

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Senate Bill 661

Sponsor: Senator Jack Faxon

Committee: Health Policy

Date Completed: 5-22-90

JUN 28 1990

SUMMARY OF SENATE BILL 661 as introduced 11-1-89:

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

- Require that a tanning facility be registered annually with the Department of Public Health (DPH) and require a facility's owner or operator to display a registration certificate.
- Set an initial and annual registration fee at \$100.
- 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 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, such as providing customers with protective eyewear and keeping a permanent record of a customer's use of a tanning device.
- Require that a parent or guardian of a minor who was 14 years old or older sign a written statement concerning the effects of using 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, which then would be required to transmit a copy of the report to the Federal Food and Drug Administration.
- 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 violation of the bill or rules promulgated under it.

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.)

S.B. 661 (5-22-90)

A person could register a tanning facility by submitting an application to the Department on a form, prescribed by the Department, that contained the following information: the name and location of the facility, the name of the owner of the facility, and other information that the DPH reasonably required to protect the public health.

The initial registration and annual renewal fee would be \$100. Registration would have to be renewed annually. The Department 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 Department would be required to promulgate rules to implement the bill.

The owner or operator of a tanning facility would have to display a registration certificate issued by the Department 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.

Information Statement

Before a person used a tanning device in a tanning facility, the facility's owner or operator would have to provide that person with 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 tanning facility caused burns.
- Repeated exposure to the ultraviolet radiation produced by tanning devices used in the tanning facility 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, the following: 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 that using a tanning device was safe or free from risk. The bill specifies that compliance with these provisions would not diminish or otherwise limit or alter the liability 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:

- Have present during business hours an employee who was sufficiently knowledgeable in the correct operation of the tanning devices used at the facility so that he or she could inform and assist each customer in the

proper uses of the devices.

- Provide, before each use of a tanning device, each customer who did not have his or her own protective eyewear with properly sanitized protective eyewear that protected the eye from ultraviolet radiation and allowed adequate vision to maintain balance. 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.
- Use for each tanning device a timer that had an accuracy of plus or minus 10% of any selected timer interval.
- 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.
- Keep a permanent record of each customer's use of a tanning device.

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(s) 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 promptly each injury or complaint of an injury that occurred in the facility to the DPH on a form provided by the Department. 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 Federal Food and Drug Administration. 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 assessing civil penalties for violations and on permitting alleged violators to petition the Department for

a hearing on a citation (MCL 333.2262(2) and 333.2235). The Department also could authorize a local health department to enforce the bill pursuant to enforcement provisions in the Code (MCL 333. 2461 (2) and 333.2462).

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. A facility's registration could be denied, suspended, or revoked for a violation of the bill. The bill specifies that these provisions 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

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate impact on State revenues and expenditures. The increase in registration fee revenues would be between \$75,000 and \$120,000 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 provisions of 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.

Fiscal Analyst: P. Graham

S8990\S661SA

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.