

# SENATE BILL REPORT

## SB 5593

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As of February 21, 2011

**Title:** An act relating to the regulation of tanning facilities.

**Brief Description:** Regulating tanning facilities.

**Sponsors:** Senators Kohl-Welles, Keiser, Conway, Kline, Murray and Prentice.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/10/11, 2/21/11 [DPS-WM, DNP].

Ways & Means:

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5593 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

**Staff:** Ingrid Mungia (786-7423)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jenny Greenlee (786-7711)

**Background:** Tanning occurs when the human body produces melanin, which darkens the skin. Tanning is caused by exposure to ultraviolet (UV) radiation from the sun or artificial UV radiation. Tanning beds or booths are equipment that utilize tanning lamps to expose the skin to UV radiation, which induces tanning.

Some states and local jurisdictions have statutes or rules regulating tanning facilities. These regulations include minimum standards for tanning facilities; restrictions on access for minors; and the licensing, permitting, or registration of tanning facilities. Currently, there are no state wide regulations of tanning facilities in Washington.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill (Recommended Substitute): Licensure of Tanning Facilities.** All tanning facilities in the state must be licensed by the Department of Health (DOH). A person seeking licensure must submit an application including the name, address, and telephone number of the facility and the owner; information on each of the tanning devices in the facility; a certification that the applicant has read and understands the statutes relating to tanning; a copy of the facility's operating procedures; and any other information required by the DOH. The DOH must grant an applicant's license if it determines the applicant meets all applicable requirements.

A licensee must place the license in a location clearly visible to customers. Licenses expire annually and are not transferable from one facility to another.

The fee for licensure and renewal must be set in an amount necessary to defray the costs of the tanning facility licensing program, but in no case may exceed \$125 per salon and \$25 per additional bed over ten.

Tanning Regulations. Licensed tanning facilities are subject to a variety of regulations, including regulations relating to tanning equipment, tanning operators, injuries, advertising, and disclosures to customers.

A tanning facility may not allow a person under the age of 16 to use a tanning device.

*Tanning Equipment.* All tanning equipment in a tanning facility must have a control enabling users to manually shut off the equipment without unplugging the equipment or touching the tanning lamps. A tanning facility must cleanse the contact surfaces of tanning equipment between uses. After cleansing the equipment, the facility must place a visible sign on the bed or booth indicating it has been cleansed. The facility must also properly sanitize bathrooms and dressing rooms and provide customers with clean towels and washcloths. The DOH must adopt rules relating to tanning facility sanitization standards.

*Tanning Operators.* In most cases, a tanning operator must be present whenever tanning equipment is being operated in the facility. Beginning July 1, 2013, all operators must have successfully completed a DOH-approved training course. The operator must be within hearing distance of the equipment or be able to reach the customer within 30 seconds if summoned by intercom or buzzer. An operator must be able to recognize the customer's skin type based on the Fitzpatrick Scale, which classifies skin type based on the skin's reaction to the first ten to 45 minutes of sun exposure after the winter season. An operator must limit the customer's tanning session to the duration and frequency recommended by the tanning equipment's manufacturer and must instruct each customer in the following:

- proper body positioning;
- the location of the safety railing, if any;
- the operation of the control to manually shut off the equipment; and
- the maximum time of exposure.

An operator is not required to be present if:

- the tanning equipment is remotely monitored;
- customers are provided with personal security devices capable of summoning first responders; and

- each customer utilizing equipment without an operator present has had at least one session with an operator present in which the customer received the required instruction.

*Injury Reporting.* A tanning facility must report to the DOH any tanning injury in which medical attention was sought or obtained within five days after the day of the injury or the day when the facility became aware of the injury. The report must contain the name of the customer, the name and location of the tanning facility, the nature of the injury, the name and address of the health care provider, if any, and any other relevant information. The DOH must forward the injury reports to the U.S. Food and Drug Administration.

*Advertising.* A tanning facility may not advertise or distribute promotional materials claiming use of a tanning device is safe or free from risk, or that the device results in medical or health benefits.

Enforcement. A tanning facility must allow the DOH to have access to the facility at reasonable times for inspection. When inspecting a tanning facility, the DOH must review the following:

- the construction and operation of the facility;
- any required records and training documentation;
- operator understanding and competency; and
- any other areas the DOH deems appropriate.

The DOH may deny, suspend, or revoke a tanning license for any of the following:

- submitting false statements;
- operating a tanning facility in a manner that threatens the public health or safety;
- failing to allow the DOH to have access for inspections or investigations;
- failing to pay licensing or renewal fees; and
- any other violations of tanning regulations.

In addition to license denial, suspension, or revocation, the DOH may also assess civil penalties of up to \$5,000 per violation or require a corrective action plan. A person who operates or uses a tanning device in violations of the requirements of the act is also guilty of a misdemeanor.

In cases involving the public health, safety, or welfare, the DOH must take immediate action to suspend or revoke a facility's license. In all other cases, the DOH must provide written notice to the tanning facility of the facts or conduct warranting the suspension or revocation and provide the facility with an opportunity to demonstrate or achieve compliance.

Exemptions. The following are exempt from regulation:

- devices for personal use in a residence;
- devices intended for purposes other than the irradiation of the human skin; and
- phototherapy or UV radiation devices providing therapeutic benefits to patients receiving medically-supervised treatment for medical conditions from a health care professional acting within his or her scope of practice.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute):**

- replaces the maximum fee with a \$125 fee plus \$25 per each bed over ten;
- removes the public awareness campaign;
- removes the warnings (including the requirement that the DOH adopt a model sign);
- removes the bulb replacement schedules;
- removes the intent section;
- makes the following changes to the injury report:
  - requires the report to be in writing;
  - requires the report to be submitted only in cases where medical attention is sought or obtained; and
  - allows the tanning facility to submit the report within five days, instead of by the end of the next business day;
- removes the requirement that tanning facilities must follow the same cleanliness standards as salons/shops;
- requires tanning operators to complete a DOH-approved training course;
- allows a facility to operate without a trained operator, if:
  - the tanning equipment is remotely monitored;
  - customers are provided with personal security devices capable of summoning first responders; and
  - each customer utilizing equipment without an operator present has had at least one session with an operator present in which the customer received the required instructions;
- gives the DOH until July 1, 2012, to modify recordkeeping requirements and adopt rules necessary to implement the act; and
- extends the effective date until July 1, 2012.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Consumer Protection):** PRO: I am not opposed to tanning salons, but I do believe they should be regulated. Tanning salons are a danger to young women. The state regulates cigarettes and haircuts, but not tanning salons. We are playing Russian roulette with young women's lives. The Melanoma National Foundation has the Prom Promise. This program talks to girls about not going to the tanning salon before going to the prom. When I was younger, I tanned and I was not aware of the dangers of tanning. If I had known what I know today, I would have never tanned. The DOH supports the concept of the bill and recognizes it as a public health issue. However, the DOH recommends some amendments that would provide additional time for operators to report injuries and to receive the approved training and to let the department set the inspection frequency and the need for two separate and distinct

rulemaking provisions in the bill. These recommendations would lead to a reduced fiscal impact to the bill and still protect public health. Melanoma is the deadliest form of skin cancer, and its incidence is on the rise. It is the commonest form of cancer between 25-29 year olds. Across the United States, one person dies from melanoma every minute. Use of tanning beds before age 35 increase the risk of melanoma by 75 percent. The tanning industry is unregulated in the state of Washington. The federal government does not regulate tanning beds as some people believe. The Food and Drug Administration issued recommendations, but not enforcement with anything to do with tanning salons. There is no required training for people working in tanning salons or state standardization for tanning beds. There are safer ways to get vitamin D and serotonin. Regulation of tanning beds is imperative to the future of melanoma patients.

CON: The highest risk factor for developing melanoma is skin burns and over exposure to the sun. The licensing fees would make Washington the most costly state for licensing and regulation. The fees do not need to be that high. The public education campaign requirement would also drive the cost up for the tanning industry. This bill does not have any industry input. We are in the health business. The economic impact is huge on small business owners. We do not have a problem with oversight, but this bill will put some salon owners out of business. This will also drive up health costs for people with health problems who cannot afford a dermatologist. We do have federal standards and regulations in the industry. We do post warnings on the equipment. There is no evidence that sun lamps create melanoma. The death rate of melanoma had been decreasing rapidly. Our industry is very misunderstood.

**Persons Testifying (Labor, Commerce & Consumer Protection):** PRO: Senator Kohl-Welles, prime sponsor; Peter Rasmussen, Melanoma International Foundation; Michele Spenser, Washington State Dermatology Association; Terry Frazee, DOH; Sasha Krammer, Washington State Dermatology Association; Maggie Moore, citizen.

CON: James Curry, Indoor Tanning Association; Daniel Mann, Tropical Tan; Brad Kelly, Kelson Distributors; Brook Taylor, All Hours.