

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 572

INTRODUCER: Senator Sobel

SUBJECT: Use of a Tanning Facility by a Minor

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

This bill prohibits minors from using tanning devices, such as tanning beds, at a tanning facility unless the use is prescribed by a physician to treat a medical condition and the minor's parent or legal guardian gives written consent. The consent requirement includes a statement signed by the minor's parent or guardian that is witnessed by the tanning facility operator or proprietor authorizing a specified number of sessions as prescribed by the minor's health care provider. The specified number of tanning sessions may not exceed the number prescribed, the rules of the Department of Health (DOH), or the manufacturer's exposure schedule.

II. Present Situation:

Ultraviolet Radiation Exposure Risks

Skin cancer is the most common form of cancer. Basal cell and squamous cell carcinomas, two types of skin cancer, are successfully cured at high rates. However, melanoma, the third most common skin cancer, poses a greater threat, especially among minors. Approximately 65 to 90 percent of melanomas are caused by exposure to UV light. Persons with a history of one or more blistering sunburns during childhood or adolescence are two times more likely to develop melanoma than those who did not have such exposures. More than one half of a person's lifetime UV light exposure occurs during childhood and adolescence.¹ The American Cancer Society has estimated that there were 4,330 new cases of melanoma of the skin for the state of Florida in 2013.²

¹ Centers for Disease Control and Prevention, *Guidelines for School Programs to Prevent Skin Cancer* (Apr. 26, 2002), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5104a1.htm> (last visited on Mar. 19, 2014).

² American Cancer Society, Surveillance and Health Policy Research, *Cancer Facts & Figures 2013*, 5, available at <http://www.cancer.org/acs/groups/content/@epidemiologysurveillance/documents/document/acspc-036845.pdf> (last visited Mar. 19, 2014).

According to the Centers for Disease Control and Prevention (CDC), the best way to prevent skin cancer is to protect oneself from the sun by seeking shade, covering up skin exposed to the sun, wearing a wide brim hat, wearing sunglasses, and wearing sunscreen. The CDC recommends avoiding tanning beds and sunlamps because they emit UV rays that are as dangerous as those from the sun.³

According to the 2011 Youth Risk Behavior Surveillance System,⁴ the following proportions of youth report indoor tanning:⁵

- 13 percent of all high school students.
- 21 percent of high school girls.
- 32 percent of girls in grade 12.
- 29 percent of white high school girls.

Federal Regulation of Sunlamp Products

Since 1979, the U.S. Food and Drug Administration (FDA) has regulated the manufacture of sunlamp products and ultraviolet lamps. The regulation, codified in 21 C.F.R. s. 1040.20, specifies several sunlamp product requirements including: protective eyewear, a UV radiation warning label, detailed user instructions, a timer system, a recommended exposure schedule, and the maximum recommended exposure time. The FDA also regulates the use of dihydroxyacetone (DHA), a color additive that darkens the skin by reacting with amino acids in the skin's surface, which is commonly the active ingredient in most sunless tanning sprays or bronzers.⁶

State Regulation of Tanning Facilities

As of February 2014, at least 33 states and the District of Columbia regulate minors' use of tanning devices.⁷ The policies that states have adopted vary, but generally include one or more of these limitations: age restrictions, parental accompaniment requirements, and parental written permission. Currently California, Illinois, Nevada, Texas and Vermont ban the use of tanning beds for all minors under 18.⁸

³ Centers for Disease Control and Prevention, *What Can I Do to Reduce My Risk?*, http://www.cdc.gov/cancer/skin/basic_info/prevention.htm (last visited Mar. 19, 2014).

⁴ The Youth Risk Behavior Surveillance System within the Centers for Disease Control monitors six types of health-risk behaviors that contribute to the leading causes of death and disability among youth and adults, including: behaviors that contribute to unintentional injuries and violence; sexual behaviors that contribute to unintended pregnancy and sexually transmitted diseases, including HIV infection; alcohol and other drug use; tobacco use; unhealthy dietary behaviors; and inadequate physical activity.

⁵ Centers for Disease Control, *Skin Cancer*, http://www.cdc.gov/cancer/skin/basic_info/indoor_tanning.htm (last visited Mar. 19, 2014).

⁶ 21 C.F.R. s. 73.1150.

⁷ National Conference of State Legislatures, *Indoor Tanning Restrictions for Minors, A State-by-State Comparison*, <http://www.ncsl.org/research/health/indoor-tanning-restrictions.aspx> (last visited Mar. 19, 2014).

⁸ *Id.*

Regulation of Tanning Facilities in Florida

The DOH, through the county health departments, currently licenses and inspects more than 1,600 tanning facilities with over 7,100 tanning devices.⁹ Tanning facilities¹⁰ subject to state regulation are facilities that operate tanning devices¹¹, which emit electromagnetic radiation of wavelengths between 200 and 400 nanometers.¹² The DOH does not regulate products or devices that create the appearance of a tan, such as airbrush tanning or spray-on tanning.¹³ To operate a tanning facility a person must obtain a license, subject to annual renewal, and meet minimum requirements including: training, sanitation standards, safety provisions, and record requirements.¹⁴

Tanning facilities are required to provide each customer a written warning that states:¹⁵

- Not wearing the provided eye protection can cause damage to the eyes;
- Overexposure causes burns;
- Repeated exposure can cause premature aging of the skin or skin cancer;
- Abnormal skin sensitivity or burning may be caused by certain foods, cosmetics, or medications, including, without limitation, tranquilizers, diuretics, antibiotics, high blood pressure medicines, or birth control pills;
- Any person who takes prescription or over-the-counter medication should consult a physician before using a tanning device; and,
- The tanning facility's liability insurance information or a statement that the facility does not carry liability insurance for injuries caused by tanning devices.

Tanning facilities are also required to post a sign near each tanning device which states, in all caps, "Danger, Ultraviolet Radiation," with a list of detailed instructions.¹⁶ Each time a customer uses a tanning device or executes or renews a contract, facilities must require the customer to sign a written statement acknowledging that he or she has read and understands the warnings and agrees to use protective eyewear.¹⁷

Tanning facilities must limit each customer to the maximum exposure time recommended by the manufacturer of the tanning device.¹⁸ The DOH requires tanning facilities to limit customers to one tanning session within a 24-hour period.¹⁹

⁹ Florida Department of Health, *Health Issues*, <http://www.floridahealth.gov/healthy-environments/tanning-facilities/index.html> (last visited March 20, 2014).

¹⁰ "Tanning facility" is defined as a place of business which provides access to a tanning device by customers. (s. 381.89(1)(a), F.S.)

¹¹ This includes a sunlamp, tanning booth, or tanning bed or any accompanying equipment." (See s. 381.89(1)(c), F.S.)

¹² Tanning facilities that use only phototherapy devices that emit ultraviolet radiation which are used by or under the direct supervision of a physician are exempt from regulation under s. 381.89, F.S. See s. 381.89(2), F.S.

¹³ Air-brush and spray-on tanning devices contain DHA, which is subject to FDA regulation. (*Supra* note 6.)

¹⁴ Section 381.89, F.S., and Rule 64E-17, F.A.C.

¹⁵ Section 381.89(4)(a), F.S.

¹⁶ Section 381.89(4)(b), F.S.

¹⁷ Section 381.89(6)(g), F.S.

¹⁸ Section 381.89(6)(e), F.S.

¹⁹ Rule 64E-17.002(2)(m), F.A.C.

Minors 14 years of age or older may use a tanning device if the tanning facility has a statement on file signed by the minor's parent or legal guardian stating that the parent or legal guardian has read and understands the warnings provided by the tanning facility, consents to the minor's use of a tanning device, and agrees that the minor will use the provided protective eyewear. Minors under the age of 14 must be accompanied by a parent or legal guardian during each visit to a tanning facility.²⁰

III. Effect of Proposed Changes:

This bill further restricts the use of tanning facilities by minors. Specifically, the bill prohibits a tanning facility from allowing a minor to use a tanning device unless the use is prescribed by a physician to treat a medical condition and the minor's parent or legal guardian gives written consent. The required consent must include a statement signed by the minor's parent or guardian that is witnessed by the tanning facility operator or proprietor authorizing a specified number of sessions as prescribed by the minor's health care provider. The specified number of tanning sessions may not exceed the number prescribed, the rules of the DOH, or the manufacturer's exposure schedule.

The bill has an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tanning facilities may incur a small cost because of the cost to revise their consent forms to comply with the requirement for the forms to be witnessed and to authorize a specified number of visits.

²⁰ Section 381.89(7) and (8), F.S.

Tanning facilities are likely to lose a portion of their business because the bill conditions minor's use on a written prescription for a related medical condition.

C. Government Sector Impact:

The DOH anticipates an additional, but indeterminate, expense resulting from facility inspections to determine compliance with the new requirements or to investigate any related complaints.

VI. Technical Deficiencies:

The term "health care provider" is not defined by the bill. The Legislature may wish to define or narrow the scope of the term if its intent is to capture only dermatologists or those health care practitioners who are most likely to prescribe UV light treatment for medical conditions.

Line 60 refers to a health care provider "authorizing" tanning sessions. That would should be changed to "prescribed," consistent with the terminology used on line 48.

Current law requires a tanning facility to limit a customer to the maximum exposure time recommended by the device manufacturer, so including this same prohibition on lines 63–64 is redundant.²¹ As an alternative, the Legislature may wish to require that the tanning facility may not exceed the exposure time or scheduled frequency of visits²² when indicated on the prescription or practitioner's order, if lower than what is currently allowed by statute and rule.

VII. Related Issues:

The DOH has expressed concern regarding the intent of lines 61 – 64 and whether the DOH is expected to adopt new rules to implement the bill's provisions, or whether the reference to department rules is to the existing rule that prohibits more than one tanning session in a 24-hour period.

VIII. Statutes Affected:

This bill substantially amends section 381.89 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

²¹ *Supra* note 18.

²² *Supra* note 19.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
