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FISCAL IMPACT REPORT

ORIGINAL DATE 2/8/19

SPONSOR Romero LAST UPDATED _____ HB 421

SHORT TITLE Indoor Tanning Act SB _____

ANALYST Chilton

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$22.5	\$22.5	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$150.0	\$250.0	\$250.0	\$650.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Medical Board (MB)
Regulation and Licensing Department (RLD)
Department of Environment (NMED)

SUMMARY

Synopsis of Bill

House Bill 421 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

This bill does not contain an appropriation.

However, NMED indicates that "the objectives of the Indoor Tanning Act are unachievable unless continuous funding is made available through an appropriation to NMED from the general fund. The number of tanning facilities in New Mexico is currently estimated to be less than 150. It is estimated that initially a minimum of two FTEs will be required to implement the requirements of the Indoor Tanning Act, and at least one FTE thereafter to maintain the registration, enforcement, training, investigation, and inspection of the program assuming the number of facilities remains around 150 in total. Rulemaking would incur additional startup costs in terms of staff time and resources as well as costs associated with the public hearing process, such as public notices and legal costs.

Major assumptions and estimates in promulgation of regulations and implementation of the Indoor Tanning Act include:

- 150 estimated tanning facilities in the state;

- Estimated annual fee \$150 per year, per facility, total fees \$22,500 and would not be enough to cover the cost of administering HB 421;

Therefore, general fund of \$250 thousand per year would be necessary to implement the registration, inspections and enforcement as required by HB 421.”

SIGNIFICANT ISSUES

According to the National Conference of State Legislators, in 2017, 44 states and the District of Columbia regulated the use of tanning facilities by minors; New Mexico would, under the act, be the 20th state to ban minors’ use of tanning facilities, but currently is one of only six 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 March 2018, but does not give information about having instituted the rule.

DOH amplifies on these points:

According to the Food and Drug Administration (FDA), there are many risks from indoor tanning devices. Using sunlamp products such as indoor tanning beds or booths exposes users to ultraviolet (UV) radiation and increases the risk of eye injury, skin damage, and skin cancer. There is increasing evidence that indoor tanning during childhood and early adult life increases the risk of skin cancer, including melanoma. In fact, people who have been exposed to radiation from indoor tanning are 59 percent more likely to develop melanoma than those who have never tanned indoors (<https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm350790.htm>). Due to these risks, since 2014, the FDA has required indoor tanning devices to be labeled with a visible, black-box warning stating that they should not be used by people under age 18. The FDA is also now proposing a rule to protect youth from the risks of these devices by restricting use only to adults age 18 and older. This proposed rule also would require indoor tanning facilities to inform adult users about the health risks of indoor tanning and to obtain a signed risk acknowledgement from these users.

In New Mexico from 2015 through 2017, there were an average of 62 deaths per year from melanoma skin cancer (https://ibis.health.state.nm.us/indicator/complete_profile/CancerDeathMelanoma.html). The provisions of HB421 would provide similar protections to New Mexicans as those proposed by the FDA.

According to the National Conference of State Legislatures, currently, at least 44 states and D.C. regulate the use of tanning facilities by minors

(www.ncsl.org/research/health/indoor-tanning-restrictions.aspx). Of these, 19 states and D.C. ban the use of ultraviolet tanning devices by anyone under age 18. The provisions in HB421 would add New Mexico to the list of states requiring this level of protection for minors from potential short- and long-term injuries and illnesses related to indoor tanning.

A recent publication concluded that “restricting indoor tanning among minors younger than 18 (consistent with an FDA proposed rule) was estimated to prevent 61,839 melanoma cases, prevent 6,735 melanoma deaths, and save \$342.9 million in treatment costs over the lifetime of the 61.2 million youth age 14 years or younger in the United States.” (The Potential Impact of Reducing Indoor Tanning on Melanoma Prevention and Treatment Costs in the United States: An Economic Analysis, *Journal of the American Academy of Dermatology*, Volume 76, Issue 2, February 2017, Pages 226–233).

During 2013, 20.2% of female high school students engaged in indoor tanning as compared to 5% of male high school students. Further, indoor tanning was most common among non-Hispanic white female students. (Trends in Indoor Tanning Among US High School Students, 2009–2013, *JAMA Dermatology*, 2015 Apr, 151(4): 448-450)

TECHNICAL ISSUES

NMED notes that there is no specificity in the bill as to where fees for tanning facilities would be deposited.

NMED also points out that “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... As an alternative, NMSA 1978, Section 74-1-14 provides language regarding local authority that has helped to resolve jurisdiction questions in the liquid waste setting:”

DOH points out that tanning facilities consent forms would have to be kept, but does not specify for how long, and that there is no timetable set in the bill for rule-setting or licensing tanning facilities.

ALTERNATIVES

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

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.

LAC/al/gb