

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 152

(Senator Raskin, *et al.*)

Finance

Tanning Devices - Use by Minors - Prohibition

This bill prohibits an owner, employee, or operator of a tanning facility from allowing a minor to use a tanning device. Violators are subject to existing civil penalties of up to \$250 for the first violation, up to \$500 for the second violation, and up to \$1,000 for each subsequent violation.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's penalty provisions, assuming enforcement and collection by the Secretary of Health and Mental Hygiene. The Department of Health and Mental Hygiene (DHMH) can use existing budgeted resources to amend its regulations, revise complaint forms, and train local health department (LHD) staff on changes in enforcement.

Local Effect: Enforcement can be handled with existing resources, assuming enforcement continues to be complaint-based. No effect on revenues.

Small Business Effect: Potential meaningful decrease in revenues for small tanning businesses that derive significant business from customers who are minors.

Analysis

Bill Summary/Current Law: Chapter 691 of 2008 prohibits an owner, employee, or operator of a tanning facility from allowing a minor younger than age 18 to use a tanning device unless the minor's parent or legal guardian provides written consent on the premises of the tanning facility and in the presence of an owner, employee, or operator of the tanning facility. Violators are subject to civil penalties. Fines for violations are up to

\$250 for the first violation, up to \$500 for the second violation, and up to \$1,000 for each subsequent violation. The bill repeals the ability of a minor's parent or legal guardian to provide consent to allow the minor to use a tanning facility.

Neither Chapter 691 nor the bill preempts local governments from enacting and enforcing more stringent measures to regulate the use of tanning devices by minors. DHMH advises that enforcement, which is conducted by LHDs, is complaint-based.

Background: The Radiological Health Program within the Maryland Department of the Environment is required to control the use of radiation and to protect public health and the environment from inadvertent and unnecessary radiation exposure. The program ensures regulatory compliance through registration of radiation machines, licensing of radioactive materials, inspections, and enforcement actions. At the federal level, the U.S. Food and Drug Administration (FDA) enforces regulations relating to tanning device labels intended to inform consumers of the appropriate use and potential dangers of tanning equipment.

In June 2014, FDA amended regulations for tanning device labels and added a requirement that all sunlamp products have a black box with a warning that reads "Attention: This sunlamp product should not be used on persons under the age of 18 years." The label must be permanently affixed or inscribed on the product. Further, FDA reclassified these devices from Class I (low risk) to Class II (moderate risk). FDA also added the requirement that certain user instructions and promotional material for sunlamp products and ultraviolet (UV) lamps intended for use in sunlamps include the following warnings and contraindications:

- the product is contraindicated for use on persons younger than 18;
- the product must not be used if skin lesions or open wounds are present;
- the product should not be used on people who have had skin cancer or a family history of skin cancer; and
- people repeatedly exposed to UV radiation should be regularly evaluated for skin cancer.

According to the U.S. Environmental Protection Agency (EPA), most tanning equipment emits two types of UV radiation: UVA and UVB. UVB has long been associated with sunburn, while UVA is recognized as a more deeply penetrating radiation. Tanning equipment mainly produces UVA radiation, sometimes referred to as "tanning rays." According to EPA, the fact that UVA radiation from artificial tanning equipment is less likely to cause sunburn than UVB radiation from sunlight does not make UVA radiation safe.

In July 2009, the World Health Organization (WHO) reclassified tanning beds and UV radiation as carcinogenic. Previously, tanning beds and UV radiation were considered “probably carcinogenic to humans.” WHO reclassified tanning beds and UV radiation after a comprehensive analysis that concluded that the risk of skin melanoma increases by 75% when individuals begin using tanning beds prior to age 35. WHO recommends a prohibition on tanning bed use for individuals younger than age 18.

According to the National Conference of State Legislatures, at least 41 states and the District of Columbia regulate indoor tanning for minors. California, Delaware, the District of Columbia, Hawaii, Illinois, Louisiana, Minnesota, Nevada, Texas, and Vermont, ban the use of tanning beds for all minors younger than age 18. Washington and Oregon only allow tanning for minors younger than age 18 with a doctor’s prescription. Connecticut, New Jersey, and New York ban tanning devices for minors younger than age 17, while Pennsylvania and Wisconsin do so for minors younger than age 16, and Alabama does so for minors younger than age 15. Georgia, Maine, New Hampshire, North Carolina, North Dakota, and West Virginia ban the use of tanning devices by children younger than age 14 (although some of these states have exceptions for medical necessity). Most other states that regulate indoor tanning for minors require parental consent or parental accompaniment for certain or all minors.

In November 2009, Howard County became the first local jurisdiction in the United States to prohibit individuals younger than age 18 from using tanning devices without a written prescription from a physician. The Howard County Board of Health has also adopted regulations requiring tanning facility personnel to check photo identification to ensure that a customer is not a minor.

Local Fiscal Effect: Enforcement can be handled with existing resources, assuming enforcement continues to be complaint-based and that the number of complaints does not increase significantly. The Maryland Association of County Health Officers advises it does not anticipate any significant impact on enforcement actions. Accordingly, the Department of Legislative Services assumes that complaints, if any, are minimal under this bill.

Howard County must amend its regulations under the bill since Howard County currently allows minors with a medical prescription to use tanning devices, and the bill makes no such exception. However, this requirement can be handled with existing resources.

Additional Information

Prior Introductions: HB 310 of 2014 and HB 207 of 2012 were withdrawn after a hearing in the House Health and Government Operations Committee. Their cross files, SB 410 of 2014 and SB 213 of 2012, received an unfavorable report from the Senate Finance Committee. HB 1111 of 2011 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 604 of 2011, was heard in the Senate Finance Committee, but no further action was taken.

Cross File: HB 56 (Delegate Reznik, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Howard County, Maryland Association of County Health Officers, U.S. Environmental Protection Agency, U.S. Food and Drug Administration, National Conference of State Legislatures, World Health Organization, Department of Legislative Services

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