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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH; ENACTING THE INDOOR TANNING ACT; BANNING THE USE OF TANNING DEVICES BY INDIVIDUALS UNDER THE AGE OF EIGHTEEN; ESTABLISHING SAFETY MEASURES FOR INDOOR TANNING; ESTABLISHING CIVIL PENALTIES; PROVIDING FOR RULEMAKING AND TANNING FACILITY LICENSURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Indoor Tanning Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Indoor Tanning Act:

A. "department" means the department of environment;

B. "health care practitioner" means an individual licensed or certified to deliver health care in the ordinary

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1 course of business;

2 C. "minor" means an individual who is under
3 eighteen years of age;

4 D. "operator" means a person that owns, leases or
5 manages a tanning facility;

6 E. "phototherapy device" means equipment that emits
7 ultraviolet radiation and is used in the diagnosis or treatment
8 of disease or injury;

9 F. "tanning device" means equipment that emits
10 electromagnetic radiation having wavelengths in the air between
11 two hundred and four hundred nanometers and that is used for
12 tanning of human skin and any equipment used with that
13 equipment, including protective eyewear, timers and handrails.
14 "Tanning device" does not include a phototherapy device used,
15 or prescribed for use, by a physician; and

16 G. "tanning facility" means any premises where an
17 individual may access a tanning device, regardless of whether a
18 fee is charged for access to the premises or the tanning
19 device, including a common area of a private facility but
20 excluding the interior of a private home.

21 SECTION 3. [NEW MATERIAL] TANNING DEVICES--PROHIBITION ON
22 USE BY MINORS--SIGNAGE--WRITTEN STATEMENT.--

23 A. It is unlawful for a minor to use any tanning
24 device in a tanning facility.

25 B. An operator shall post in a conspicuous place in

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1 each tanning facility a sign that contains a notice that
2 conforms to department rules, states that the operator owns,
3 leases or operates a tanning facility and states that:

4 (1) it is unlawful for a tanning facility or
5 operator to allow an individual under the age of eighteen to
6 use any tanning device;

7 (2) a tanning facility or operator that
8 violates a provision of the Indoor Tanning Act shall be subject
9 to a civil penalty;

10 (3) an individual may report a violation of
11 one or more provisions of the Indoor Tanning Act to the
12 department; and

13 (4) the health risks associated with tanning
14 include skin cancer, premature aging of skin, burns to the skin
15 and adverse reactions to certain medications, foods and
16 cosmetics.

17 C. An operator shall give to each individual that
18 uses a tanning device at a tanning facility under the
19 operator's control a written statement that shall be signed by
20 the user before the user's initial use of the tanning device
21 and each year thereafter that the user uses the tanning device.
22 The written statement shall conform to department rules and
23 contain the following:

24 (1) the notices and warnings set forth in
25 Paragraphs (1) through (4) of Subsection B of this section;

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1 (2) language in which the user acknowledges
2 that the user understands the notices and warnings set forth in
3 Subsection B of this section; and

4 (3) language in which the user agrees that the
5 user will use protective eyewear.

6 SECTION 4. [NEW MATERIAL] TANNING FACILITIES--OPERATING
7 REQUIREMENTS.--The operator of a tanning facility shall ensure
8 that:

9 A. a minor does not use a tanning device in the
10 operator's tanning facility;

11 B. during operating hours, an individual is present
12 at the tanning facility who has been trained in minimizing the
13 risks associated with the use of tanning devices and who is
14 able to inform users about, and assist users in, minimizing the
15 risks associated with using a tanning device;

16 C. each tanning device is properly sanitized after
17 each use;

18 D. before each user begins to use a tanning device,
19 the user is provided, at no cost to the user, with properly
20 sanitized and securely fitting protective eyewear that protects
21 the wearer's eyes from ultraviolet radiation and allows enough
22 vision to maintain balance;

23 E. a user does not use a tanning device unless the
24 user wears protective eyewear;

25 F. each user is shown how to use such physical aids

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1 as handrails and markings on the floor to maintain a proper
2 exposure distance from the tanning device in accordance with
3 manufacturer recommendations;

4 G. a timing device that is accurate within ten
5 percent of any selected timer interval is used and is remotely
6 located so users cannot set their own exposure time in the
7 tanning devices they use;

8 H. each tanning device is equipped with a mechanism
9 that allows the user to turn the tanning device off;

10 I. each user's exposure time is limited to the
11 amount of time recommended by the manufacturer for the user's
12 skin type;

13 J. users are not allowed to use a tanning device
14 more than once in any twenty-four-hour period;

15 K. the interior temperature of the tanning facility
16 does not exceed one hundred degrees Fahrenheit; and

17 L. the following records are maintained:

18 (1) copies of all consent forms signed by
19 users at that tanning facility;

20 (2) a record of each user's total number of
21 tanning visits to the tanning facility;

22 (3) the dates and durations of each user's
23 tanning exposures; and

24 (4) for each user, any injury report made for
25 a period of three years after the injury report is made.

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1 SECTION 5. [NEW MATERIAL] TANNING FACILITIES--USER

2 DUTIES.--An individual shall not use a tanning device at a
3 tanning facility unless the individual complies with all of the
4 following:

5 A. immediately before the user's first use of a
6 tanning facility and every year thereafter, signs a statement
7 acknowledging that the user has read and understands the
8 written statement and the warning sign required pursuant to
9 Section 3 of the Indoor Tanning Act; and

10 B. uses protective eyewear at all times while using
11 a tanning device.

12 SECTION 6. [NEW MATERIAL] EXCLUSION.--The provisions of
13 the Indoor Tanning Act do not apply to the use of a
14 phototherapy device:

15 A. by a health care practitioner;

16 B. by a patient of any age pursuant to a valid
17 prescription of a health care practitioner;

18 C. in the office or treatment room of a health care
19 practitioner; or

20 D. in a health facility that the department of
21 health licenses.

22 SECTION 7. [NEW MATERIAL] PENALTIES.--

23 A. The department shall impose on an operator that
24 violates a provision of the Indoor Tanning Act or any rule
25 promulgated pursuant to that act a civil penalty of not more

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1 than two hundred fifty dollars (\$250) for the first violation
2 and not more than five hundred dollars (\$500) for any
3 subsequent violation.

4 B. In addition to the penalty described in
5 Subsection A of this section, the department may suspend or
6 revoke the license issued to the tanning facility at which the
7 violation occurred.

8 SECTION 8. [NEW MATERIAL] RULEMAKING--TANNING FACILITY
9 LICENSE.--

10 A. The department is authorized to make inspections
11 and investigations and to adopt rules to carry out the
12 provisions of the Indoor Tanning Act. At a minimum, these
13 rules shall establish fees and procedures for an annual
14 application for tanning facility licensure.

15 B. On an annual basis and in accordance with
16 department rules, an operator shall obtain a tanning facility
17 license from the department for each tanning facility that the
18 operator owns or operates. An operator shall not operate a
19 tanning facility without a tanning facility license issued by
20 the department. The operator shall display each tanning
21 facility's license in a conspicuous place at the tanning
22 facility.

23 SECTION 9. [NEW MATERIAL] PREEMPTION.--The provisions of
24 the Indoor Tanning Act shall not preempt any local ordinance
25 that provides for more restrictive regulation of tanning

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1 facilities than the Indoor Tanning Act establishes.

2 SECTION 10. [NEW MATERIAL] SEVERABILITY.--If any part or
3 application of the Indoor Tanning Act is held invalid, the
4 remainder or its application to other situations or persons
5 shall not be affected.

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