

HOUSE BILL REPORT

HB 2652

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

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

Brief Description: Regulating tanning facilities.

Sponsors: Representatives Darneille, Dunshee, Driscoll, Green, Dickerson and Orwall.

Brief History:

Committee Activity:

Health Care & Wellness: 1/19/10, 1/29/10 [DPS];

Health & Human Services Appropriations: 2/4/10 [DPS(HCW)].

Brief Summary of Substitute Bill

- Licenses tanning facilities.
- Subjects tanning facilities to requirements relating to operations, sanitation, advertising, and equipment.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Cody, Chair; Driscoll, Vice Chair; Clibborn, Green, Kelley, Moeller, Morrell and Pedersen.

Minority Report: Do not pass. Signed by 5 members: Representatives Ericksen, Ranking Minority Member; Bailey, Campbell, Herrera and Hinkle.

Staff: Jim Morishima (786-7191).

Background:

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.

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 beds or booths are equipment that utilize tanning lamps to expose the skin to UV radiation, which induces tanning.

Several states have statewide statutes or rules regulating tanning facilities. 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, 2011, 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.

II. Tanning Regulations.

Licensed tanning facilities are subject to a variety of regulations, including regulations relating to tanning equipment, tanning operators, injuries, advertising, disclosures to customers, 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. Bulbs in tanning lamps must be replaced at intervals recommended by the manufacturer and with bulbs intended for use in the equipment (or their equivalent). The facility must maintain records of bulb replacement accessible to customers and post dates of bulb replacement on the tanning devices.

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. The DOH must

adopt rules relating to tanning facility sanitization that meet the standards for cosmetologists, barbers, and manicurists.

A tanning facility must provide its customers with eyewear meeting the minimum federal requirements for spectral transmittance.

B. Tanning Operators.

A tanning operator must be present whenever tanning equipment is being operated in the facility. 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.

C. Injury Reporting.

A tanning facility must report any tanning injury to the DOH by the end of the next working day 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. The DOH must conduct a public awareness campaign on the dangers of indoor tanning.

E. Disclosures to Customers.

A tanning facility must post a warning sign in a location easily visible to persons entering the facility. The DOH must adopt a model warning sign and post it on the DOH website in a form that is easily downloaded and printed. The warning sign must contain the following provisions:

*"WARNING: ULTRAVIOLET RADIATION
Follow the manufacturer's instructions for use of this device.
Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin
injury and allergic reactions. Repeated exposure to ultraviolet radiation may cause*

chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.

Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to the ultraviolet radiation.

Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Women who are pregnant or are taking oral contraceptives who use this product may develop discolored skin.

A customer may contact the department of health to report an alleged injury regarding this tanning facility."

A tanning facility must also require each customer to sign a warning statement prior to initial exposure and prior to renewals of contracts. The warning statement must include the following provisions:

"Failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes.

Overexposure to ultraviolet light causes burns.

Repeated exposure to ultraviolet light may result in premature aging of the skin and skin cancer.

Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain:

Food;

Cosmetics; or

Medications, including:

Tranquilizers;

Diuretics;

Antibiotics;

High blood pressure medications; or

Birth control pills.

Any person taking a prescription or over-the-counter drug should consult a physician prior to using a tanning device.

A person with skin that always burns easily and never tans should avoid a tanning device.

A person with a personal or family medical history of skin cancer should avoid a tanning device."

F. Other Regulations Imposed by the DOH.

The DOH may impose additional rules on tanning facilities. When determining whether to impose such rules, the DOH must consider federal regulations and guidelines, regulations in other states, and industry guidelines and practices.

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;
- the spectral transmittance of eyewear provided in the facility;
- the radiation output of the tanning equipment measured under operational conditions and typical user position;
- 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 proposed substitute:

- removes the age restrictions from the original bill;
- removes the specific fee amounts. Instead, requires the fee to be set in amount necessary to defray the costs of the licensing program;
- requires tanning facilities to provide eyewear meeting the minimum federal requirements for spectral transmittance;
- allows the DOH to inspect the spectral transmittance of the eyewear provided in the facility and the radiation output of the tanning equipment;
- allows the DOH to adopt additional regulations on tanning facilities by rule. When determining whether to exercise this authority, the DOH must consider federal

- regulations and guidelines, regulations in other states, and industry guidelines and practices;
 - removes the account into which tanning licensing fees were to be deposited; and
 - delays the effective date until July 1, 2011 (instead of January 1, 2011).
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Appropriation: None.

Fiscal Note: Original fiscal note is available. Requested fiscal note on substitute on February 2, 2010.

Effective Date of Substitute Bill: Section 12, which requires the DOH to adopt a model warning sign by rule, takes effect 90 days after adjournment of session in which bill is passed. The remainder of the act takes effect on July 1, 2011.

Staff Summary of Public Testimony:

(In support) This bill is about saving lives. Tanning beds, which emit significant ultraviolet radiation, are linked to increased cancer risk—this is as bad as smoking cigarettes. People who use tanning facilities at a younger age face higher cancer risk. Washington has one of the highest concentrations of melanoma in the country. The regulations in this bill are reasonable. Restricting youth access to tanning facilities is one thing that can be done immediately to address this issue. Burning is common when young people use tanning facilities. Studies have shown that young people are exhibiting addictive behavior to tanning. The people who are becoming addicted to tanning are also the people who are at the highest risk for burning and long-term damage. Vitamin D can be obtained without tanning.

(Opposed) The fees in this bill are higher than the fees in any other state. Many of the requirements in this bill are already industry practice. Tanning facilities also currently follow federal Food and Drug Administration regulations. Additional warnings may have the opposite effect if people become desensitized to them. The tanning industry currently promotes safe and moderate tanning. Tanning facilities are ill-equipped to serve customers pursuant to prescriptions. Cancer studies can be misleading—they indicate increased risk of cancer, but the risk is already fairly small. It is unfair to blame every instance of skin cancer in the state on the tanning industry. There are many benefits to tanning. Burning is what causes cancer, not tanning, and tanning facilities do not allow customers to burn. Tanning equipment emits the type of ultraviolet radiation that promotes tanning, not the type that promotes burning. Most tanning facilities already require parental consent before allowing a minor to use tanning equipment. Banning tanning for minors will only force them to tan outside in an uncontrolled environment. Tanning facilities provide an economic benefit to the state and this bill will force many facilities out of business.

Persons Testifying: (In support) Representative Darneille, prime sponsor; Marc Antezana, Washington State Dermatology Association; Robin Hornung, The Everett Clinic; Michelle Neary; and Peter Rasmussen.

(Opposed) James Curry, Indoor Tanning Association; Mark Willard, Desert Sun Tanning Salons; Scott Swerland, Seattle Sun Tan; Dan Mann, Tropical Tan; and Barec Peshtaz, Desert Sun Franchising.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pettigrew, Chair; Seaquist, Vice Chair; Appleton, Cody, Dickerson, Miloscia, Morrell, O'Brien, Roberts and Wood.

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

Staff: Chris Blake (786-7392).

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

No changes were recommended.

Appropriation: None.

Fiscal Note: Requested on February 2, 2010.

Effective Date of Substitute Bill: The bill takes effect July 1, 2011, except for section 12, relating to requiring the DOH to adopt a model warning sign by rule, which takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Washington has the fifth highest melanoma incidence in the United States. Tanning increases the risk of melanoma. Tanning devices are carcinogenic. Tacoma and Spokane have a high concentration of tanning facilities. Tanning facilities should be regulated just as cosmetologists and body piercers. If tanning facilities are not regulated, they will mislead the public about their health risks. The costs of treating people diagnosed with melanoma in Washington in 2008 was \$20 million.

(Oppose) The fee should be capped at about \$75-\$100. There is no need for a public awareness campaign that is paid for through fees.

Persons Testifying: (In support) Shannon McDonald, Executive Director, Washington Dermatologists Association.

(Opposed) James Curry, Indoor Tanning Association.

Persons Signed In To Testify But Not Testifying: None.