

HOUSE BILL REPORT

HB 1363

As Reported by House Committee On:
Health Care & Wellness
Health & Human Services Appropriations & Oversight

Title: An act relating to the regulation of tanning facilities.

Brief Description: Regulating tanning facilities.

Sponsors: Representatives Darneille, Kirby, Dickerson, Orwall, Green, Jinkins, Billig, Eddy, Appleton, Dunshee, Roberts and Kenney.

Brief History:

Committee Activity:

Health Care & Wellness: 2/10/11, 2/17/11 [DPS];

Health & Human Services Appropriations & Oversight: 2/18/11, 2/21/11 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Licenses tanning facilities.
- Subjects tanning facilities to requirements relating to operations, sanitation, advertising, and access for minors.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn, Green, Kelley, Moeller and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey and Harris.

Staff: Jim Morishima (786-7191).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Tanning occurs when the human body produces melanin, which darkens the skin. Tanning is caused by exposure to ultraviolet (UV) radiation from the sun or artificial UV radiation. Tanning beds or booths are equipment that utilize tanning lamps to expose the skin to UV radiation, which induces tanning.

Tanning facilities are regulated in other states. These regulations include minimum standards for tanning facilities, restrictions on access for minors, and the licensing, permitting, or registration of tanning facilities. Tanning facilities are currently not licensed in Washington.

Summary of Substitute Bill:

I. Licensure of Tanning Facilities.

Beginning on July 1, 2012, all tanning facilities in the state must be licensed by the Department of Health (DOH). A person seeking licensure must submit an application including the name, address, and telephone number of the facility and the owner; information on each of the tanning devices in the facility; a certification the applicant has read and understands the statutes relating to tanning; a copy of the facility's operating procedures; and any other information required by the DOH. The DOH must grant an applicant's license if it determines the applicant meets all applicable requirements.

A licensee must place the license in a location clearly visible to customers. Licenses expire annually and are not transferable from one facility to another.

The fee for licensure and renewal must be set in an amount necessary to defray the costs of the tanning facility licensing program, but in no case may exceed \$125 per salon and \$25 per additional bed over 10.

II. Tanning Regulations.

Licensed tanning facilities are subject to a variety of regulations, including regulations relating to tanning equipment, tanning operators, injuries, advertising, and other regulations imposed by the DOH.

A. Tanning Equipment.

All tanning equipment in a tanning facility must have a control enabling users to manually shut off the equipment without unplugging the equipment or touching the tanning lamps. A tanning facility must cleanse the contact surfaces of tanning equipment between uses. After cleansing the equipment, the facility must place a visible sign on the bed or booth indicating it has been cleansed. The facility must also properly sanitize bathrooms and dressing rooms and provide customers with clean towels and washcloths.

B. Tanning Operators.

In most cases, a tanning operator must be present whenever tanning equipment is being operated in the facility. Beginning July 1, 2013, all operators must have successfully completed a DOH-approved training course. The operator must be within hearing distance of the equipment or be able to reach the customer within 30 seconds if summoned by intercom or buzzer. An operator must be able to recognize the customer's skin type based on the "Fitzpatrick Scale," which classifies skin type based on the skin's reaction to the first 10 to 45 minutes of sun exposure after the winter season. An operator must limit the customer's tanning session to the duration and frequency recommended by the tanning equipment's manufacturer and must instruct each customer in the following:

- proper body positioning;
- the location of the safety railing, if any;
- the operation of the control to manually shut off the equipment; and
- the maximum time of exposure.

An operator is not required to be present if:

- the tanning equipment is remotely monitored;
- customers are provided with personal security devices capable of summoning first responders; and
- each customer utilizing equipment without an operator present has had at least one session with an operator present in which the customer received the required instruction.

C. Injury Reporting.

A tanning facility must report to the DOH any tanning injury in which medical attention was sought or obtained within five days after the day of the injury or the day when the facility became aware of the injury. The report must contain the name of the customer, the name and location of the tanning facility, the nature of the injury, the name and address of the health care provider, if any, and any other relevant information. The DOH must forward the injury reports to the U.S. Food and Drug Administration.

D. Advertising.

A tanning facility may not advertise or distribute promotional materials claiming use of a tanning device is safe or free from risk or that the device will result in medical or health benefits.

E. Access for Minors.

A tanning facility may not allow a person under the age of 18 to use a tanning device unless the person has a prescription from a physician.

F. Other Regulations Imposed by the DOH.

By July 1, 2012, the DOH may by rule modify, as necessary, the prescribed form and content for tanning facility records.

III. Enforcement.

A tanning facility must allow the DOH to have access to the facility at reasonable times for inspection. When inspecting a tanning facility, the DOH must review the following:

- the construction and operation of the facility;
- any required records and training documentation;
- operator understanding and competency; and
- any other areas the DOH deems appropriate.

The DOH may deny, suspend, or revoke a tanning license for any of the following:

- submitting false statements;
- operating a tanning facility in a manner that threatens the public health or safety;
- failing to allow the DOH to have access for inspections or investigations;
- failing to pay licensing or renewal fees; and
- any other violations of tanning regulations.

In addition to license denial, suspension, or revocation, the DOH may also assess civil penalties of up to \$5,000 per violation or require a corrective action plan. A person who operates a tanning device in violation of the requirements of the act is also guilty of a misdemeanor.

In cases involving the public health, safety, or welfare, the DOH must take immediate action to suspend or revoke a facility's license. In all other cases, the DOH must provide written notice to the tanning facility of the facts or conduct warranting the suspension or revocation and provide the facility with an opportunity to demonstrate or achieve compliance.

IV. Exemptions.

The following are exempt from regulation:

- devices for personal use in a residence;
- devices intended for purposes other than the irradiation of the human skin; and
- phototherapy or UV radiation devices providing therapeutic benefits to patients receiving medically-supervised treatment for medical conditions from a health care professional acting within his or her scope of practice.

Substitute Bill Compared to Original Bill:

The substitute bill:

- replaces the maximum fee with a \$125 fee plus \$25 per each bed over 10;
- removes the public awareness campaign;
- removes the warnings (including the requirement that the DOH adopt a model sign);
- removes the bulb replacement schedules;
- removes the intent section;
- makes the following changes to the injury report: requires the report to be in writing; requires the report to be submitted only in cases where medical attention was sought or obtained; and allows the tanning facility to submit the report within five days, instead of by the end of the next business day;
- removes the requirement that tanning facilities must follow the same cleanliness standards as salons/shops;

- requires tanning operators to complete a DOH-approved training course;
 - allows a facility to operate without a trained operator if: the tanning equipment is remotely monitored; customers are provided with personal security devices capable of summoning first responders; and each customer utilizing equipment without an operator present has had at least one session with an operator present in which the customer received the required instruction;
 - gives the DOH until July 1, 2012, to modify recordkeeping requirements and adopt rules necessary to implement the act; and
 - extends the effective date until July 1, 2012.
-

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2012, except for sections 12 and 13, requiring the Department of Health (DOH) to adopt rules necessary to implement this chapter and allowing the DOH to modify tanning facility record requirements, which take effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Melanoma is the deadliest form of skin cancer and its incidence is on the rise. There is compelling scientific evidence that both exposure to UV radiation and indoor tanning are linked to increased risk for skin cancer. The earlier a person starts tanning, the greater the risk. A base tan does not protect your skin from damage. People who tan can exhibit addictive behaviors toward tanning. People who use and work in tanning salons are often not warned of the risks of tanning. If the state can regulate other activities that increase cancer risk, it should also be able regulate indoor tanning. This is a reasonable bill that addresses a serious problem.

(Concerns) It would be difficult for some facilities to implement the requirements that operators be nearby because these facilities are not staffed around the clock. These facilities provide instruction and safety measures for customers and restrict access to tanning equipment by minors.

(Opposed) The science on this issue is not clear cut. There is no direct link between UV exposure and melanoma. Vitamin D has health benefits and UV exposure is the best way to acquire vitamin D. The number one risk factor for skin cancer is overexposure and burning, which tanning facilities avoid. The licensing fees in this bill are excessive. The age restrictions in this bill will be difficult to implement because tanning facilities do not have the necessary expertise to process prescriptions. Tanning facilities already limit access to tanning equipment by minors and provide warnings to customers. Tanning operators are already well-trained. The warning, cleaning, and bulb replacement requirements in this bill are redundant with requirements in federal law. The public relations campaign will drive up costs for tanning facilities. This bill will drive small businesses out of business and will limit people's access to needed health treatment.

Persons Testifying: (In support) Representative Darneille, prime sponsor; Sasha Kramer and Michele Spencer, Washington State Dermatology Association; Peter Rasmussen, Melanoma International Foundation; and Lonnie Johns-Brown, National Organization for Women.

(With concerns) Melissa Gombosky, Anytime Fitness.

(Opposed) James Curry, Indoor Tanning Association; Daniel Mann, Tropical Tan; Brad Kelly, Kelson Distributors; and Brooke Taylor, All Hours.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 6 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Cody, Green, Kagi and Pettigrew.

Minority Report: Do not pass. Signed by 5 members: Representatives Johnson, Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Harris, Overstreet and Walsh.

Staff: Amy Skei (786-7109).

Summary of Recommendation of Committee On Health & Human Services Appropriations & Oversight Compared to Recommendation of Committee On Health Care & Wellness:

The substitute bill removes the specific dollar cap on tanning facilities license fees.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect on July 1, 2012, except for sections 12 and 13, requiring the Department of Health (DOH) to adopt rules necessary to implement this chapter and allowing the DOH to modify tanning facility record requirements, which take effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) People should be protected from unnecessary radiation exposure. With the cap on the fees and the per device fee limited to over 10 beds, the tanning facility licensing program would not generate enough revenue to be self-supporting. The bill will keep children away from indoor tanning facilities when they are most susceptible to cell damage. It will ensure that people are informed about the impacts of ultraviolet rays and will ensure

that salon owners are appropriately trained to operate this equipment. Fees should be set at levels that cover the cost of the tanning facility licensing program, but no higher.

(With concerns) The bill has been dramatically improved, but tanning operators are not sure how they would handle the requirement that minors produce a doctor's prescription. The \$125 cap is enough to cover the cost of the tanning facility licensing program and is consistent with prices in other states. This bill also covers other facilities that have tanning beds as an ancillary service, and the number of those licensees should produce enough revenue to pay the costs of the program.

(Opposed) None.

Persons Testifying: (In support) Terry Frazee, Department of Health; and Shannon McDonald, Washington State Dermatology Association.

(With concerns) James Curry, Indoor Tanning Association.

Persons Signed In To Testify But Not Testifying: None.