HB 887

Department of Legislative Services

Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 887 (Delegate Healey, *et al.*)
Economic Matters

Department of the Environment - Licensing and Regulation of Tanning Facilities

This bill requires the Maryland Department of the Environment (MDE) to license and regulate specified tanning facilities. MDE is required to set reasonable fees to cover the costs of administering the licenses. It is the intent of the General Assembly that the Governor provide funds in the fiscal 2009 budget to begin the regulatory process and that the general fund be reimbursed by special funds once available from license fees.

The licensing and regulatory requirements take effect October 1, 2008. The bill's other provisions take effect June 1, 2007.

Fiscal Summary

State Effect: General fund expenditure increase of $45,100 in FY 2008 to begin the regulatory process; it is assumed the general fund would be reimbursed in FY 2010. Future year special fund expenditures reflect additional staff, annualization, inflation, and the general fund reimbursement in FY 2010, but do not reflect indirect costs. Special fund revenues could increase by $412,500 annually beginning in FY 2009 from license fees.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	$0	$0	$45,100	$0	$0
SF Revenue	0	412,500	412,500	412,500	412,500
GF Expenditure	45,100	0	0	0	0
SF Expenditure	0	244,600	248,700	214,500	226,200
Net Effect	($45,100)	$167,900	$208,900	$198,000	$186,300

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Licensing/Renewal Process

The term of a license is one year; licenses may be renewed. The bill establishes provisions governing the denial, reprimand, or suspension/revocation of licenses.

Regulatory Requirements

The bill establishes requirements governing the display of licenses and the posting of specified warning signs by tanning facilities. The bill requires that a knowledgeable operator be present during operating hours to instruct customers in the proper use of the tanning devices and to inform customers of the potential hazards of and protective measures necessary for ultraviolet radiation, among other things. Further, the operator must provide protective eyewear to each customer at no charge. Other requirements relate to:

- cleaning and sanitizing tanning devices;
- using timers to limit exposure time of customers;
- controlling the temperature of tanning devices;
- limiting the frequency of use by any given customer;
- maintaining and inspecting tanning devices; and
- keeping customer records.

The bill prohibits individuals younger than 14 from using a tanning device. Those between 14 and 18 years of age may not use a tanning device unless they have permission from a parent or guardian or a written prescription from a physician. Adult customers must sign a written statement acknowledging that they have read and understand the warnings and agree to wear protective eyewear before using a tanning device.

By October 1, 2008, MDE must make reasonable efforts to educate tanning facilities about the requirements of the bill.

Penalties

The bill authorizes the Secretary to impose a civil penalty of up to $250 on a person who violates the bill.

Current Law: The Radiological Health Program within MDE is required to control the uses of radiation and to protect the public health and safety and the environment from inadvertent and unnecessary radiation exposure. This is accomplished through registration of radiation machines, licensing of radioactive materials, inspections, and enforcement actions to ensure regulatory compliance. Tanning devices are not currently regulated by MDE.

At the federal level, the U.S. Food and Drug Administration enforces regulations that deal with labels on tanning devices. The labels are intended to inform consumers of the appropriate use and potential dangers of using tanning equipment.

Background: According to the U.S. Environmental Protection Agency (EPA), most tanning equipment emits ultraviolet radiation (UV). Two types of UV radiation are UVA and UVB. UVB has long been associated with sunburn, while UVA has been recognized as a deeper penetrating radiation. Tanning equipment mainly produces UVA radiation, sometimes known as "tanning rays." While UVA radiation from artificial tanning equipment is less likely to cause sunburn than UVB radiation from sunlight, that does not make UVA radiation safe. UVA rays have a suspected link to malignant melanoma; like UVB rays, they also may be linked to immune system damage.

EPA advises that the long-term exposure to natural or artificial sources of UV rays increases the risk of developing skin cancer. According to EPA, women who use tanning beds more than once a month are 55% more likely to develop malignant melanoma, the most fatal form of skin cancer. In addition, exposure to UV light actually thins the skin, making it less able to heal and increasing the damage caused by sunlight.

According to information provided by MDE, 26 states regulate tanning facilities in some manner; these regulations may require licenses or registrations, fees, inspections, and/or training.

State Fiscal Effect: General fund expenditures could increase by an estimated $45,122 in fiscal 2008, which reflects an October 1, 2007 start-up date. This estimate reflects the cost of one administrative officer to begin the significant amount of preparatory work anticipated, including conducting research, involving stakeholders with the development of regulations, and conducting public education in order to license facilities by the

following year. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	$37,750
Equipment and Operating Expenses	7,372
Total FY 2008 State Expenditures	**$45,122**

Future year expenditures reflect: (1) the hiring of one office secretary and two environmental enforcement inspectors in fiscal 2009 and associated one-time start-up and ongoing operating costs, including the purchase of two vehicles; (2) full salaries with 4.5% annual increases and 3% employee turnover; (3) 1% annual increases in ongoing operating expenses; and (4) in fiscal 2010, the reimbursement of the general fund for start-up costs incurred in fiscal 2008. Although the actual number of tanning facilities in the State is unknown, based on information from other states that regulate tanning facilities, the estimates assume that there could be approximately 750 regulated facilities under the bill.

The estimates above reflect only the *direct* costs of administering the regulatory program; they do not reflect any indirect costs. MDE advises that *indirect costs* are collected on special fund expenditures at a rate established within the agency each year, but that a reliable estimate of indirect costs associated with this program cannot be made at this time.

The bill requires MDE to set reasonable fees for the administration of licenses issued under the bill; the fees must be set so as to produce funds to approximate the direct *and* indirect costs of administering licenses issued under the bill. Accordingly, it is assumed that MDE would set fees at a level to not only cover the costs noted above, but also any indirect costs. Although *total* costs are unknown, MDE advises that it is not unreasonable to assume that an annual fee of $550 could be assessed each facility. Assuming 750 facilities become licensed as a result of the bill, the number of licensed facilities remains constant, and MDE establishes an annual fee of $550 per facility, increased special fund revenues to the Radiation Control Fund would total $412,500 annually beginning in fiscal 2009. Although this fee level appears to generate more revenue than may be needed, once the actual number of regulated facilities is known, it is assumed that MDE would set the fee at a level that would approximate its total costs. In addition, fees could be adjusted over time as needed.

Special fund revenues could also increase to the extent any penalties are assessed for violations of the bill; any such increase cannot be reliably estimated at this time.

Although there could be a delay in the receipt of license fees in fiscal 2009, it is assumed that special funds would cover all program costs beginning in fiscal 2009. In any event, pursuant to the intent language provided in the bill, any general funds appropriated for the program in fiscal 2009 would be reimbursed, with no net impact on the general fund.

Small Business Effect: An estimated 750 tanning facilities would be subject to annual license fees, regulatory requirements, and inspections. Although any increase in costs to facilities to meet the regulatory requirements cannot be reliably estimated at this time, annual license fees could total approximately $550 per facility. The number of tanning facilities considered small businesses is unknown.

Additional Information

Prior Introductions: HB 1226 of 2006 would have required the Department of Health and Mental Hygiene to regulate tanning facilities; the House Health and Government Operations Committee held a hearing on the bill but the bill was ultimately withdrawn. SB 209 of 2004 would have given the State Board of Cosmetologists broad authority to regulate tanning facilities and devices; the bill received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee.

Cross File: SB 964 (Senator Raskin) – Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment, U.S. Environmental Protection Agency, U.S. Food and Drug Administration, National Tanning Training Institute, Department of Legislative Services

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