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BILL ANALYSIS

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Senate Bill 661 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Jack Faxon

Committee: Health Policy

Date Completed: 8-14-90

**RATIONALE**

The tanning industry is growing rapidly in this country. According to the National Institutes of Health, more than 1 million Americans use commercial tanning facilities every day. Tanning clinics use devices that are capable of mimicking the emission of some or all of the solar spectrum, including ultraviolet radiation (UVR). While some exposure to UVR by way of sunlight is unavoidable and necessary for vitamin D maintenance, there apparently is little benefit from additional exposure. In fact, evidence exists to show that skin is damaged by direct overexposure to natural or artificial UVR. In light of the adverse effects that UVR exposure can have on the skin, some have raised concerns about the operation of tanning clinics and the exposure of the clinics' clients to UVR. Some people believe that the operation of these establishments should be regulated to ensure the safety of the customers.

**CONTENT**

The bill would amend the Public Health Code to add a Part 134 on the regulation of tanning facilities and to:

- used such a device.
- Require that a poster, provided by the DPH, concerning ultraviolet radiation be displayed in a tanning facility.
- Establish certain responsibilities of a tanning facility owner or operator.
- Require that a parent or guardian of a minor who was 14 years old or older sign a written statement concerning the use of a tanning device, before the minor used the device at a tanning facility.
- Require that a minor who was under 14 years old be accompanied by a parent or guardian when using a tanning device at a tanning facility.
- Require a tanning facility owner or operator to report an injury or complaint of an injury to the DPH.
- Require the DPH to investigate a complaint and permit a representative of the DPH or local health department to inspect a tanning facility to determine compliance with the bill.
- Provide for denial, suspension, or revocation of a tanning facility's registration for violation of the bill.
- Provide that a person would be guilty of a misdemeanor for violating the bill or rules promulgated under it, and permit the DPH to impose an administrative fine of up to \$500 for a violation.
- Require that a tanning facility be registered annually with the Department of Public Health (DPH).
- Set an initial and annual registration fee at \$50 for each tanning device and provide for an optional fee of \$50 for each additional device.
- Require a facility's owner or operator to offer a statement about the effects of using a tanning device to a person before he or she

S.B. 661 (8-14-90)

### Registered Facility

A person would be prohibited from owning or operating a tanning facility unless the facility was registered with the Department of Public Health. ("Tanning facility" would mean a location, area, place, structure, or business that provided individuals with access to a "tanning device". "Tanning device" would mean equipment that emitted electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and was used for skin tanning. Tanning device would include, but would not be limited to, a sunlamp, tanning booth, or tanning bed and any accompanying equipment including, but not limited to, protective eyewear, timers, and handrails.)

A person could register a tanning facility by submitting an application to the DPH on a form, prescribed by the Department, that contained the following information:

- The name, location, and owner of the tanning facility.
- The manufacturer, model number, and type of each tanning device to be used in the tanning facility. This provision would not apply to protective eyewear, timers, or handrails.
- The geographic areas to be covered by the tanning facility, if the facility were mobile.
- The name of the supplier, installer, and service agent for each tanning device. This provision would not apply to protective eyewear, timers, or handrails.
- A signed, notarized, and dated statement that the applicant had read and understood the Public Health Code's Part 134, proposed in the bill.
- A copy of the operating and safety procedures used by the tanning facility.
- Other information that the Department reasonably required to protect the public health.

Within 15 days after the change occurred, a tanning facility's owner or operator would be required to notify the Department of a change in the application information pertaining to the name and location of the facility; the name of the facility's owner; the manufacturer, model number, and type of each tanning device to be used; the geographic areas to be covered by a

mobile facility; and, the facility's operating and safety procedures. This provision would not apply if the equipment were being replaced with equipment that was certified as equivalent under regulations of the U.S. Food and Drug Administration (FDA).

The initial registration and annual renewal fee would be \$50. An additional fee of up to \$50 per tanning device could be charged to cover the cost of the inspection and registration. Registration would have to be renewed annually on or before the expiration date of the registration certificate. The DPH would be required to send the registrant notice of the renewal time, procedure, and fee. Failure of the registrant to receive notice would not relieve the registrant of the responsibility of renewing the registration. A registration not renewed by the expiration date could be renewed within 30 days of that date upon application and payment of renewal and late renewal fees. The registrant could continue to operate the tanning facility during the 30-day period. If a registration were not renewed within 30 days of the expiration date, the registration would be void. The DPH would have to renew a facility's registration if the facility paid the renewal fee and continued to comply with these provisions and rules promulgated under them. The expiration or surrender of a registration would not terminate the Department's authority to impose sanctions on a registrant whose registration had expired or been surrendered.

The owner or operator of a tanning facility would have to display a registration certificate in a conspicuous place in the facility. The owner or operator of more than one tanning facility would have to obtain a separate registration certificate for each facility. A registration certificate would not be transferable.

The Department would be required to promulgate rules to implement the bill.

### Information Statement

Before a person used a tanning device in a tanning facility, the facility's owner or operator would have to give that person a written statement that contained all of the following information:

- Not wearing the eye protection provided to the individual by the tanning facility could damage the eyes.
- Overexposure to the ultraviolet radiation produced by the tanning devices used in the facility caused burns.
- Repeated exposure to the ultraviolet radiation produced by tanning devices could cause premature aging of the skin and skin cancer.
- Abnormal skin sensitivity to ultraviolet radiation or burning could be caused by certain foods, cosmetics, and medication. The medication would include, but not be limited to, tranquilizers, diuretics, antibiotics, high blood pressure medication, and birth control medication.
- An individual who was taking a prescription drug or over-the-counter drug should consult a physician before using a tanning device.

#### Poster

The owner or operator of a tanning facility would be required to display conspicuously a poster provided by the DPH. The poster would have to be substantially in the form and contain information on ultraviolet radiation, as outlined in the bill. The owner or operator or an employee of a tanning facility could not claim or distribute printed promotional materials that claimed or advertised that using a tanning device was safe or free from risk, or that an activity of the tanning facility was approved under a registration issued under the bill. The bill specifies that compliance with these provisions would not diminish or otherwise limit or alter the liability of a tanning facility's owner or operator.

#### Owner Responsibilities

The owner or operator of a tanning facility would be required to do all of the following:

- Use only tanning devices that were manufactured and certified to comply with Federal regulations and standards in 21 C.F.R. 1040.20. (This regulation, which is part of regulations on the performance standards for light-emitting products, deals specifically with sun lamp products and ultraviolet lamps intended for use in sun lamp products.)

- Have present during business hours at least one employee who was adequately trained in the following areas: the bill's requirements and rules promulgated under the bill, procedures for correct operation of the tanning devices used in the tanning facility, recognition of injury and/or overexposure, and emergency procedures.
- Maintain a list of employees who were trained, as required in the bill, and make a copy of the list available upon request to a customer and to the Department.
- Before each use of a tanning device, provide each customer with properly sanitized protective eyewear that protected the eye from ultraviolet radiation, allowed adequate vision to maintain balance, and met the requirements of 21 C.F.R. 1040.20. A person who used a tanning device in a tanning facility would be required to use the protective eyewear provided by the facility.
- Prohibit an person from using a tanning device if the person did not use the required protective eyewear.
- Show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device, and install physical barriers as needed to prevent the customer from touching or breaking the sun lamp.
- Use for each tanning device a timer that had an accuracy of plus or minus 10% of any selected timer interval and that met the requirements of Federal regulations and standards.
- Limit each customer to the maximum exposure time as recommended by the manufacturer of the tanning device.
- Control the interior temperature of a tanning facility so that it never exceeded 100 degrees Fahrenheit.
- Require each customer, before allowing him or her to use a tanning device, to sign a written statement acknowledging that the customer had read and understood the written statement required under the bill and agreed to use the protective eyewear provided by the tanning facility. The facility owner or

operator could not require a customer to sign the statement more than once in a one-year period.

- Retain the written statement for at least one year.
- Ensure that the tanning booth was constructed so that it would withstand the stress of use and the impact of a falling person; that access to the booth was of rigid construction; that the doors open outwardly; and, that handrails and nonslip floors were provided.
- Replace a defective or burned out sun lamp or filter with a type intended by the manufacturer for use in the tanning device or with a sun lamp or filter that was equivalent under the FDA regulations.

### Minors

Before a minor who was 14 years of age or older used a tanning device in a tanning facility, the owner or operator of the facility would have to require that a statement, similar to the statement outlined in the bill, be presented and signed by the minor's parent, legal guardian, or person in loco parentis indicating that the person had read and understood the statement, consented to the minor's use of a tanning device, and agreed that the minor would use the protective eyewear provided by the facility.

A minor who was under 14 years of age would have to be accompanied by a parent, legal guardian, or person in loco parentis when using a tanning device in a tanning facility.

### Reporting Injuries or Complaints

A tanning facility owner or operator would be required to report each injury or complaint of an injury that occurred in the facility to the DPH on a form provided by the Department within five working days after the injury or complaint occurred. The DPH would be required to transmit a copy of the report to the injured party or person who complained of an injury and to the FDA. The report would have to include at least the following information: the name of the person who was the subject of the report; the name and location of the tanning facility in which the incident occurred; the nature of the injury; the name and address

of the health care provider, if any, to whom the injured person was referred; and, other information considered relevant by the Department. The facility's owner or operator would be required to keep a permanent record of each customer's use of a tanning device, including visits and exposure times.

A person who had a reasonable belief that the bill or rules promulgated under it had been violated could file a complaint with the Department.

### DPH Investigation

The Department would be required to investigate a complaint and to enforce these provisions pursuant to the Code's provisions on issuance of civil citations and on permitting alleged violators to petition the DPH for a hearing on a citation (MCL 333.2262(2) and 333.2263). The Department also could authorize a local health department to enforce the bill pursuant to the Code's provisions on the delegation by the DPH of powers and functions to a local health department (MCL 333.2235). A local health department authorized to enforce the bill would be required to do so under the Code's provisions that permit a local health department to issue a citation, hold a hearing on the citation, provide for an appeal, and assess a civil penalty (MCL 333. 2462 and 333.2463).

An authorized representative of the DPH or local health department could inspect a tanning facility in order to determine compliance with the bill. Inspections could be conducted only during business hours. If it determined that a tanning facility was not operating in compliance with these provisions or rules, the DPH or local health department would be required to issue an order requiring compliance within a specified period of time. The Department or local health department would be required to provide an opportunity for a hearing within 10 working days after the order was issued. The bill specifies that this provision would not limit any other enforcement authority vested in the DPH or local health department.

### Violations

Upon a finding of a deficiency or violation that

seriously affected the health, safety, or welfare of individuals using a tanning facility, the DPH or a local health department would be required to issue an emergency order denying, suspending, or revoking the facility's registration. The DPH or local health department would be required to provide an opportunity for a hearing within five working days after issuance of the emergency order, which would have to incorporate the Department's or local health department's findings and would remain in effect during a hearing.

After notifying an applicant or registrant of intent to deny, restrict, suspend, or revoke a registration and after an opportunity for a hearing, the Department could deny, restrict, suspend, or revoke the registration if one or more of the following existed:

- Submission of incorrect, false, or misleading information in an application for registration or renewal.
- Failure to operate and maintain a tanning facility in accordance with an application registration or renewal.
- Operation of a tanning facility in a manner that created a nuisance or a hazard to the public health or safety.
- Violation of a restricted registration.
- Failure of a registrant or an employee or agent of the registrant to allow an authorized agent of the DPH to inspect a tanning facility at a reasonable time and in a reasonable manner.
- Failure to pay a fine or a registration, renewal, or inspection fee.
- A violation of the bill or a rule promulgated under it.

In addition to these sanctions, the Department could impose an administrative fine of up to \$500 for a violation of the bill or a rule promulgated under it or under any of the circumstances listed in the bill. The bill specifies that this provision would not preclude any other remedies available under the law.

#### Exemption

The bill specifies that it would not apply to a "phototherapy device" used by or under the direct supervision of a licensed physician. ("Phototherapy device" would mean equipment

that emitted ultraviolet radiation and was used by a health care professional in the treatment of disease.)

Proposed MCL 333.13401-333.13417

#### BACKGROUND

The following is an excerpt from a Consensus Development Conference Statement, entitled "Sunlight, Ultraviolet Radiation, and the Skin" that was issued in May 1989, by the National Institutes of Health:

There are both natural and artificial sources of UVR (ultraviolet radiation). Although there are many artificial sources of this energy, sunlight is the only natural source.

The sun emits a wide variety of electromagnetic radiation, including infrared, visible, ultraviolet A (UVA), ultraviolet B (UVB), and ultraviolet C (UVC). The only UVR wavelengths that reach the earth's surface are UVA and UVB. UVA radiation is 1,000-fold less effective than UVB in producing skin redness. However, its predominance in the solar energy reaching the Earth's surface (tenfold to one hundredfold more than UVB) permits UVA to play a far more important role in contributing to the harmful effects of sun exposure than previously suspected.

Sunlight is the greatest source of human UVR exposure, affecting virtually everyone. The extent of an individual's exposure, however, varies widely depending on a multiplicity of factors such as clothing, occupation, lifestyle, age, and geographic factors such as altitude and latitude...

...Over the past several decades, the average American's exposure to UVB has increased considerably due to changing lifestyles--more

outdoor recreational activities, more emphasis on tanning, scantier clothing, and a population shift to the sunbelt.

The most common sources of artificial UVR exposure are various kinds of lamps that emit this form of energy. These lamps are used primarily for recreational tanning and phototherapy of skin diseases such as psoriasis and cutaneous T-cell lymphoma (mycosis fungoides). UVR lamps can emit UVA, UVB, and/or UVC. Those lamps currently used for recreational tanning emit UVA primarily or exclusively. Some UVA lamps generate greater than 5 times more UVA per unit time than solar UVA radiation reaching the Earth's surface at the Equator. At these doses, "pure UVA" is likely to have adverse biologic effects. However, UVB remains a potential problem with most of these sources. Even 1 percent UVB emission from a UVA source can cause a significant increase in potential for skin cancer.

### **FISCAL IMPACT**

The bill would have an indeterminate impact on State revenues and expenditures. The increase in registration fee revenues would be between \$150,000 and \$240,000 annually. The level of expenditures would depend on the number of complaints investigated by the Department and the level of Departmental activity required by rules that might be promulgated pursuant to the bill. The Department projects the level of expenditures to be \$300,000 in the first year and \$250,000 annually thereafter. The Department's projection assumes a requirement for regular, periodic inspections. If periodic inspections were not required, the annual cost of registration and complaint investigation only would be less.

### **ARGUMENTS**

#### **Supporting Argument**

Exposure to ultraviolet radiation in tanning facilities presents a potential health hazard. Prolonged exposure to ultraviolet radiation predisposes some people to premature aging of the skin, premalignant lesions, early onset of skin cancer, damage to the eyes, and suppression of the immune system. In fact, skin cancers in which UVR exposure plays an important role are the most common form of cancer. Despite evidence that ultraviolet radiation can result in significant and irreparable damage to the skin, many people continue to use the services of commercial tanning salons in pursuit of the "ultimate tan". Unfortunately, many tanning parlors advertise their service as a safe way to get a tan that will protect a person from further sun damage. This so called "safe tan" actually has the opposite effect of what is intended--preparing the skin for further ultraviolet exposure from the sun. As a result, more than 1,500 Americans are admitted yearly to hospital emergency rooms for burns suffered at commercially operated tanning facilities, according to the American Academy of Dermatology. Reportedly, few tanning parlors pay attention to a person's skin type; consider the level of light exposure from a previous visit; adjust the exposure time to variances in each lamp's output of light; or, screen the customer for medications that could react to the effects of ultraviolet radiation and induce an allergic or toxic reaction. Concerns about the operation of tanning salons have heightened awareness of the need to regulate the commercial tanning industry. A number of states, in addition to Michigan, are considering legislation to regulate the industry, and similar legislation has been enacted in 10 states, including Texas, Ohio, California, and New Jersey.

#### **Supporting Argument**

Senate Bill 661 (S-1) would require that a parent or guardian of a minor who was 14 years of age or older sign a written statement concerning the use of a tanning device, before the minor used the device at a tanning facility. The bill also would require that a minor who was under 14 years old be accompanied by a parent or guardian when using a tanning device at a tanning facility. The largest categories of users of tanning salons reportedly

are young adults, especially women, and adolescents. The damage from ultraviolet light takes many years to manifest itself. Therefore, it is often difficult to convince adolescents that the long-term effects of using tanning devices are not worth the short-term benefits of having tanned skin. By requiring minors to obtain parental consent prior to visiting a tanning salon, it is hoped that minors would be made aware of the dangers of subjecting their skin to ultraviolet radiation exposure.

#### Opposing Argument

It is feared that requiring tanning salons to be registered annually with the Department of Public Health could give these facilities credibility. Rather than providing for the registration of these facilities, efforts should be directed toward greater education of the public on the health dangers associated with using the facilities.

#### Opposing Argument

The bill would set an initial and annual registration fee at \$50 for each tanning device and provide for an optional fee of \$50 for each device. These fees are cost-prohibitive relative to other license fees assessed by the State. The effect of imposing a fee structure, as proposed in the bill, could be to put tanning facilities out of business in the State.

**Response:** The \$100 registration and renewal fees proposed in the original version of the bill would have supported the costs stemming from the registration and enforcement provisions of the bill, without having to use General Fund money. The fees proposed in the substitute version of the bill, however, would not even cover registration and enforcement, according to the DPH. Furthermore, the fee structure is not out of line in comparison with other registration and inspection programs. Under the DPH's program to register and inspect x-ray equipment, for example, the registration and inspection fee is \$50 with a charge of \$100 per unit for special inspections.

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