

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 Judiciary Committee

BILL: CS/SB 430

INTRODUCER: Judiciary Committee and Senator Sobel

SUBJECT: Tanning Facilities/Use by Minors

DATE: February 22, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper/Bell	Wilson	HR	Fav/1 amendment
2.	Treadwell	Maclure	JU	Fav/CS
3.			HA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... ☒ Statement of Substantial Changes
B. AMENDMENTS..... ☐ Technical amendments were recommended
☐ Amendments were recommended
☐ Significant amendments were recommended

I. Summary:

This bill prohibits minors under the age of 14 from using tanning devices, such as tanning beds, at a tanning facility. Minors 14 years of age or older may use tanning devices with detailed parental or guardian consent. The consent requirement includes a statement signed by the minor's parent or guardian and witnessed by the tanning facility operator or proprietor. This statement includes an acknowledgement of the risks, an agreement that the minor will wear protective eyewear, and a specified number of tanning sessions authorized for the minor during a 12-month period.

The bill creates an exception allowing minors under the age of 14 to use tanning devices if a health care provider has prescribed use of the device for the purpose of medical treatment. However, even if the minor has a prescription for tanning bed use, the parent or guardian of the minor must satisfy the consent requirements included in the bill prior to the minor's use of the tanning device.

This bill substantially amends section 381.89, Florida Statutes.

II. Present Situation:

Ultraviolet Radiation Exposure Risks

Epidemiological data suggest that most skin cancers can be prevented if children, adolescents, and adults are protected from ultraviolet (UV) radiation.¹ In the United States, 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 percent to 90 percent of melanomas are caused by exposure to UV light.² The American Cancer Society has estimated that there were 4,920 new cases of melanoma of the skin for the state of Florida in 2009.³

In June 2009, the World Health Organization (WHO) International Agency for Research on Cancer (IARC) reclassified UV radiation as “carcinogenic to humans,” and raised the use of UV-emitting tanning devices to the highest risk category for causing cancer.⁴

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.⁵ The Florida Department of Health (DOH), Bureau of Chronic Disease Prevention, also recommends that individuals avoid sunlamps and tanning salons to prevent skin cancer.⁶

More than one half of a person’s lifetime UV light exposure occurs during childhood and adolescence.⁷ The CDC recommends that school health education programs to prevent skin cancer advise students to avoid using sunlamps and tanning beds. The National Health Interview Survey reported that, in 2005, 8.7 percent of teens aged 14-17 years used indoor tanning devices. Girls between the ages of 14 and 17 years were seven times more likely to use these devices than boys in the same age group.⁸

¹ Centers for Disease Control and Prevention, *Skin Cancer Prevention and Education Initiatives* (2008/2009), available at http://www.cdc.gov/CANCER/skin/pdf/0809_skin_fs.pdf (last visited on Feb. 11, 2010).

² 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 Feb. 11, 2010).

³ American Cancer Society, Surveillance and Health Policy Research, *Cancer Facts & Figures 2009*, 5, available at <http://www.cancer.org/downloads/STT/500809web.pdf> (last visited on Feb. 11, 2010).

⁴ Group 1 (Exposure circumstances): The agent is carcinogenic to humans. See WHO International Agency for Research on Cancer Monograph Working Group, *A review of human carcinogens—Part D: radiation*, THE LANCET ONCOLOGY, Vol. 10, Issue 8, 751-752 (Aug. 2009), available at <http://monographs.iarc.fr/ENG/Meetings/index1.php> (last visited Feb. 11, 2010).

⁵ Centers for Disease Control and Prevention, *supra* note 1.

⁶ Florida Department of Health, *Skin Cancer Fact Sheet*, available at <http://www.doh.state.fl.us/Family/cancer/facts/Skin.pdf> (last visited Feb. 11, 2010).

⁷ Centers for Disease Control and Prevention, *supra* note 2.

⁸ Centers for Disease Control and Prevention, *QuickStats: Percentage of Teens Aged 14-17 Years Who Used Indoor Tanning Devices During the Preceding 12 Months, by Sex and Age*, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5540a9.htm> (last visited Feb. 11, 2010).

As of November 2009, 31 states regulated minors' use of tanning devices.⁹ The policies that govern minors' use of tanning devices vary, but generally include one or more of these limitations: age restrictions, parental accompaniment requirements, and parental written permission.

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.

Regulation of Tanning Facilities in Florida

According to the Florida Department of Health (DOH), there are currently more than 1,600 tanning facilities with over 7,100 tanning devices licensed by Florida.¹⁰ The DOH, Bureau of Community Environmental Health, is responsible for regulating and licensing facilities that operate tanning devices that emit electromagnetic radiation of wavelengths between 200 and 400 nanometers.¹¹ The Florida Statutes and the Florida Administrative Code list the requirements for a tanning facility operating license and the regulations tanning facilities must follow, including: sanitation standards, safety provisions, and record requirements.¹² County health departments are responsible for inspecting and approving tanning facilities as a prerequisite to granting an operating license and inspecting operating tanning facilities biannually.¹³ The DOH does not regulate products or devices that create the appearance of a tan, such as airbrush tanning or spray-on tanning.

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

- 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;

⁹ National Conference of State Legislatures, *Tanning Restrictions for Minors, A State-by-State Comparison*, available at <http://www.ncsl.org/programs/health/tanningrestrictions.htm> (last visited Feb. 11, 2010).

¹⁰ Florida Bureau of Community Environmental Health, *Tanning Facilities*, available at <http://www.myfloridaeh.com/community/tanning/index.html> (last visited Feb. 11, 2010).

¹¹ Florida law defines a "tanning device" as "equipment that emits electromagnetic radiation of wavelengths between 200 and 400 nanometers and that is used for tanning the skin, including a sunlamp, tanning booth, or tanning bed or any accompanying equipment." Section 381.89(1)(c), F.S.

¹² Section 381.89, F.S., and ch. 64E-17, F.A.C.

¹³ Florida Bureau of Community Environmental Health, *supra* note 10.

- 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 cause by tanning devices.¹⁴

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.¹⁵ 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 she or he has read and understands the warnings and agrees to use protective eyewear.¹⁶

By statute, tanning facilities must limit each customer to the maximum exposure time recommended by the manufacturer of the tanning device.¹⁷ By rule, the DOH requires tanning facilities to limit customers to one tanning session within a 24-hour period.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.¹⁹

III. Effect of Proposed Changes:

The bill amends s. 381.89, F.S., relating to tanning facility regulation, to prohibit minors who are under 14 years of age from using tanning devices at a tanning facility.

The bill authorizes tanning facilities to provide services to minors 14 years of age or older, only after the tanning facility has a statement on file from the minor's parent or legal guardian, which was signed and witnessed by the operator or proprietor of the tanning facility, and includes:

- An acknowledgement that the parent or legal guardian has read and understands the tanning warnings;
- Consent for the minor's use of the tanning device;
- An agreement that the minor will use the protective eyewear; and
- A specific number of tanning sessions authorized in a 12-month period. The number of tanning sessions authorized by the parent or legal guardian may not exceed the number authorized by the rules of the Florida Department of Health and the manufacturer's exposure schedule.

¹⁴ Section 381.89(4)(a), F.S.

¹⁵ Section 381.89(4)(b), F.S.

¹⁶ Section 381.89(6)(g), F.S.

¹⁷ Section 381.89(6)(e), F.S.

¹⁸ Rule 64E-17.002, F.A.C.

¹⁹ Section 381.89(7) and (8), F.S. The Florida Department of Health reports that, under current practice, in addition to accompanying the minor to the tanning session, the parent or legal guardian must also sign the acknowledgement statement, and the owner or proprietor of the tanning facility must keep this statement on file.

The bill creates an exception to allow minors under the age of 14 to use a tanning device if use of the device has been prescribed by a health care provider. However, the parent of the minor must comply with the consent requirement, which includes signing the consent form in the presence of the operator or proprietor of the tanning facility. In some jurisdictions, laws regulating minors' use of tanning beds allow for the use of a tanning device if the minor has a prescription from a physician indicating the nature of the medical condition requiring treatment, the number of visits allowed, and the time of exposure for each visit.²⁰ The Legislature may wish to consider adopting similar language if it wishes to ensure that a minor's use of the tanning device does not exceed the amount of exposure contemplated by the health care provider.

The term "health care provider" is not defined in the bill. The Legislature may wish to define or narrow the scope of the term if it is the intent of the Legislature to capture only dermatologists or those providers who are most likely to prescribe, via a written medical prescription, UV light treatment for certain medical conditions.²¹

The effective date of the bill is July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁰ For example, North Carolina prohibits a person 13 years and younger from using tanning equipment without a written prescription from the person's medical physician specifying the nature of the medical condition requiring the treatment, the number of visits, and the time of exposure for each visit. N.C. GEN. STAT. s. 104E-9.1(a)(2).

²¹ "Health care provider" is defined in other chapters of the Florida Statutes, with the definitions varying in scope. For example, in the medical negligence context, "health care provider" has a broad definition to encompass, among others, hospitals, certain birth centers, blood banks, plasma centers, anyone licensed to practice medicine, chiropractors, optometrists, and nurses. Section 766.202(4), F.S.

B. Private Sector Impact:

In order to comply with the new parental and guardian consent procedures in the bill, tanning facilities may incur a cost to revise, copy, and print new parental or guardian tanning device consent forms.

Tanning facilities are likely to lose a portion of their business because the bill prohibits minors under the age of 14 from using tanning devices unless use is prescribed by a health care provider. There are no state statistics that report on the use of tanning devices by adolescents. However, nationally, the Centers for Disease Control and Prevention estimates that 8.7 percent of teens between the ages of 14 and 17 use tanning devices.²² The Florida Department of Health coordinated its fiscal impact of the bill with the Florida Indoor Tanning Association and noted that tanning facilities that serve the adolescent population disproportionately will lose profits and could potentially close as a result of the bill.²³

Tanning facilities that offer customers sunless tanning options may see an increase in clientele under the age of 14. The bill does not address alternative forms of tanning, such as sunless tanning sprays.

C. Government Sector Impact:

The Florida Department of Health (DOH) indicated that it may receive more tanning facility complaints as a result of the bill. If substantially more complaints were received, then the DOH indicates that it would incur a fiscal impact for the additional tanning facility inspections.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on February 18, 2010:

The committee substitute:

²² Centers for Disease Control and Prevention, *supra* note 8.

²³ Florida Department of Health, *Bill Analysis, Economic Statement and Fiscal Note: HB 205* (Oct. 20, 2009) (on file with the Senate Committee on Judiciary).

²⁴ *Id.*

- Restores the authority in current law for minors 14 years of age or older (rather than 16- and 17-year-olds under the bill) to use a tanning device with parental consent;
- Clarifies that the number of tanning sessions a parent or legal guardian may authorize for minors 14 years of age or older may not exceed the manufacturer's exposure schedule and the number of sessions authorized by department rule;
- Changes the age requirement to provide that a minor under the age of 14 (rather than 16 under the bill) may not use a tanning device at a tanning facility;
- Creates an exception to allow minors under the age of 14 to use a tanning device if use of the device has been prescribed by a health care provider; and
- Provides that parents of minors subject to the medical-treatment exception must comply with the consent and acknowledgement requirements prior to use of the tanning device.

B. Amendments:

None.