

**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.)

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

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BILL: SB 414

INTRODUCER: Senator Sobel

SUBJECT: Use of a Tanning Facility by a Minor

DATE: October 26, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Favorable</b>
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

**I. Summary:**

SB 414 attempts to prevent skin cancer in minors by prohibiting tanning facilities from allowing minors to use the facilities' tanning devices unless prescribed by a health care provider to treat a medical condition. The bill also strengthens the parental consent requirements and requires a parent or guardian to accompany a minor who is younger than 14 years of age to the prescribed tanning sessions.

**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 ultraviolet (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.<sup>1</sup> The American Cancer Society has estimated that there were 5,330 new cases of melanoma of the skin for the state of Florida in 2013.<sup>2</sup>

The U.S. Food and Drug Administration (FDA) is particularly concerned about children and teens being exposed to UV rays. Intermittent exposures to intense UV radiation leading to

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<sup>1</sup> 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 Oct. 22, 2015).

<sup>2</sup> American Cancer Society, *Cancer Facts & Figures 2013*. Atlanta: American Cancer Society (2013) p.5, available at <http://www.cancer.org/acs/groups/content/@epidemiologysurveillance/documents/document/acspc-036845.pdf> (last visited Oct. 26, 2015).

sunburns, especially in childhood and teen years, increase the risk of melanoma, according to the National Cancer Institute (NCI).<sup>3</sup>

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.<sup>4</sup>

“Young people may not think they are vulnerable to skin cancer,” says Kaczmarek. “They have difficulty thinking about their own mortality.” Yet of the more than 68,000 people in the United States who will learn they have melanoma this year, one out of eight will die from it, according to the NCI estimates. In addition, the American Academy of Dermatology reports that melanoma is the second most common cancer in women 20 to 29 years old.<sup>5</sup>

According to the 2011 *Youth Risk Behavior Surveillance System*,<sup>6</sup> the following proportions of youth report indoor tanning:<sup>7</sup>

- 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.

### **Tanning Lamps, Booths, and Beds**

Tanning lamps, booths and beds are a popular method of maintaining a year-round tan, but their effects can be as dangerous as tanning outdoors. Like the sun, the lamps used in tanning booths and beds emit UV radiation. Experts argue that artificial tanning is less dangerous because the intensity of light and the time spent tanning are controlled. There is limited evidence to support this claim.

On the other hand, sunlamps may be more dangerous than the sun because they can be used at the same intensity every day of the year, something that is unlikely for the sun because of winter weather and cloud cover. They can also be more dangerous because people can expose their entire bodies at each session, which would be difficult to do outdoors.<sup>8</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> Centers for Disease Control and Prevention, What Can I Do to Reduce My Risk?, [http://www.cdc.gov/cancer/skin/basic\\_info/prevention.htm](http://www.cdc.gov/cancer/skin/basic_info/prevention.htm) (last visited Oct. 22, 2015).

<sup>5</sup> U.S. Food and Drug Administration, *Indoor Tanning: The Risks of Ultraviolet Rays*, (last updated January 21, 2015) available at <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm186687.htm>, (last visited Oct. 22, 2015).

<sup>6</sup> The Youth Risk Behavior Surveillance System within the CDC 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.

<sup>7</sup> Centers for Disease Control, Skin Cancer, available at [http://www.cdc.gov/cancer/skin/basic\\_info/indoor\\_tanning.htm](http://www.cdc.gov/cancer/skin/basic_info/indoor_tanning.htm) (last visited Oct. 22, 2015).

<sup>8</sup> Cokkinides V, Weinstock M, Lazovich D, Ward E, Thun M., *Indoor tanning use among adolescents in the US, 1998 to 2004*. *Cancer*. 2009 Jan 1;115(1):190-8. Cokkinides and his associates compared two surveys from 1998 (N-1196) and 2004

Tanning beds, which specifically include multiple tanning lamps, are commonly used by children and teenagers in the U.S.<sup>9</sup> In 2011, the American Academy of Pediatrics (AAP), a group of 60,000 pediatricians, called for all US tanning salons to bar minors. With this new policy statement, the AAP was joined by other health groups such as the American Medical Association, the World Health Organization (WHO), the Academy of Dermatology, and The Skin Cancer Foundation in demanding a ban on indoor tanning for young people.<sup>10</sup>

### **State Regulation of Tanning Facilities**

Section 381.89, F.S., authorizes the Department of Health (DOH) to regulate tanning facilities providing access to tanning devices that emit electromagnetic radiation of wavelengths between 200 and 400 nanometers and are used for tanning the skin, including sunlamps, tanning booths, or tanning beds or any accompanying equipment. This statute does not apply to a tanning facility using only phototherapy devices that emit ultraviolet radiation which are used only by or under the direct supervision of a physician licensed under ch.458 or an osteopathic physician licensed under ch. 459.<sup>11</sup>

Currently, s. 381.89, F.S., requires that a minor's parent or legal guardian provide written consent for a minor to use a tanning device when a minor is under the age of 18. 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.<sup>12</sup>

The DOH, through its local offices in the 67 counties licenses and inspects 1,668 indoor tanning facilities to ensure compliance with health and safety requirements of s. 381.89, F.S., and Rule Chapter 64E-17, Florida Administrative Code. The department staff review the customer records, including signed parental consent statements, to ensure the facilities are complying with the requirements for minors. Failure to comply with these requirements is a 2<sup>nd</sup> degree misdemeanor.

Tanning facilities are required to provide each customer a written warning that states:<sup>13</sup>

- 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;

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(N-1613) and found fairly consistent rates of usage in teenagers aged 11- 18 of 10% and 11% in the two surveys. Available at <http://www.ncbi.nlm.nih.gov/pubmed/19085965>.

<sup>9</sup> *Id.*

<sup>10</sup> The American Academy of Pediatrics, *Calls for Ban on Youth Tanning*, 2011, cited by The Skin Cancer Foundation news release, available at <http://www.skincancer.org/news/tanning/american-academy-of-pediatrics-calls-for-ban-on-youth-tanning>

<sup>11</sup> See s. 381.89(2), F.S.

<sup>12</sup> Section 381.89(7) and (8), F.S.

<sup>13</sup> Section 381.89(4)(a), F.S.

- 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.<sup>14</sup> 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.<sup>15</sup>

Tanning facilities must limit each customer to the maximum exposure time recommended by the manufacturer of the tanning device.<sup>16</sup> The DOH requires tanning facilities to limit customers to one tanning session within a 24-hour period.<sup>17</sup>

As of February 2014, at least 33 states and the District of Columbia regulate minors' use of tanning devices.<sup>18</sup> 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 years of age.<sup>19</sup>

### III. Effect of Proposed Changes:

The bill prohibits tanning facilities from allowing minors to use tanning devices for any purpose other than for the treatment of a medical condition as prescribed by a health care provider. The minor's parent or legal guardian must give written consent that is witnessed by the tanning facility operator or proprietor, which includes the current elements of consent, as well as authorizing a specified number of sessions as prescribed by the minor's health care provider. The tanning sessions provided by the tanning facility may not exceed the number, frequency, or exposure time prescribed if less than otherwise allowed by law or rule of the DOH. If a minor, who is younger than 14 years of age, uses a tanning device, the parent or legal guardian must also accompany the minor during the prescribed tanning session.

The bill has an effective date of October 1, 2016.

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<sup>14</sup> Section 381.89(4)(b), F.S.

<sup>15</sup> Section 381.89(6)(g), F.S.

<sup>16</sup> Section 381.89(6)(e), F.S.

<sup>17</sup> Rule 64E-17.002(2)(m), F.A.C.

<sup>18</sup> 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 Oct. 22, 2015).

<sup>19</sup> *Id.*

**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 to revise consent forms to comply with the new requirements.

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

Parents may incur the cost of a pre-tanning health care provider visit to obtain a prescription for minors with a medical condition that was previously self-treated with a tanning device.

There is a potential to increase the sale and use of home tanning devices by minors and their parent or guardian and thus increase profits and income to the tanning device industry.

## C. Government Sector Impact:

The impact on DOH is indeterminate at this time. Longer inspections and additional enforcement actions are likely. Additional rulemaking or public education may be needed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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 practitioners who are most likely to prescribe UV light treatment for medical conditions.

**VIII. Statutes Affected:**

This bill substantially amends s. 381.89, 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.