

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1226

(Delegate Healey, *et al.*)

Health and Government Operations

Department of Health and Mental Hygiene - Tanning Facilities - Licensing and Regulation

This bill requires a person to obtain a license from the Department of Health and Mental Hygiene (DHMH) before operating a tanning facility in Maryland. A separate license is required for each facility a person operates.

DHMH must make reasonable attempts to educate persons affected by the bill beginning June 1, 2006. Tanning facility licensure requirements and the related provisions of the bill take effect October 1, 2006.

Fiscal Summary

State Effect: General fund revenues could increase by \$225,000 in FY 2007 reflecting tanning facility license fees. Potential further increase in general fund revenues to reflect the bill's civil penalty provision. General fund expenditures could increase by \$49,100 in FY 2007 for DHMH to hire a sanitarian to manage the license program. Future years reflect a stable number of tanning facilities remaining licensed, annual renewal fees, annualization, and inflation.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
GF Expenditure	49,100	60,500	63,900	67,600	71,600
Net Effect	\$175,900	\$164,500	\$161,100	\$157,400	\$153,400

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in expenditures for local health departments with large concentrations of tanning facilities in their jurisdictions to hire contractual health inspectors, to the extent that the level of funding local health department operations receive from DHMH does not increase.

Small Business Effect: Meaningful for small business tanning facilities that would be required to pay an annual licensing fee, be subject to annual inspections, and upon which a civil penalty may be imposed.

Analysis

Bill Summary: Each license is valid for one year and renewable for one year. Licenses can be renewed as long as the licensee is otherwise entitled to a license, files a renewal application, and pays the renewal fee.

Each tanning facility and the tanning devices used within them must be inspected annually by an appropriate authority determined by the Secretary. The Secretary may suspend the license of any tanning facility that has tanning devices that fail the inspection until the licensee can provide evidence that the tanning devices are being operated according to the manufacturer's specifications and in a safe and healthful manner.

Tanning Facility/Operator Requirements

A facility must have an operator present during operating hours. The operator must: (1) be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility; (2) instruct, inform, and assist each customer in the proper use of tanning devices; (3) complete and maintain records required by the bill; and (4) explain or otherwise inform each customer initially using the tanning facility of the potential dangers of exposure to ultraviolet radiation.

Before each use of a tanning device, the operator must provide clean and sanitized protective eyewear in the immediate area of each tanning device. An individual may not use a tanning device without using the protective eyewear. The operator also must show each customer how to use suitable physical aids to maintain proper exposure distance as recommended by the device's manufacturer. The operator must clean and sanitize the device's body contact surfaces after each use. The facility must use a timer with an accuracy of at least plus or minus 10% of the maximum timer interval of the tanning device. The operator must limit a customer's exposure time on a tanning device to the maximum time recommended by the device's manufacturer. A timer must be located where a customer cannot set or reset the exposure time. The operator must control the temperature of the device's contact surfaces and the surrounding area so it may not exceed 100 degrees Fahrenheit. A customer may not be allowed to use a tanning device in a facility more than once in a 24-hour period.

Tanning facilities and tanning facility operators are required to post a warning sign regarding the dangers of exposure to ultraviolet radiation in a conspicuous location readily visible to individuals entering the facility and to an individual about to use the tanning device. Every time before an adult customer uses a tanning device, the customer must sign a written statement acknowledging that he/she has read and understood the warnings and agrees to use protective eyewear. An individual younger than 13 may not use a tanning device unless he/she has either (1) a written prescription from the individual's physician specifying the nature of the medical condition requiring the treatment, the number of prescribed visits, and the time of exposure at each visit; or (2) permission from a parent or guardian.

Each facility must maintain a record of each customer using a tanning device at least until the third anniversary date of the customer's last use of a device.

Disciplinary Actions, Hearings, and Penalties

The Secretary of Health and Mental Hygiene may deny a license, reprimand a licensee, or suspend or revoke a license if the applicant or licensee fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another, fraudulently or deceptively uses a license, violates a provision of the bill, or violates a regulation adopted by the Secretary.

Before the Secretary takes any final disciplinary action, the Secretary must give the individual against whom the action is contemplated an opportunity for a hearing before the Secretary. The Secretary may administer oaths in connection with any hearing. If after due notice, the individual against whom action is contemplated fails or refuses to appear, the Secretary may hear and determine the matter. Anyone aggrieved by a final decision by the Secretary may appeal the decision to judicial review or to the Court of Special Appeals.

The Secretary may impose a maximum \$250 civil penalty on a person who violates any provision of this bill.

Current Law: DHMH has no responsibility for licensing and regulating any tanning facility or regulating any tanning device.

State Revenues: General fund revenues could increase by \$225,000 beginning in fiscal 2007, assuming DHMH licenses 1,500 tanning facilities and each facility pays a \$150 licensing fee. Potential further increase in general fund revenues due to the bill's civil penalty provision. Future year revenues assume a stable number of licensees and a \$150 annual license renewal fee.

State Expenditures: General fund expenditures could increase by an estimated \$49,079 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date for licensing tanning facilities. This estimate reflects the cost of hiring one sanitarian to manage the licensing program. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The Department of Legislative Services (DLS) assumes that existing DHMH staff will notify tanning facilities of the bill's requirements from June 1, 2006 to October 1, 2006. After October 1, DLS assumes the new sanitarian will be responsible for maintaining communications with these facilities. The information and assumptions used in calculating the estimate are stated below:

- an estimated 1,500 tanning facilities in Maryland, including freestanding tanning salons and other facilities, including beauty salons, at which tanning services are offered;
- a \$150 initial license fee and \$150 renewal license fee; and
- most local health departments would be responsible for inspecting tanning facilities and could do so within existing budgeted resources; however, those with large concentrations of tanning facilities may need to hire contractual inspectors.

Salary and Fringe Benefits	\$42,646
Operating Expenses	<u>6,433</u>
Total FY 2007 State Expenditures	\$49,079

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Any expenditures related to hearings are expected to be minimal and absorbable within existing budgeted resources.

Local Fiscal Effect: DLS assumes that most local health departments could inspect tanning facilities using existing budgeted resources. Local health departments with large concentrations of tanning facilities may need to hire contractual sanitarians to inspect the facilities, assuming DHMH funding for local health department operations does not increase.

Additional Information

Prior Introductions: SB 209 of 2004 that would have given the State Board of Cosmetologists broad authority to regulate tanning facilities and tanning devices received

an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee.

Cross File: None.

Information Source(s): Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Legislative Services

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