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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/17

SPONSOR Romero LAST UPDATED \_\_\_\_\_ HB 212

SHORT TITLE Indoor Tanning Act SB \_\_\_\_\_

ANALYST Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$20.0	\$110.5	\$123.5	\$254.0	Recurring	General Fund*

(Parenthesis ( ) Indicate Expenditure Decreases) \* The New Mexico Environment Department recommends instead the enactment of an "Indoor Tanning Fund".

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Medical Board (MB)  
 Attorney General's Office (AGO)  
 Department of Environment (NMED)

### SUMMARY

#### Synopsis of Bill

House Bill 212 would make a number of new provisions to regulate the tanning industry. It differentiates between devices that emit ultraviolet radiation for phototherapy (as used in certain skin diseases) and for tanning. The latter is of concern because of its association with the production of all types of skin cancer, among other ill effects, just as natural (sun-exposure-induced) tanning is.

- 1) Tanning facilities would be unable to serve those under eighteen years of age,
- 2) Tanning facility operators would be required to post a notice that would have to include the prohibition of the facility's use by minors, the health risks associated with tanning, the availability of the department of the environment to take complaints about violation of the act, and the availability of civil penalties against operators of tanning facilities that violate the indoor tanning act,
- 3) Users of tanning facilities would have to sign a form acknowledging having seen and understood the information mentioned in (2) above and agreeing to use protective eyewear,

- 4) A knowledgeable employee at the facility must be available to provide protective eyewear, to explain the written and posted information, and to keep minors from using the equipment,
- 5) Tanning equipment would need to be sanitized after each use,
- 6) Sanitized protective eyewear would be provided,
- 7) Accurate timing devices to quantitate exposure would be present,
- 8) An off-switch would be provided,
- 9) Clients could not use the tanning facility more than once each twenty-four hour period,
- 10) The tanning facility would be kept below 100 degrees Fahrenheit, and
- 11) Records of use, injuries, and consent forms would be kept.

Users would also be responsible for using protective eyewear, and signing the statement referred to in (3) above.

The bill excludes from these regulations therapeutic use of a tanning device prescribed by a health care practitioner.

Penalties for tanning facilities that deviate from these provisions are specified.

The Department of the Environment would be required to develop regulations to license tanning facilities; the license would have to be displayed in the facility.

The act would not preempt more restrictive local ordinances within New Mexico jurisdictions and a severability clause is included.

## **FISCAL IMPLICATIONS**

No appropriation is made. NMED indicates that it would need to promulgate regulations and then hire new staff to enforce those regulations. Their calculations assume that 2 FTE personnel would be required initially, decreasing to one after an uncertain period. Part of this cost would be offset by licensing fees, estimated (on the basis of Texas' charges) of \$150 per facility and \$100 per tanning device. NMED also proposes an "Indoor Tanning Fund" to receive monies through these licensing fees and legislative appropriations.

## **SIGNIFICANT ISSUES**

According to the National Conference of State Legislators, in 2013, 42 states and the District of Columbia regulated the use of tanning facilities by minors; New Mexico would, under the act, be the 14<sup>th</sup> state to ban minors' use of tanning facilities, but currently is one of eight states with no regulation of ultraviolet tanning devices.

The Skin Cancer Foundation notes that "more people develop skin cancer because of tanning than develop lung cancer because of smoking." Risk of the most dangerous type of skin cancer, melanoma, is increased by one-third among those who have used tanning beds more than ten times. Noting that the young are especially susceptible to tanning-induced skin cancer, the American Cancer Society advises that people of all ages avoid the use of tanning devices. (<https://www.cancer.org/latest-news/the-ugly-truth-about-indoor-tanning.html>). The American Academy of Pediatrics shares the view that tanning is dangerous, especially for children, and cites a 2015 federal Drug Administration proposal to ban minors from the use of tanning devices.

The FDA’s website gives notice of the rule-making in December 2015, but does not give information about having instituted the rule.

### **ADMINISTRATIVE IMPLICATIONS**

NMED indicates the need to establish regulations and then educate tanning facility operators about those regulations.

### **TECHNICAL ISSUES**

As noted by NMED,

Subsection F of Section 2 of the Indoor Tanning Act exempts “phototherapy devices used, or prescribed for use, by a physician”. This is the only instance that “physician” is used in the Indoor Tanning Act. If this is intended to fit within the definition of a “health care practitioner” [used elsewhere in the bill], NMED recommends that this be changed for consistency.

Section 9 of the Indoor Tanning Act states that it does not preempt more stringent local ordinances. However, this language is ambiguous as to enforcement capacity. It is unclear that, if a local ordinance is more stringent, would NMED still need to provide the inspection and oversight staff, or would this obligation be carried by the local authority.

### **ALTERNATIVES**

Some other states require parents of guardians to consent before minors could use tanning devices, and still other restrict some but not all minors from their use.

With respect to enforcement by local jurisdictions within New Mexico, NMED recommends “As an alternative, NMSA 1978, Section 74-1-14 (1997) provides language regarding local authority that has helped to resolve jurisdiction questions in the liquid waste setting:”

NMED suggests that authority to regulate tanning facilities might better be placed in the Department of Health; it also suggests that an “Indoor Tanning Fund” be established, and an appropriation be made to it.

Another option would be to put oversight of tanning salons under the Regulation and Licensing Department.

AGO suggests that annual acknowledgement of risks may be difficult for a tanning facility to track, and suggests that an acknowledgement form be filled out with each use of the facility. Further, AGO notes that the duration of exposure to ultraviolet radiation in the tanning facilities might be a better measure to track rather than frequency of visits.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

New Mexico would remain one of a dwindling number of states that does not regulate tanning facilities, and does not in any way restrict particularly vulnerable minors from their use.