the preemption language reflects the power of the public and its ability to impact important pieces of legislation. The public’s support for cruelty-free cosmetics laws and animal protection is clear, and the federal government should be prioritizing bills that address these issues.⁶⁹

63. See *States Continue to Lead the Way to a Cruelty Free USA*, CRUELTYFREE INT’L (June 22, 2021), <https://crueltyfreeinternational.org/latest-news-and-updates/states-continue-lead-way-cruelty-free-usa> [https://perma.cc/2QY5-UVD5].

64. *US S3357, Humane Cosmetics Act of 2021*, BILLTRACK50, <https://www.billtrack50.com/billdetail/1405852> [https://perma.cc/XB7H-TPRZ] (listing the bill as “dead” as of January 3, 2023).

65. Food and Drug Administration Safety and Landmark Advancements Act of 2022, S. 4348, 117th Cong. (2022); *New US Bill Presents Opportunities and Risks for Cruelty Free Cosmetics in the US*, CRUELTYFREE INT’L (June 15, 2022), <https://crueltyfreeinternational.org/latest-news-and-updates/new-us-bill-presents-opportunities-and-risks-cruelty-free-cosmetics-us> [https://perma.cc/T3G2-MBYC].

66. S. 4348, § 802.

67. *Physicians Denounce Plan in U.S. Senate to Roll Back Cruelty-Free Cosmetics Laws*, PHYSICIANS COMM. FOR RESPONSIBLE MED. (June 17, 2022), <https://www.pcrm.org/news/news-releases/physicians-denounce-plan-us-senate-roll-back-cruelty-free-cosmetics-laws> [https://perma.cc/R2ET-2K5X].

68. See *Victory! Senate Says No to Blinding and Poisoning Animals for Cosmetics*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://action.peta.org/bwbwtgM> [https://perma.cc/H9RM-MNEQ].

69. A promising piece of federal legislation for animal testing overall is the FDA Modernization Act 2.0., a bill which “allow[s] for alternatives to animal testing for purposes of drug and biological product applications.” S. 5002, 117th Cong. (2022).

This bill authorizes the use of certain alternatives to animal testing, including cell-based assays and computer models, to obtain an exemption from the Food and Drug Administration to investigate the safety and effectiveness of a drug. The bill also removes a requirement to use animal studies as part of the process to obtain a license

2. Cruelty-Free Laws at the State Level

Despite the lack of effective federal legislation, individual states have stepped up to legislate and address the use of animal testing in the cosmetics industry. As of August 2022, nine states (California, Hawaii, Illinois, Louisiana, Maine, Maryland, Nevada, New Jersey, and Virginia) have passed legislation and have active laws banning cosmetic animal testing.⁷⁰ Other states—Rhode Island, Oregon, and New York— have introduced cruelty-free legislation that is currently pending.⁷¹ California passed the first cruelty-free cosmetics law in

for a biological product that is biosimilar or interchangeable with another biological product.

S. 5002-FDA Modernization Act 2.0, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/senate-bill/5002> (on file with the *Iowa Law Review*).

Senator Paul had previously introduced S. 2952, “FDA Modernization Act of 2021” which “allows an applicant for market approval for a new drug to use methods other than animal testing to establish the drug’s safety and effectiveness. Under this bill, these alternative methods may include cell-based assays, organ chips and microphysiological systems, computer modeling, and other human biology-based test methods.” *S. 2952-FDA Modernization Act of 2021*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/senate-bill/2952> (on file with the *Iowa Law Review*). However, this first attempt stalled in the Senate, whereas the second attempt with the FDA Modernization Act 2.0 successfully passed the Senate. *Id.*; S. 5002.

The bipartisan bill amends both the FDCA and the Public Health Service Act (“PHSA”). *See Passage of Senate Bill S. 5002, “FDA Modernization Act 2.0,” Relating to Animal Testing*, COVINGTON & BURLING LLP (Oct. 4, 2022), <https://www.cov.com/en/news-and-insights/insights/2022/10/passage-of-senate-bill-s-5002-fda-modernization-act-2-0-relating-to-animal-testing> [<https://perma.cc/VAZ9-GEUK>] [hereinafter *Passage of Senate Bill*]. Previously, the FDCA required drugs to be tested on animals. *See* Jeffrey A. Singer, *FDA Modernization Act 2.0 Is a Welcome Reprieve for Puppies, but More Comprehensive Reform Is Urgently Needed*, CATO INST.: CATO LIBERTY (Sept. 29, 2022, 5:35 PM), <https://www.cato.org/blog/fda-modernization-act-20-welcome-reprieve-puppies-more-comprehensive-reform-urgently-needed> [<https://perma.cc/64VR-73CZ>]. The bill changes the FDCA by permitting other tests to be used in lieu of animal testing for human drug studies. *Id.*

Although the bill does not fully remove the use of animals for human drug studies, allowing alternative, non-animal test options to be used is a step in the right direction. The bill does fully remove the animal testing requirement from the PHSA with respect to biosimilar products and toxicity studies. *See Passage of Senate Bill, supra*. The FDA Modernization Act 2.0 was approved unanimously by the Senate in September 2022. *Booker Celebrates Passage of FDA Modernization Act to Ban Animal Testing Mandates*, CORY BOOKER (Sept. 29, 2022), <https://www.booker.senate.gov/news/press/booker-celebrates-passage-of-fda-modernization-act-to-ban-animal-testing-mandates> [<https://perma.cc/ME5Q-M46E>]; S. 5002.

Although the FDA Modernization Act 2.0 does not address the use of animal testing in cosmetics, it indicates the wide support against animal testing. Additionally, if animal-free and cruelty-free alternatives are adequate for drug and toxicity testing, it further indicates that there is no need for animal testing in the cosmetics space. The FDA Modernization Act 2.0 was signed into law by President Biden in December 2023. *See* Joe Hernandez, *The FDA No Longer Requires All Drugs to Be Tested on Animals Before Human Trials*, NPR (Jan. 12, 2023, 6:03 AM), <https://www.npr.org/2023/01/12/1148529799/fda-animal-testing-pharmaceuticals-drug-development> [<https://perma.cc/ST4N-BM55>].

70. *State Bans on Animal Testing – What They Do and What They Exempt*, BUNNY ARMY (Aug. 2022), <https://www.bunnyarmy.org/articles/article-states-ban-animal-testing-cosmetics.html> [<https://perma.cc/RqDY-Y6g6>].

71. *States Continue to Lead the Way to a Cruelty Free USA, supra* note 63.

2018.⁷² In May 2022, New York’s Cruelty-Free Cosmetics Act successfully passed the state legislature and has been sent to the governor to sign the bill.⁷³

Many of the states have similar language and provisions that ban manufacturers from “import[ing] or sell[ing] any cosmetic developed or manufactured using an animal test conducted after a specified date,” and “[t]he ban[s] appl[y] to tests on finished cosmetics and their ingredients” and applies to “tests conducted or contracted by the manufacturer or any supplier of the manufacturer.”⁷⁴ These state laws generally share the following exceptions to the prohibitions against the use of animal testing for cosmetics.⁷⁵ The first exception permits tests on invertebrate animals, which will “[a]llow[] tests on the water flea, the invertebrate typically used in cosmetic tests for ecosystem effects.”⁷⁶ The second and third exceptions permit tests on active ingredients in sunscreen and “[a]llows tests for health emergencies.”⁷⁷ Sunscreen is likely exempted due to the FDA’s 2019 proposal that requested additional data on sunscreen ingredients “[t]o improve the quality, safety, and effectiveness of sunscreens.”⁷⁸ The fourth exception permits “animal tests for foreign regulations”⁷⁹ and exempts cosmetic animals tests that are done to comply with a foreign government’s regulations.⁸⁰ While these tests cannot be used to evaluate cosmetic safety,⁸¹ this exception does not provide a strong limitation on animal testing and does not incentivize companies to change their practices. As most cosmetics companies likely will sell their products in China and will be required to test before doing so, this exception means that many companies would not qualify as truly cruelty-free.⁸² The final common exception is the permission to “test[] for a non-cosmetic purpose when the ingredient has non-cosmetic uses” since many ingredients in cosmetics are used in other

72. *Id.*; *California Governor Signs Cruelty Free Cosmetics Act*, CRUELTY FREE INT’L (Oct. 1, 2018), <https://crueltyfreeinternational.org/latest-news-and-updates/california-governor-signs-cruelty-free-cosmetics-act-o> [<https://perma.cc/73ZW-C7RR>].

73. *New York Cruelty Free Cosmetics Act Passes State Legislature*, CRUELTY FREE INT’L (May 27, 2022), <https://crueltyfreeinternational.org/latest-news-and-updates/new-york-cruelty-free-cosmetics-act-passes-state-legislature> [<https://perma.cc/QF3A-LZYL>].

74. *State Bans on Animal Testing – What They Do and What They Exempt*, *supra* note 70.

75. *Id.*

76. *Id.*

77. *Id.*

78. U.S. FOOD & DRUG ADMIN., FDA PROPOSES SUNSCREEN REGULATION CHANGES (2019), <https://www.fda.gov/media/124654/download> [<https://perma.cc/PTL8-YHQM>].

79. *State Bans on Animal Testing – What They Do and What They Exempt*, *supra* note 70.

80. See Nicole Pallotta, *California Bans the Sale of Most Cosmetics Tested on Animals*, ANIMAL LEGAL DEF. FUND (Dec. 2022), <https://aldf.org/article/california-bans-the-sale-of-most-cosmetic-s-tested-on-animal> [<https://perma.cc/KG7K-XR4X>].

81. *State Bans on Animal Testing – What They Do and What They Exempt*, *supra* note 70.

82. Michelle L. Price, *US States Join Global Push to Ban Animal-Tested Cosmetics*, NBC4 WASH. (Feb. 1, 2020, 3:08 PM), <https://www.nbcwashington.com/news/national-international/us-state-s-join-global-push-to-ban-animal-tested-cosmetics/2208076> [<https://perma.cc/QJ68-VS26>].

products.⁸³ However, there is a split among the states with respect to this exception. California, Illinois, Maine, New Jersey, and Louisiana promote alternatives by not permitting the tests to be used to assess cosmetic safety, whereas Nevada, Virginia, Maryland, and Hawaii do allow the tests to be used to assess cosmetic safety, which does not disincentivize the use of animal testing for cosmetic companies.⁸⁴ In terms of penalties, many of the states have similar language, which provides that violations of the animal cruelty statutes are “punishable by a fine of five thousand dollars (\$5,000) and an additional one thousand dollars (\$1,000) for each day the violation continues.”⁸⁵

The importance of states legislating and passing cruelty-free cosmetics laws is indicated by the statistics pertaining to the top cosmetics and skincare companies. While over 390 companies have endorsed the Humane Cosmetics Act⁸⁶ and over 2,000 companies are Leaping Bunny certified,⁸⁷ it is still not enough because the vast majority of the largest cosmetics and skincare companies are not cruelty-free.⁸⁸ In 2021, a cruelty-free advocacy site, Cruelty-Free Kitty, found that eighty-eight percent of the fifty largest cosmetics companies fund animal testing.⁸⁹ The top five companies that are not cruelty-free are L’Oréal, Gillette, Nivea, Guerlain, and Estee Lauder.⁹⁰ In contrast, the only brands that are cruelty-free and do not fund animal testing on the list of the fifty largest cosmetics companies are Garnier, TRESemmé, The Body Shop, Dove, Herbal Essences, and Sunsilk.⁹¹

Cruelty-free activists remain skeptical that large cosmetics and skincare companies will change their methods and practices unless legislation incentivizes or forces the changes to be made. For example, Monica Engebretson, the Head of Public Affairs in North America for Cruelty Free International, said: “US history has shown that state activity leads to changes at the federal level.”⁹² Ideally, the trend of passing cruelty-free legislation at the state level will continue

83. *State Bans on Animal Testing – What They Do and What They Exempt*, *supra* note 70.

84. *Id.*

85. *See, e.g.*, CAL. CIV. CODE § 1834.9.5(d) (West 2023); N.Y. GEN. BUS. LAW § 399-aaaa (McKinney 2023); HAW. REV. STAT. § 321-30.4(b) (2023).

86. *Celebrity Advocates Lobby Congress to Pass the Humane Cosmetics Act*, HUMANE SOC’Y INT’L (Sept. 20, 2023), <https://www.hsi.org/news-resources/celebrity-advocates-lobby-congress-to-pass-the-humane-cosmetics-act> [<https://perma.cc/F5G8-LCZC>].

87. *Compassionate Shopping Guide: Shop Cruelty-Free Products*, LEAPING BUNNY PROGRAM, <https://www.leapingbunny.org/shopping-guide> [<https://perma.cc/H849-RE4P>]; *Frequently Asked Questions*, LEAPING BUNNY PROGRAM, <https://www.leapingbunny.org/frequently-asked-questions> [<https://perma.cc/VFR7-TT9G>].

88. Suzana Rose, *88% of Top Beauty Brands Fund Animal Testing (Animal Testing Statistics)*, CRUELTY-FREE KITT Y (Oct. 4, 2021), <https://www.crueltyfreekitty.com/news/animal-testing-statistics> [<https://perma.cc/93W3-WGEN>].

89. *Id.*

90. *Id.*

91. *Id.*

92. *New York Cruelty Free Cosmetics Act Passes State Legislature*, *supra* note 73.

and will eventually be supported by a coextensive federal bill to provide the most protection and prohibitions against animal testing in the cosmetics industry.

B. CRUELTY-FREE LAWS INTERNATIONALLY

In the international cruelty-free cosmetics space, there are a number of challenges and developments taking place that are shaping the future of animal-friendly practices in the cosmetics industry. First, this Section will address the problems facing the success of cruelty-free laws internationally. Then, this Section will examine the positive changes impacting cruelty-free laws internationally.

1. Problems Facing the Success of Cruelty-Free Laws Internationally

This wide support against animal testing is also seen on a global level. In 2013, the European Union (“EU”) banned the use of cosmetic animal testing and prohibited the marketing or sale of products that were tested on animals.⁹³ Shortly after, Norway, Switzerland, Israel, Turkey, India, Guatemala, Taiwan, and New Zealand introduced similar laws and other countries have begun to follow suit.⁹⁴ The EU’s ban in 2013, combined with India’s ban in 2014, “closed markets for 1.7 billion consumers to multinational cosmetic and toiletry manufacturers that insist on testing on animals.”⁹⁵ However, this success is not seen everywhere across the globe. Like the United States, Canada has proposed pending legislation that has been relatively slow-moving.⁹⁶

The largest obstacle to cruelty-free cosmetics laws is China due to its animal testing laws and its requirement of pre-market animal testing.⁹⁷ In 2021, China did change its laws by allowing brands “to sell imported non-special use cosmetics” without requiring animal tests.⁹⁸ Non-special use cosmetics include skincare, hair care, nail care, makeup, and perfumes.⁹⁹ While this marked a significant change in China’s laws, it still mandates pre-market animal testing for special use cosmetics, including hair dyes, hair growth products, whitening products, deodorants, sunscreen, and other products.¹⁰⁰ There are also three

93. *Cruelty-Free Cosmetics*, PHYSICIANS COMM. FOR RESPONSIBLE MED., <https://www.pcrm.org/ethical-science/animal-testing-and-alternatives/cruelty-free-cosmetics> [https://perma.cc/F72W-AVXJ]. Another example of success in Europe is seen in Great Britain specifically and is evidenced by Cruelty Free International’s report that zero eye irritation tests were conducted on animals in Great Britain in 2021. *Facts and Figures on Animal Testing*, *supra* note 46.

94. *See Cruelty-Free Cosmetics*, *supra* note 93.

95. PACELLE, *supra* note 27, at 181.

96. *See Cruelty-Free Cosmetics*, *supra* note 93.

97. *See China & Cosmetics Animal Testing FAQ*, HUMANE SOC’Y INT’L, https://www.hsi.org/wp-content/uploads/assets/pdfs/bcf_china_faqs.pdf [https://perma.cc/EZ7J-Z38P].

98. Suzana Rose, *The Truth About China Ending Mandatory Animal Testing This May*, CRUELTY-FREE KITTY (Mar. 29, 2021), <https://www.crueltyfreekitty.com/news/china-ends-mandatory-animal-testing-may> [https://perma.cc/CRD7-G5FU].

99. *Id.*

100. *Id.*

product exceptions that always require testing and cannot be exempted, specifically: “[i]nfant and children cosmetics,” “[c]osmetics using new ingredients during their 3-year monitoring period,” and “[c]osmetics whose . . . manufacturer is listed as a key supervision target by the [National Medical Products Administration].”¹⁰¹ Since China is one of the largest cosmetics markets, many cosmetics companies will continue to test on animals in order to be able to sell their products in China.

Another problem facing the cruelty-free cosmetics global community is the objectives of two EU laws: the Cosmetics Regulation (“EC”) and Registration, Evaluation, Authorization, and Restriction of Chemicals (“REACH”).¹⁰² The EC prohibits animal testing for cosmetics, but ingredients that are only used in cosmetics are being tested on animals under REACH.¹⁰³ REACH essentially acts as a loophole that allows manufacturers to get around the EC if the ingredients tested are only for cosmetic use.¹⁰⁴ Therefore, while the EC appears to prohibit animal testing for cosmetics in theory, REACH permits such testing in practice. The European Commission—the EU’s executive arm that proposes new laws and policies¹⁰⁵—has said that they take concerns about animal testing seriously and that “REACH requires companies to share data in order to avoid unnecessary [animal] testing.”¹⁰⁶ The Commission also requires that companies seeking to perform tests must report the proposed tests and obtain approval.¹⁰⁷ Although the official statement is that “[a]nimal testing is to be avoided in favour of [alternative] methods and registrants can only carry out tests involving the use of animals” as a last resort,¹⁰⁸ the actual result is that animal testing for cosmetic purposes has resumed despite the EU’s previous ban.¹⁰⁹

The European Chemicals Agency (“ECHA”) is also impacting the EU’s animal testing cosmetics ban by lobbying for “animal tests for ingredients with a long history of safe use, even for those solely used in cosmetics.”¹¹⁰ The ECHA is pushing for these tests by alleging safety concerns and if the “ECHA

101. *China Mainland Cosmetic Regulation*, CHEMLINKED (Oct. 3, 2021), <https://cosmetic.chemlinked.com/cosmopedia/china-mainland-cosmetic-regulation> [<https://perma.cc/P2KA-KFHN>].

102. *Leaping Bunny Program in the US Responds to EU Animal Testing Report*, LEAPING BUNNY PROGRAM (Sept. 8, 2021), <https://www.leapingbunny.org/REACH> [<https://perma.cc/6MJF-MTAQ>].

103. *Id.*; Jean Knight et al., 38 *ALTS. TO ANIMAL EXPERIMENTATION* 653, 667–68 (2021).

104. *See Leaping Bunny Program in the US Responds to EU Animal Testing Report*, *supra* note 102.

105. *European Commission*, EUR. UNION, https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/european-commission_en [<https://perma.cc/68WM-2YAC>].

106. *See REACH Testing for Cosmetic Ingredients*, EUR. ANIMAL RSCH. ASS’N, <https://www.eara.eu/reach-testing> [<https://perma.cc/FHF5-KLEE>].

107. *Id.*

108. *Id.*

109. Esme Stallard, *Animal Tests for Makeup Ingredients Allowed*, BBC (May 10, 2023, 10:07 AM), <https://www.bbc.com/news/science-environment-65484552> [<https://perma.cc/LN2P-PHQ5>].

110. *Supporting a Future Global Ban on Animal Testing for Cosmetics*, UNILEVER (May 3, 2022), <https://www.unilever.com/news/news-search/2022/supporting-a-future-global-ban-on-animal-testing-for-cosmetics> [<https://perma.cc/KV3S-535S>].

believes there is a possibility of workforce exposure during manufacturing.”¹¹¹ As a result, many pieces of legislation, companies, and countries are preventing improvements and progress in cruelty-free cosmetics laws globally. Due to the large number of cosmetics consumers and the economic and political power it holds, the United States is well-positioned to push for cruelty-free cosmetics laws and improve the current practices and trends across the globe.

2. Positive Changes Impacting Cruelty-Free Laws Internationally

Despite some disappointing steps internationally, there are positive changes and progress happening that are improvements in the cruelty-free space. The Organization for Economic Co-operation and Development (“OECD”) is made up of thirty-eight countries, including the United States, “that collaborate on key global issues at national, regional and local levels.”¹¹² In 2015, the “OECD approve[d] additional non-animal alternative tests for eye and skin irritation.”¹¹³ Cosmetics and skincare manufacturers themselves have started taking steps toward cruelty-free practices and products. Recently, a handful of large cosmetics companies have become cruelty-free and declared their commitment to ending animal testing.¹¹⁴ Coty is one of the world’s largest cosmetics companies and is the parent company for brands like Rimmel, Manhattan, and Risqué.¹¹⁵ Rimmel has a huge reach, with sales and marketing in over eighty countries.¹¹⁶ In 2018, Covergirl, another Coty brand and one of the largest and most well-known cosmetics companies, stopped selling in China and became certified cruelty-free by the Leaping Bunny Program.¹¹⁷ Although Covergirl was not the first cosmetics brand to go cruelty-free—Wet’n’Wild, e.l.f., NYX, Milani, and Physicians Formula have been cruelty-free for far longer¹¹⁸—large cosmetics companies that change their practices will put pressure on non-cruelty-free competitors to follow suit. These large, popular companies dictate and set the standards for the cosmetics and skincare market and have significant influence and power that can result in lasting change. Having cosmetics and skincare manufacturers on board with moving towards cruelty-free cosmetics laws will

111. Kerry Postlewhite, *Banned—But Animal Cosmetics Testing Is Still Happening*, POLITICO (Mar. 11, 2021, 9:00 AM), <https://www.politico.eu/sponsored-content/banned-but-animal-cosmetics-testing-is-still-happening> [<https://perma.cc/32Y2-M8Eg>].

112. *Our Global Reach*, ORG. FOR ECON. COOP. & DEV., <https://www.oecd.org/about/member-s-and-partners> [<https://perma.cc/KG9F-9FET>].

113. See *Timeline: Cosmetics Testing on Animals*, *supra* note 14.

114. See *Coty Expands Partnership with Cruelty Free International*, BUS. WIRE (Sept. 26, 2022, 7:00 AM), <https://www.businesswire.com/news/home/20220926005006/en/Coty-Expands-Partnership-With-Cruelty-Free-International> [<https://perma.cc/WB32-6XQ2>].

115. *Id.*

116. *Id.*

117. Suzana Rose, *Covergirl Pulled out of China and Is Now Certified by Leaping Bunny*, CRUELTY-FREE KITTY (May 12, 2020), <https://www.crueltyfreekitty.com/news/is-covergirl-cruelty-free> [<https://perma.cc/UqJQ-85BS>].

118. *Id.*

result in a comprehensive and seamless transition for companies, legislators, and consumers.

Although progress has been slow both domestically and globally in moving away from animal testing for cosmetic and skincare products, there have been significant steps that signal the widespread support for such changes. The most important changes need to come from larger cosmetics and skincare companies joining the industry in using cruelty-free methods, as well as changes in the laws of countries like China that have both a high number of cosmetics consumers and strict laws requiring animal testing for cosmetics and skincare products.

III. THE IMPORTANCE OF CRUELTY-FREE LAWS FOR CONSUMER PROTECTION PURPOSES

One clear goal of consumer protection legislation is to prevent consumers from being exposed to harmful products.¹¹⁹ A large portion of the argument for animal testing in cosmetics is centered around this idea, claiming that these tests will prevent consumers from purchasing and using products that can cause rashes, infections, or perhaps worse. However, results from animal testing function more as a “psychological salve” by “allowing us to believe we are safer”¹²⁰ rather than providing accurate safety data and information. As discussed previously, the results from animal testing, especially for cosmetics, are oftentimes inaccurate and translate poorly to human responses to various products and substances.¹²¹ Animal testing “has not provided us with a practical means to assure human safety” and instead functions “as legal defense for manufacturers and distributors.”¹²²

This Part develops the concept of the importance of cruelty-free laws for consumer protection and how cruelty-free laws would resolve current problems in regulating the sale, labeling, and advertising of cruelty-free products in the United States and would prevent consumer confusion. This Part will also elaborate on the current programs that are in place to certify cruelty-free cosmetic and skincare products.

A. CRUELTY-FREE COSMETICS LAWS WOULD PREVENT CONSUMER CONFUSION

Consumer protection is important from an advertising and labeling standpoint. Particularly for cosmetics, advertising and labeling is problematic for consumer protection purposes because there is little to no regulation or

119. See, e.g., Press Release, Jan Schakowsky, U.S. Rep., Schakowsky Announces the Safer Beauty Bill Package to Protect Consumers from Harmful Products in Cosmetics and Personal Care Products (July 29, 2021), <https://schakowsky.house.gov/media/press-releases/schakowsky-announces-safer-beauty-bill-package-protect-consumers-harmful> [<https://perma.cc/G8F4-3PNU>].

120. PACELLE, *supra* note 27, at 169.

121. See *supra* Part I.

122. See *supra* Part I.

oversight for what cosmetics companies can claim on their labels.¹²³ While the law requires that claims on cosmetic labels “must be truthful and not misleading,” there is no FDA approval required for labeling or cosmetic product claims.¹²⁴ The FDCA concludes that, amongst other requirements, “a cosmetic is misbranded if—‘its labeling is false or misleading in any particular [way]’” or if “its label does not include all required information.”¹²⁵ Despite the relevant sections from the FDCA regarding misbranding and mislabeling for cosmetics, the FDA concedes that “[t]he unrestricted use of . . . phrases” like “cruelty-free” and “[n]ot [t]ested on [a]nimals . . . is possible because there are no legal definitions for these terms,” and the terms do not appear to have any enforceable meaning under the law.¹²⁶ Therefore, the FDA and the Federal Trade Commission (“FTC”) are at a disadvantage because they are not able to stop products that are falsely or misleadingly labeled from being introduced into the market and have to act when it is likely that consumers have already been harmed or misled.¹²⁷

Two common label claims for cosmetics are “cruelty-free” and “not tested on animals.” However since “there are no legal definitions for these terms,” it allows for “unrestricted use” by companies who want to induce consumer purchasing.¹²⁸ In the EU, cosmetics companies are not permitted to have label claims such as “not tested on animals,” “‘animal friendly[,]’ or logos demonstrating cruelty-free” because not testing on animals is already a legal requirement.¹²⁹ By passing similarly comprehensive cruelty-free legislation, the United States could resolve cosmetics label claims issues and protect consumers from false or misleading labels. However, the EU’s labeling restrictions are not infallible. Like the FDA, authorities in the EU do not review or approve claims before a product gets to consumers and only enforce when the product is already on the market as a consumer protection mechanism.¹³⁰ At a minimum, the United States and its consumers would benefit significantly from the creation of legal definitions for phrases like cruelty-free and not tested on animals.

123. See *Cosmetics Labeling Claims*, U.S. FOOD & DRUG ADMIN. (Nov. 21, 2022), <https://www.fda.gov/cosmetics/cosmetics-labeling/cosmetics-labeling-claims> [<https://perma.cc/8UTL-MYZ9>].

124. *Id.*

125. *FDA Authority over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated*, *supra* note 15 (quoting Federal Food, Drug, and Cosmetic Act § 602(a), 21 U.S.C. § 362(a)).

126. “*Cruelty Free*”/“*Not Tested on Animals*,” *supra* note 43.

127. See *Cosmetics Labeling Claims*, *supra* note 123. “[T]he [FTC] regulates advertising claims” and has taken action against companies that use deceptive phrases such as “all natural” when they really use synthetic ingredients. *Id.*; Lesley Fair, *Are Your “All Natural” Claims All Accurate?*, FED. TRADE COMM’N (Apr. 12, 2016), <https://www.ftc.gov/business-guidance/blog/2016/04/are-your-all-natural-claims-all-accurate> [<https://perma.cc/NH9V-2EWP>].

128. “*Cruelty Free*”/“*Not Tested on Animals*,” *supra* note 43.

129. *What Is the EU Ban on Animal Testing?*, COSLAW.EU (Apr. 12, 2022), <https://www.coslaw.eu/what-is-the-eu-ban-on-animal-testing> [<https://perma.cc/2RR2-MYKP>].

130. *Id.*

There is also significant inconsistency across cosmetics companies in how they use the phrases, whether they apply to the finished product or the components,¹³¹ which ultimately can be misleading because consumers assume the product is cruelty-free. Some companies claim they do not test on animals merely because they do not test the *final* product on animals, while they still test individual components of the product on animals. Other companies use third parties to perform animal testing while claiming their product is cruelty-free. An example of this can be seen in a statement from cosmetics and skincare company Guerlain about their animal testing practices: “[i]n China, where our products are marketed, authorities require that certain imported cosmetics products be tested on animals, considered the best way to guarantee consumer safety. We do not perform these tests, which are done by independent laboratories.”¹³² This is a position taken by many cosmetics companies that still use animal tests for cosmetics—they skirt the issue by claiming that others perform the actual tests and taking the position that doing so absolves them of blame.

Due to China’s restrictive laws and requirements for importing cosmetics, the general consensus among cruelty-free advocates is that companies that sell cosmetics and skincare to Chinese consumers cannot be deemed cruelty-free.¹³³ In 2012, consumers filed suit against Estée Lauder, Avon, and Mary Kay, claiming false advertising due to their claims that their cosmetics were cruelty-free despite testing on animals so they could sell in China.¹³⁴ The complaint indicates consumers’ strong preference for cruelty-free products by pointing to the increase in sales when People for the Ethical Treatment of Animals (“PETA”) listed the companies “on their ‘Do Not Test’ list.”¹³⁵

There are currently programs that allow consumers to determine whether the product they are purchasing is cruelty-free or not tested on animals. The three main programs that “certify cruelty-free products” are Beauty Without

131. “Cruelty Free”/“Not Tested on Animals,” *supra* note 43.

132. 5 *Lies Your “Cruelty-Free” Brand Is Telling You*, ETHICAL ELEPHANT (June 8, 2023) (emphasis omitted), <https://ethicalelephant.com/cruelty-free-loopholes> [<https://perma.cc/9HRV-3U8D>].

133. Mandy Carter, *Tricky Cruelty-Free Claims Can Mislead Consumers—Don’t Be Fooled*, ONEGREENPLANET, <https://www.onegreenplanet.org/animalsandnature/cruelty-free-claims-can-mislead-consumers> [<https://perma.cc/526V-FFKN>].

134. Manatt Phelps & Phillips LLP, “*Cruelty-Free Claims Subject of False Advertising Suit*,” LEXOLOGY (Mar. 23, 2012), <https://www.lexology.com/library/detail.aspx?g=23e756f9-5a78-412d-afdf-of5d51d5d4db> [<https://perma.cc/J9S8-S274>]. The defendants were eventually split into separate suits, and the class action against Avon was ultimately dropped. Gavin Broady, *Avon Ducks Animal Testing False Ad Class Action*, LAW360 (Aug. 26, 2013, 5:36 PM), <https://www.law360.com/articles/467533/avon-ducks-animal-testing-false-ad-class-action> (on file with the *Iowa Law Review*). Despite this result, it is clear that standardization for cosmetic labeling is needed, particularly for “cruelty-free” and “not tested on animals” claims to protect consumers.

135. Manatt Phelps & Phillips LLP, *supra* note 134.

Bunnies, Leaping Bunny, and Choose Cruelty Free (“CCF”).¹³⁶ Each program has its various strengths and weaknesses,¹³⁷ and they are a great resource for consumers, but these three programs differ enough in their certification requirements such that they do not provide a uniform way to determine whether a product is cruelty-free. The superior program overall appears to be the Leaping Bunny Program due to its presence in multiple countries and its rigorous certification criteria.¹³⁸

To add another confusing layer for consumers, a product can still be cruelty-free and not bear an indicative logo because the company opted not to pay a fee to use the logo.¹³⁹ The licensing fee for Beauty Without Bunnies is a one-time fee of \$100; for Leaping Bunny, it is a one-time fee based on gross sales and can range from \$500 to \$4,500; and for CCF, it is a yearly fee based on gross sales that can range from \$340 to \$3,400.¹⁴⁰ Small, local companies may opt out of these licensing fees to save costs in an otherwise competitive market. However, foregoing these stamps of approval can be costly since many consumers that are aware of these programs intentionally seek out claims of “cruelty-free” or “not tested on animals” that are validated with these program logos. By passing comprehensive cruelty-free legislation like the EU, the United States could remove these stamps of approval and reduce the associated costs for business owners, all while ensuring that consumers get safe and correctly labeled products.

136. *Decoding Cosmetics Claims: ‘Not Tested on Animals,’ ‘Cruelty Free,’ supra* note 51. Beauty Without Bunnies is associated with PETA, the Leaping Bunny Program is associated with the CCIC, and CCF is an Australian non-profit. *Id.*

137. *Id.* Beauty Without Bunnies is listed as only requiring “a short questionnaire and sign[ing] or submit[ing] a statement ‘verifying that neither they nor their ingredient suppliers conduct, commission, or pay for any tests on animals for ingredients, formulations or finished products.’” *Id.* (quoting *What Types of Companies Are on the “Don’t Test” List?*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://crueltyfree.peta.org/faq/what-types-of-companies-are-on-the-dont-test-list> [<https://perma.cc/7XY6-JDC9>]). Currently, Beauty Without Bunnies certifies over 4,300 companies. *Id.*

Leaping Bunny is described as having “a difficult-to-parse exemption from its prohibition against animal testing.” *Id.* The exception “says companies can use animal-tested ingredients provided that (1) the ingredient was tested to meet ‘explicit statutory or regulatory requirements’ for animal testing and (2) the testing was not conducted to assess safety, efficacy or environmental effects.” *Id.* And that another section specifies “that companies ‘shall not allow animal testing to be performed by or for submission to regulatory agencies in foreign countries.’” *Id.* The type of testing referred to in the second element is not specified and leaves an unclear loophole. *See id.* Currently, Leaping Bunny certifies more than 1,300 companies. *Id.*

Although CCF requires companies to “sign[] a legally-binding contract to the effect that what they have said in their application is the truth,” they do not verify the truth of the companies’ claims. *Id.* Currently, CCF certifies 126 companies. *Id.*

138. *See Best Cruelty-Free Standards*, BUNNY ARMY, <https://www.bunnyarmy.org/articles/article-cruelty-free-standards.html> [<https://perma.cc/P22A-LXET>].

139. *Decoding Cosmetics Claims: ‘Not Tested on Animals,’ ‘Cruelty Free,’ supra* note 51.

140. *Id.*

While these programs and their infrastructure provide a great jumping off point for consumers to make informed choices, they have many limitations and differences that hinder consumers from receiving clear, comprehensive information that they can use in their purchasing decisions. The Leaping Bunny Program provides resources for consumers such as an app and the Compassionate Shopping Guide¹⁴¹ and Beauty Without Bunnies has an online database,¹⁴² but many consumers may not be aware of these certification programs or their tools. Instead, the typical consumer assumes that since the cosmetics labels say “cruelty-free” or “not tested on animals,” these claims are true and can be trusted, which results in harm to these consumers who want to purchase truly cruelty-free products.

B. CONSUMER SUPPORT FOR CRUELTY-FREE COSMETICS LAWS

Cruelty-free cosmetics laws achieve, at minimum, two significant goals: reducing animal testing and providing consumer protection. Because there is no standardization or regulation of cosmetic labeling claims, federal and state action is needed to empower consumer purchasing decisions and prevent deception by cosmetics and skincare companies. Cruelty-free cosmetics laws help ensure that the products in the marketplace are actually cruelty-free and not tested on animals and ensure that consumers know what they are purchasing.

Studies indicate that most consumers support laws against the use of animal testing in cosmetics,¹⁴³ with some polls showing results as high as seventy-nine percent of Americans polled supporting laws prohibiting the use of animals in cosmetic testing.¹⁴⁴ In the United States, seventy-five percent of people polled “sa[id] that they would feel safer, or as safe, if non-animal methods were used to test the safety of a cosmetic instead of animal testing.”¹⁴⁵ Furthermore, the results from the United States also indicated that “70 [percent] of women

141. *Myths & Facts*, LEAPING BUNNY PROGRAM, <https://www.leapingbunny.org/news-resources/myths-facts> [<https://perma.cc/7NKH-DPXX>].

142. *Decoding Cosmetics Claims: ‘Not Tested on Animals,’ ‘Cruelty Free,’* *supra* note 51.

143. Suzana Rose, *Poll Results: 70% Worldwide Want Animal Testing Ban*, CRUELTY-FREE KITTY (May 22, 2018), <https://www.crueltyfreekitty.com/news/animal-testing-poll-results-2016> [<https://perma.cc/TL5U-TXMD>]. The public opinion surveys were spearheaded by Humane Society International and collected the opinions of consumers “in the US, Canada, South Korea, Brazil, Japan, and Taiwan.” *Id.*

144. *New Poll Reveals US United Against Cosmetics Animal Tests*, *supra* note 50.

145. Rose, *supra* note 143. These sentiments were similar across the other countries polled. In Canada, eighty percent of “people support[ed] a national cosmetics animal testing ban” and “88 [percent] agreed that animal testing ‘can cause pain and suffering to animals and it is not worth causing this kind of suffering just to test the safety of cosmetics, especially when there are safe ingredients already available.’” *Id.* In South Korea, seventy percent “support[ed] a national animal testing ban for cosmetics” and in Japan, almost ninety percent said, “I don’t want manufactures to use ingredients in cosmetics whose safety cannot be determined unless they are tested on animals.” *Id.*

think that animal testing of cosmetics should be illegal,”¹⁴⁶ which is significant given that women are the target consumers and largest purchasers of cosmetics and skincare. The federal and state bills, as well as the poll results, have also indicated that opposition to cosmetic animal testing is not a partisan issue.¹⁴⁷ This evidence of wide, bipartisan support against the use of animal testing for cosmetics is promising and has the potential to result in comprehensive protections against the practice at both the state and federal levels.

IV. IOWA NEEDS A CRUELTY-FREE COSMETICS LAW FOR ANIMAL PROTECTION AND CONSUMER PROTECTION PURPOSES

Animals have always been integral and invaluable to the state of Iowa, in no small part due to the large farms spread throughout the state. It is estimated that Iowa has “approximately 7.1 million animal units on its farms” with an animal unit being equivalent to one thousand pounds of animal.¹⁴⁸ Despite the high volume of animals in the state and their importance to the local and national economy, animal protection laws in Iowa are generally lacking across the board, from livestock to companion animals. Additionally, in 2022, Iowa ranked in the bottom tier for animal protection laws, coming in at forty-one out of fifty.¹⁴⁹ Iowa ranks in the bottom tier for animal protection laws due to the presence of “an ag-gag law[,]” lack of “felony provisions for first time cruelty to animals (only fighting)[,]” “[s]ocial services professionals [are] not required to report suspected animal abuse[,]” and the “[l]imited definition of ‘animal.’”¹⁵⁰ Currently, Iowa’s animal protection laws list substantive prohibitions in section 717 for general cruelty, fighting and racketeering,

146. *Id.* Another poll showed even more opposition from women, providing results that seventy-eight percent of women were opposed. *New Poll Reveals US United Against Cosmetics Animal Tests*, *supra* note 50.

147. *See* discussion *supra* Section II.A.; *New Poll Reveals US United Against Cosmetics Animal Tests*, *supra* note 50. The poll indicated that “71 [percent] of respondents who identify as ‘very conservative’ saying they would support a federal prohibition.” *Id.*

148. *Livestock and Poultry in Iowa*, IOWA FARM BUREAU (July 5, 2022), <https://www.iowafarmbureau.com/Article/Livestock-and-Poultry-In-Iowa> [<https://perma.cc/7SX7-GFX7>].

149. 2022 *U.S. State Animal Protection Laws Rankings: The Best and Worst States for Animal Protection Laws*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/us-state-rankings> [<https://perma.cc/8BX8-79R9>].

150. *Iowa: Updates About Legal Issues Facing Animals in the State*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/state/iowa> [<https://perma.cc/9LEL-FMNZ>]. The only “pro” listed for Iowa is the requirement of “[m]andatory psychological evaluations following felony convictions for animal cruelty.” *Id.* Iowa’s “ag-gag law” “criminaliz[es] undercover investigations at animal facilities, deter[s] the exposure of animal cruelty, unsafe working conditions, and food safety threats in such facilities.” *Court Strikes down Iowa Recording Ban Ag-Gag Law*, ANIMAL LEGAL DEF. FUND (Sept. 27, 2022), <https://aldf.org/article/court-strikes-down-iowa-recording-ban-ag-gag-law> [<https://perma.cc/6V5C-KYAM>]. These laws have been challenged, with the U.S. District Court for the Southern District of Iowa finding that the latest ag-gag law is unconstitutional and violates the First Amendment. *Id.* However, there have been multiple ag-gag laws that have been the source of frequent litigation since the first ag-gag law was passed in 2012, so it is unlikely that the Southern District of Iowa’s ruling is the end. *See id.*

sexual assault, and cruelty to working animals, with separate provisions for livestock.¹⁵¹ This Part examines why passing a cruelty-free cosmetics law in Iowa would be in accordance with Iowa's long history of strong consumer protection laws and enforcement and why a cruelty-free law could put Iowa at the forefront of animal protection and consumer protection.

A. *A CRUELTY-FREE COSMETICS LAW WOULD STRENGTHEN IOWA'S ANIMAL CRUELTY AND CONSUMER PROTECTION LAWS*

In 2020, Iowa passed the Community and Pet Protection Act (“HF 737”), marking a positive step towards strengthening animal protection laws in the state and strengthening section 717B.¹⁵² HF 737 moved through the legislature easily, passing unanimously through the House and passing the Senate with only four votes in opposition.¹⁵³ This again indicates bipartisan support and consensus on animal protection issues generally, which suggests that passing a cruelty-free cosmetics law in Iowa would be possible and less divisive than other legislative goals. The passage of HF 737 indicates that Iowa has started to provide stronger protections for animals and passing a cruelty-free cosmetics law is the next step in strengthening these protections.

Currently, Iowa's animal protection laws do not address the use of animal testing for cosmetics or even general animal testing. As such, the next logical step is to pass a cruelty-free cosmetics law. Iowa has significant room for improvement in the animal protection space and passing a cruelty-free cosmetics law would be a benefit for both animal protection and consumer protection. Iowa could be a leader in passing cruelty-free cosmetics laws and would be able to provide consumer protection to constituents from unclear and unregulated “cruelty-free” and “not tested on animals” label claims on cosmetic and skincare products.

Iowa has always been a leader in robust consumer protection, from pursuing enforcement actions and settlements against companies for harmful algorithms, to robocallers, to data breaches.¹⁵⁴ The Office of the Attorney General of Iowa even has a history in tackling and enforcing consumer protection issues involving animals, most recently evidenced by an enforcement

151. ANIMAL LEGAL DEF. FUND, ANIMAL PROTECTION LAWS OF IOWA 2, 4 (2021), <https://aldf.org/wp-content/uploads/2022/01/Animal-Protection-Laws-of-Iowa-2021-Animal-Legal-Defens-e-Fund.pdf> [<https://perma.cc/7LSQ-Z424>]; IOWA CODE § 717 (2023).

152. *Gov. Reynolds Signs Bill to Strengthen Iowa's Animal Cruelty Laws*, KCRG (June 30, 2020, 8:06 AM), <https://www.kcrg.com/2020/06/30/gov-reynolds-signs-bill-to-strengthen-iowas-animal-cruelty-laws> [<https://perma.cc/S2WD-4XEG>].

153. *See id.*

154. *See* Diane Smoyer & Roger Gibboni, *Iowa Attorney General Miller on Advocating for Consumer Rights, Policing Algorithms and Offering Support During Breaches*, IAPP (Mar. 22, 2022), <https://iap.org/news/a/iowa-attorney-general-miller-on-advocating-for-consumer-rights-policing-algorithms-and-offering-support-during-breaches> [<https://perma.cc/LKV6-S8GG>].

action in 2019 surrounding a “puppy-laundering ring.”¹⁵⁵ Puppy laundering allows people to deceive consumers and circumvent laws that are intended to prevent the sale of dogs from puppy mills, where the animals live in inhumane conditions and are treated poorly.¹⁵⁶ As such, Iowa is well-positioned to enforce cruelty-free cosmetics laws and protect consumers from misleading and inaccurate labeling claims by cosmetics and skincare companies.

Iowa does have a law that has similar language to the FDCA and prohibits misbranding of cosmetics.¹⁵⁷ However, this law faces the same issues as the FDCA and does not prevent cosmetics companies from labeling their products with false or misleading claims regarding their animal testing practices. By passing a cruelty-free cosmetics law, Iowa can tackle this consumer protection issue and reduce the uncertainty and misrepresentation in labeling claims so consumers will know the products they purchase are truly cruelty-free. Iowa should pass a cruelty-free cosmetics law to provide consumer protection, to prevent the unnecessary use of animals in cosmetic testing, and to put Iowa at the forefront of animal and consumer protection.

B. IOWA SHOULD MODEL THEIR CRUELTY-FREE LEGISLATION AFTER CALIFORNIA’S CURRENT LAW

Since some other states have already passed or are in the process of passing cruelty-free cosmetics laws, Iowa can look to their language and exemptions to develop robust cruelty-free legislation. In addition to passing the pioneering law, California currently has the strongest cruelty-free cosmetics law,¹⁵⁸ and it functions as a useful model to emulate. As with most legislation, there were concessions in order for the bill to be passed, such as “grandfathering in of existing ingredients” and narrowing the scope to “appl[y] only if the testing is conducted by the cosmetics manufacturer or supplier themselves.”¹⁵⁹ But California’s resulting cruelty-free legislation is robust and provides much needed protections for animals and consumers in the cosmetics and skincare space despite the concessions and various exceptions.

Many of the states with current cruelty-free cosmetics laws have an exception for “[t]ests for a non-cosmetic purpose when the ingredient has non-cosmetic

155. *Miller Sues to Stop Iowa-Based ‘Puppy Laundering’ Ring*, IOWA DEP’T JUST., OFF. IOWA ATT’Y GEN. (Mar. 15, 2019), <https://www.iowaattorneygeneral.gov/newsroom/puppy-laundering-miller-rescue-california-chicago> [<https://perma.cc/DN5K-2HEF>]. “Puppy laundering is the practice of using non-profit rescue groups to obscure the source of dogs, deceive consumers and circumvent ‘puppy mill’ bans.” *Id.*

156. See Donnelle Eller, *Iowa Attorney General Seeks to Shut Down National Puppy Laundering Ring that Lawsuit Says Operates from State*, DES MOINES REG. (Mar. 18, 2019, 12:36 PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2019/03/18/iowa-home-national-puppy-laundering-ring-iowa-attorney-general-tom-miller-lawsuit-says/3160148002> [<https://perma.cc/B82Y-ZY7L>].

157. See Iowa Code § 126.15 (2023).

158. See Pallotta, *supra* note 80.

159. *Id.*

uses.”¹⁶⁰ However, as mentioned previously, there is a split amongst the states on how the state laws address this exemption. Iowa should follow California, Illinois, Maine, New Jersey, and Louisiana’s exemption language, which “promotes the shift to alternatives” by “ban[ning] use of the test in most cases for assessing cosmetic safety.”¹⁶¹ The other states (Nevada, Virginia, Maryland, and Hawaii) have language that does not promote alternatives and provides a wider exception.¹⁶² Except for this language split in the exemption for tests for non-cosmetic purposes and non-cosmetic uses, many of the states have similar language for their cruelty-free cosmetics laws, which makes it easier for new states to adopt similar bans, as well as for federal legislation to provide coextensive protection.

The importance of state action cannot be ignored; states function “as a testing ground for new ideas that are later adopted nationwide” and cruelty-free cosmetics laws are no exception.¹⁶³ States have been successful in passing cruelty-free cosmetics laws when equivalent federal bills have stalled and been slow-moving. These successful states and their cruelty-free legislation “creates momentum for federal action. Moreover, these state successes have demonstrated that progress is possible when companies, consumers, advocates, scientists, and lawmakers work together to reach a common goal.”¹⁶⁴ The states, and Iowa in particular, are in a unique position to drive change, protect their consumers and animals in the absence of federal protections, and influence the progress and passage of federal protection such as the Humane Cosmetics Act.

CONCLUSION

The use of animal testing in cosmetics is both inhumane and unnecessary for product safety and there are a wide range of alternative options available to ensure that cosmetics and skincare are safe for human use. The lack of regulation for cosmetics and skincare as well as the lack of legal definitions for cosmetic labeling claims pose a problem for consumer protection. The absence of action and progress at the federal level means that any important advancements will need to come from the state level. Passing a cruelty-free cosmetics law would put Iowa at the forefront of animal protection and would be a step toward decreasing the use of animals in cosmetic testing. Most consumers support a law against using animals for cosmetic testing purposes, and Iowa’s passage of such a law likely would be indicative of their constituents’ wishes and would be well-received. Iowa has the ability to reduce harm to

160. *State Bans on Animal Testing – What They Do and What They Exempt*, *supra* note 70.

161. *Id.*

162. *See id.*

163. *It’s a Very Happy New Year for Animals in Hawaii, Maryland and Virginia!*, CRUELTY FREE INT’L (Jan. 1, 2022), <https://crueltyfreeinternational.org/latest-news-and-updates/its-very-happy-new-year-animals-hawaii-maryland-and-virginia> [https://perma.cc/gJYY-WgW8].

164. *Id.*

animals and protect consumers by passing one law, and therefore Iowa should pass a cruelty-free cosmetics law.