

SUBJECT: Regulating tanning facilities

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Berlanga, Hirschi, Coleman, Glaze, McDonald

0 nays

4 absent — Delisi, Janek, Maxey, Rodriguez

WITNESSES: For — None

Against — None

On — Cynthia Culmo, Texas Department of Health

DIGEST: CSHB 2027 would amend the Tanning Facility Regulation Act to require facilities to be licensed instead of permitted, link tanning device regulation and enforcement to the Texas Food, Drug and Cosmetic Act, add requirements for protective eyewear, timers, customer information and recordkeeping, amend requirements for signs, define adult tanning facilities, provide for emergency orders and civil and administrative penalties and increase criminal penalties. The bill would take effect September 1, 1995.

Licensing. A license, instead of a permit, would be required to operate each tanning facility. The license would be valid for one year. A tanning facility would be required to return the license to TDH when the facility ceased to operate or changed ownership, location or name.

The Texas Department of Health (TDH) would be required to collect fees for license issuance, renewal and modification. Fees would allow TDH to recover not less than 50 percent of the costs to the department in implementing and enforcing tanning facility laws and regulations. Fees would be deposited into the food and drug registration fund and would be dedicated to tanning facility enforcement.

Tanning devices. A tanning device would have to comply with state laws and regulation in addition to federal laws and regulations. TDH would be permitted to investigate a person accused of adulterating or misbranding a tanning device and apply enforcement provisions, as provided under the Texas Food, Drug and Cosmetic Act.

Customer information. A tanning facility operator could not claim that the tanning device will result in medical or health benefits in addition to prohibitions against claiming the device is safe or risk-free.

A tanning facility operator would be required to instruct each customer in the proper use of tanning devices and to explain to each customer initially using the facility the potential hazards of ultraviolet radiation and dangers of overexposure, the requirement for protective eyewear, the possibility of photosensitivity or photoallergic reactions, the correlation between skin type and exposure time, the biological process of tanning and the maximum exposure time to the facility's devices.

Before the first use of a tanning device or upon contract renewal, a customer age 18 years or older would be required to sign a statement acknowledging that the person has read and understood the warnings about tanning devices and agrees to wear protective eyewear. A person under age 18 would be required to give the operator written consent to the use of the device signed and dated by the person's parent or legal guardian. A parent would be required to remain at the facility while a child under age 14 used a tanning device.

Facility operations. TDH would be required to prescribe the form and content of customer records. Records of each customer would have to be maintained by the facility at least until the third year from the date of the customer's last use. TDH-authorized health agents or health authorities would have access to copy or verify the records of the facility.

Protective eyewear would have to meet U.S. Food and Drug Administration standards, to be provided free-of-charge and located in the immediate area of each tanning device. A timer would be required to be located so that a customer could not set or reset exposure time.

A tanning facility operator would be required to clean and properly sanitize the body contact surfaces of a tanning device after each use of the device. A person would be prohibited from the area of a tanning device in use by another person.

Adult tanning facilities. An adult tanning facility would be defined as a tanning facility whose primary business is offering a service or the sale, rental, or exhibition of a device or other item intended to provide sexual stimulation or sexual gratification to a customer. Adult tanning facilities would be subject to laws and regulations governing tanning facilities.

Emergency orders and penalties. The commissioner of health could issue an emergency order without a hearing if the commissioner determined that the operation of a tanning facility posed an immediate and serious threat to human health and other procedures to remedy the threat would result in unreasonable delay. The department would be required to determine a time and place for a hearing to affirm, modify or set aside the emergency order, under the rules of the department (within 30 days).

The commissioner could also request the attorney general or district, county or municipal attorney to institute a civil suit for a permanent or temporary injunction, a temporary restraining order or other remedy and a civil penalty. The civil penalty could not exceed \$25,000 a day for each violation. Suits could be brought in Travis County or the municipality or county in which the violation occurred. A civil penalty recovered from a suit instituted by a local government would be paid to the local government.

The board of health could impose against a person licensed or regulated an administrative penalty by the act up to \$25,000 for each day a violation continues or occurs. All proceedings would be subject to the Administrative Procedure Act (Government Code Chapter 2001). The commissioner could issue a report to the board that states the facts and the recommendations on the imposition of the penalty. A written notice of the report would be required to be sent to the person within 14 days of the report's issuance and the person could accept the determination and recommended penalty or make a written request for a hearing.

Within 30 days after the board's order became final the person would be required to pay the amount of the penalty or file a petition for judicial review in Travis County district court. Upon final court judgment, interest would be charged on unpaid penalties at the rate charged on loans to the depository institutions by the New York Federal Reserve Bank. Penalties collected would be deposited to the general revenue fund.

CSHB 2027 would remove the requirement for knowing or reckless intent for criminal violations. Offenses would be Class A misdemeanors, maximum penalty of one year in jail and a \$4,000 fine, instead of Class C misdemeanors, maximum penalty of a \$500 fine.

**SUPPORTERS
SAY:**

CSHB 2027 would improve the safety of tanning facilities by enhancing customer information and recordkeeping requirements and by specifically applying penalties and other enforcement actions from the Texas Food, Drug and Cosmetic Act under the Tanning Facility Regulation Act. It would also help local communities shut down sexually oriented businesses that purport to be tanning facilities.

CSHB 2027 would clarify TDH jurisdiction and enforcement authority by adding emergency, injunctive, civil, administrative and criminal penalty provisions that parallel provisions under the Texas Food, Drug and Cosmetic Act. Current tanning facility laws are not clearly linked to the Texas Food, Drug and Cosmetic laws that govern tanning devices, and references to federal law in the Tanning Facility Regulation Act have been interpreted to exclude state intervention in some instances. CSHB 2027 would also help tanning facility owners and operators understand the full effect of state law and regulations that govern their businesses by combining all relevant provisions within the tanning regulation act.

Emergency order provisions are necessary to shut down a dangerous operation without delay. The department now can only petition a court for a temporary restraining order, or under the Texas Food, Drug and Cosmetic Act, detain an adulterated or dangerous tanning device from further use. Businesses that generate enough complaints or serious injuries should be shut down because they will most likely have reckless or negligent management practices and not just faulty devices. Detained devices also have a mysterious way of leaving the premises prior to final inspection and

judgment by the department or the court. Emergency cease and desist orders only last 30 days and could not permanently shut down a business without a hearing.

Licensing would place the same state authorization status on tanning facilities as the department places on other businesses under the Texas Food, Drug and Cosmetic Act and would effect little change in administration. License return requirements would help the department monitor an industry that is subject to a lot of turnover and change. The return requirements would also help new owners and operators become familiar with state requirements by forcing them to apply for a new license and exposing them to state informational materials.

The bill would ensure fees are levied only in amounts necessary to enforce the act and assure tanning facility owners that licensing fees won't be used as a tax to fund other state activities. All other Texas Food, Drug and Cosmetic Act fees are handled in the same manner and are similarly dedicated in the registration fund.

Recordkeeping requirements are not new and are similar to requirements in existing regulation. The recordkeeping requirements also reflect a good business practice that can protect owners and operators from liability and protect the health and safety of their customers.

Tanning is an activity that is desired for cosmetic reasons by people of all ages, and tanning devices, if installed and used properly, are relatively safe. Written warning and consent requirements sufficiently educate customers about the hazards of ultraviolet radiation and the possible sensitivities they may have as a result of skin type, medications, perfumes or food they eat.

CSHB 2027 would improve current law allowing 14-year-olds access to tanning facilities by requiring an adult to remain at the tanning facility while the child is tanning. Having an adult nearby would ensure that the child will use the device properly and that the adult knows of and is responsible for the child's behavior.

New provisions defining adult tanning facilities would give state and local governments extra enforcement authority to shut down unlawful fronts for

prostitution. The provision clarifies TDH jurisdiction over the operation of these so-called tanning facilities, and would allow the state to not only shut down the operations but to apply administrative, civil and criminal penalties. TDH enforcement activities would assist overburdened local law enforcement agencies.

OPPONENTS
SAY:

Recordkeeping provisions should remain as rules and not be placed in statute in order that they can be more easily adjusted as necessary to reflect changes in tanning device technology and use and other business practices.

The bill's emergency order authority is too broadly written and could be used by the department to unnecessarily shut down and harass legitimate tanning facility owners.

Placing adult tanning facilities under the Tanning Facility Regulation Act is inappropriate and would divert TDH staff from inspecting and enforcing legitimate tanning businesses. Shutting down businesses for prostitution is a law enforcement activity, not a state regulatory activity.

CSHB 2027 may dedicate funds that are scheduled to lose dedication on August 31, 1995, along with most dedicated funds under the phased-in funds consolidation process implemented by the 72nd Legislature. Dedicating funds removes legislative authority to appropriate revenues to meet state priorities. Tanning facility regulation is not an activity that requires special funding treatment or protections.

OTHER
OPPONENTS
SAY:

The bill would not go far enough. It should remove current provisions in the tanning regulation act that allow children under the age of 18 to use the facilities and should put more teeth into proposed provisions affecting adult tanning facilities. Tanning is a potentially dangerous activity for people of all ages, but children have very little need to subject themselves to the potential danger of ultraviolet radiation. Adults who permit this to happen are shortsighted and not properly protecting their children. Use of tanning facilities should be limited to adults, or at least to teenagers 16 years of age or older.

Proposed provisions relating to adult tanning facilities would give little assistance to state or local authorities. The provision would do nothing to specifically restrict or prohibit illegal prostitution businesses. TDH already has jurisdiction to regulate or penalize adult tanning facilities because the current definition of a tanning facility, "a business that provides persons with access to tanning devices," applies to any business with a tanning device in the facility. An adult tanning facility that complied with the letter of the law under could continue to operate without sanctions.

NOTES:

The committee substitute made nonsubstantive changes to the filed version and deleted a provision that would have allowed the department to modify a returned license.