



## **COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**A.7402  
S.3528**

**Assembly Member Rosenthal  
Senator Padavan**

AN ACT to amend the Public Health Law, in relation to prohibiting traditional animal test methods.

### **THIS BILL IS APPROVED AND WE SUGGEST REVISIONS**

This committee offers its strong approval and suggests revisions to strengthen the bill; with or without our proposed changes, however, we support this bill. A.7402/S.3528 would prohibit manufacturers and contract testing facilities from using traditional animal test methods for product safety testing when an alternative has been validated and recommended by the ICCVAM (Interagency Coordinating Committee for the Validation of Alternative Methods) and subsequently adopted by the relevant federal agency. The bill would not prohibit the use of animal tests to comply with requirements of state agencies, nor would it apply to animal tests performed for medical research. The exclusive remedies would be injunctive relief, brought by New York's Attorney General or a district attorney, and a civil penalty up to \$5000.

This bill would clarify certain ambiguities in the Agriculture and Markets law and Public Health law that have resulted from changes in science and technology subsequent to the enactment of those laws.

Companies seeking to satisfy regulatory requirements have long used animals in conducting traditional toxicology studies of substances that are toxic. These tests evaluate the impacts of chemical exposure on the health and mortality of animals. They include the Draize test, a test in which the eyes of a conscious albino rabbit are clamped open while a chemical is poured in the animal's eyes, rendering ulcerated, bleeding eyes and causing the rabbit excruciating pain for several days before the animal is killed, the intent of the test being to detect the potential harmfulness of products that might come in contact with the human eye; the Lethal Dose 50, a test designed to measure the amount or concentration of a substance that will kill 50% of test

animals within a specified time period when that substance is forcibly ingested, inhaled, or otherwise exposed to an animal, thus causing the animal intense pain, discharge, convulsions, diarrhea, and bleeding from the eyes and mouth; and the rabbit skin irritancy test (*See, e.g.*, information contained on the website of the National Anti-Vivisection Society, [www.navs.org/testing/animal\\_tests.cfm](http://www.navs.org/testing/animal_tests.cfm)).

The National Association for Biomedical Research (“NABR”) argues that the classic Lethal Dose 50 test has been replaced by modified tests that require fewer animals and that the Draize test has been changed to reduce or eliminate any pain the subject animals may feel. NABR admits, however, that the Lethal Dose 50 test still uses ten to twenty animals per test (rather than the eighty to one hundred animals that were previously used). As long as evidence shows that animals are tortured, the fact that fewer animals are subject to such torture than in years past is meaningless because no animal should have to endure such cruelty. Furthermore, although NABR states that the Draize test has been modified to reduce or eliminate pain to animals, further review of information provided by NABR demonstrates that the basic scope of the Draize test (injection of a toxic substance into a rabbit’s eye) remains the same. (See the website of NABR, [www.nabr.org](http://www.nabr.org)).

In recent decades, increased concern for animal welfare prompted scientific and legal quests for alternative methods. The ICCVAM was established in 1997 by the National Institute of Environmental Health Sciences to create a uniform procedure for approving alternative methods of product safety testing and to reduce or eliminate the use of animals in such testing. ICCVAM is comprised of federal regulatory and research agencies involved with toxicity tests for consumer products. The panel conducts scientific review of proposed alternative tests and proposes recommendations to the federal agencies for adoption. Individual federal agencies retain final discretion over testing methods.

This bill is necessary to clarify ambiguities and effectuate the intent of existing legislation. Definitions under New York statutes and case law make it abundantly clear that justifiability is the measure of cruel and/or abusive treatment and the measure of properly conducted animal testing. “Cruelty to an animal includes every unjustifiable act, omission, or neglect causing pain, suffering, or death which is caused or permitted.” People v. O’Rourke, 83 Misc.2d 175, 369 N.Y.S.2d, 339 (Crim.Ct., N.Y.Co.,1975); “(A)nti- cruelty statutes...prohibit...causing ‘unjustifiable’ pain....In the context of these statutes an act is considered justifiable ‘where its purpose or object is reasonable and adequate, and the pain and suffering caused is not disproportionate to the end sought to be attained’ (citing 4 Am.Jur2d, Animals).” People v. Arroyo, 3 Misc.3d 668, 777 N.Y.S. 2d 836, 843 (Crim. Ct., Kings Co., 2004). In People v. Downs, 26 N.Y.Crim.R. 327, 136 N.Y.S. 440, 445 (City Magistrate’s Court, 1911), the court equated the term “justifiable” with “unavoidable.”

Section 353 of New York’s Agriculture and Markets law prohibits torture, cruelty, unjustifiable injury to or killing of any animal. Section 350 defines torture or cruelty as “every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.” Section 353 provides that nothing in it shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments, or investigations involving the use of living

animals performed or conducted in laboratories or institutions approved for these purposes by the state commissioner of health.

Section 504 of the Public Health Law authorizes the State Commissioner of Health to designate approved laboratories for “properly conducted scientific tests...involving the use of living animals” and requires the Commissioner to promulgate rules under which such approval shall be granted. Such rules shall include requirements that all animals be kindly and humanely treated. These rules are set forth in NY Comp. Codes R. & Regs. tit. 10 S.55-1.5, which became effective July 1, 1983. Section 55-1.5, “Care and Treatment of Animals” provides that the laboratory or institution shall give careful consideration to the humane treatment of animals wherever located. It then sets forth specific requirements covering, for example, food, quarters, transportation, use of anesthetics and analgesics, and humane killing.

Because a formalized process to identify, legitimize, and adopt alternatives to animal testing did not exist when these statutes and regulations were enacted, the current rules do not include a provision that approved alternatives to animal testing must be utilized. Clearly, now that such alternatives are available and approved, such a requirement would be deemed necessary to effectuate the purpose of the Agriculture and Markets and Public Health Laws. The existence of a method for approving alternatives to animal testing makes testing where alternatives exist unjustifiable. Regulations which embrace such elements as food, quarters, transportation, use of analgesics, and humane killing would surely have incorporated the primary protection of animals not being used in testing at all if alternatives had been available and if a mechanism such as that offered by the ICCVAM had existed at the time of enactment of these regulations.

Testing on animals where alternative tests are available and approved is avoidable and, therefore, unjustifiable. Passage of A.7402/S.3528 is required to clarify the applicability of the above cases and statutes to such testing in view of these newly available alternative technologies.

This committee recommends strengthening the bill by providing animal advocacy organizations the right to bring a private right of action on behalf of animals that have been harmed in violation of the law. The governmental entities the bill would allow to bring an action are already overworked and understaffed and might not allocate their limited resources to bring actions enforcing the rights of animals. Thus, we strongly urge you to create a stronger enforcement mechanism whereby certain groups could protect the animals that would be affected by this bill. In Animal Welfare Institute v. Krepes, (561 F.2d 1002 (D.C. Cir. 1977)), the court stated that “[w]here [a statute] is expressly motivated by considerations of humaneness toward animals, who are uniquely incapable of defending their own interests in court, it strikes us as eminently logical to allow groups specifically concerned with animal welfare to invoke the aid of the courts in enforcing the statute.” This committee agrees with the Krepes court and suggests new language be added to Assembly Bill 7402 that would grant standing to enforce the provisions contained in such bill to any entity lawfully organized as a 501(c)3 or (c)4 for the purpose of protecting or providing for the welfare of animals.

As you consider this bill, please note that no law requires that cosmetics or household products be tested on animals. By passing this bill, you would be conforming to the federal intent behind creation of the ICCVAM and to state laws that prohibit unjustifiable cruelty. Because a federal

agency has determined that certain alternatives are available for animal testing, unnecessary animal testing should certainly be considered an action of cruelty under New York law.

For all of these reasons, this committee strongly supports this proposed legislation, which would prohibit certain animal tests from being conducted in cases where the ICCVAM has approved alternatives. A.7402/S.3528 would decrease some of the cruel, painful and unnecessary tests currently being conducted on animals, while effectuating the intent of both Congress and the New York Legislature, in each case a laudable end result.