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 BILL ANALYSIS

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House Bill 4146 (Substitute H-1 as passed by the House)
Sponsor: Representative Frank Accavitti, Jr.
House Committee: Commerce
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 12-2-08

CONTENT

The bill would add Part 134 ("Tanning Facilities") to the Public Health Code to do all of the following:

- Allow the Department of Community Health (DCH) to promulgate rules regarding the registration of tanning facilities and safety standards for them, which could include application and annual registration fees.**
- Require inspections of tanning facilities before they were issued a registration and annually after that.**
- Require the owner, operator, or employee of a tanning facility to give a customer written information about the risks of using a tanning device.**
- Require a tanning facility to display a poster with information about the risks of using tanning devices.**
- Require a customer to sign a statement that he or she received the information about risks.**
- Allow a tanning facility customer to report injuries to the facility's owner or operator and/or the DCH.**
- Require the DCH to develop injury reporting forms and maintain confidential injury reports.**
- Provide for local enforcement of Part 134.**
- Prescribe civil penalties and remedies for violations of Part 134.**

The bill also would repeal a section of the Code that includes regulations pertaining to tanning facilities.

"Tanning facility" would mean a location that provides individuals with access to a tanning device, but would not include a private residence with a tanning device used only by an owner or occupant of the residence.

"Tanning device" would mean equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for tanning of the skin, and would include a sunlamp, tanning booth, or tanning bed and accompanying equipment, including protective eyewear, timers, and handrails.

Written Statement & Poster

Under the bill, before allowing an individual to use a tanning device in any tanning facility, the owner, operator, or an employee of the facility would have to give the person a written statement that contained all of the following information:

- Not wearing eye protection while using a tanning device may cause damage to the eyes.
- Overexposure to the ultraviolet radiation produced by tanning devices used in the tanning facility causes burns.
- Repeated exposure to the ultraviolet radiation produced by tanning devices used in the tanning facility may cause

premature aging of the skin and/or skin cancer.

- An individual who is taking a prescription drug or over-the-counter drug should consult a physician before using a tanning device.
- An individual injured while using a tanning device at a tanning facility could report the injury to the facility's owner or operator and/or the DCH.
- Any skin-related treatment involving microdermabrasion, including facials, waxing, or skin peels, may cause abnormal sensitivity to ultraviolet radiation.

The written statement also would have to inform the person that abnormal skin sensitivity to ultraviolet radiation or burning may be caused by certain foods, cosmetics, and medication, including tranquilizers, diuretics, antibiotics, high blood pressure medication, and birth control medication.

The owner or operator of a tanning facility would have to display a poster conspicuously in an area frequented by customers. The poster would have to be printed in at least 32-point, boldfaced type substantially in a form specified in the bill. The poster would have to inform customers to follow instructions, avoid too frequent or too lengthy exposure, and wear protective eyewear. The poster would have to warn customers of the effects of too frequent or too lengthy exposure and danger of failing to wear protective eyewear. It also would have to give customers warnings that ultraviolet radiation from sunlamps will intensify the effects of the sun; some oral or skin medications or cosmetics may increase a person's sensitivity to ultraviolet radiation; and tanning from the device is unlikely if a person does not tan in the sun. The poster would have to inform the customer that, if he or she were injured, he or she could report the injury to the owner or operator and/or the DCH.

The bill specifies that compliance with the written statement and poster requirements would not diminish or otherwise limit or alter the tort liability of the tanning facility's owner or operator.

Signed Statement

Before allowing a customer to use a tanning device, a tanning facility's owner or operator would have to require the customer to sign a written statement acknowledging that he or she had read and understood the written statement described above and agreed to use protective eyewear. The owner or operator would have to do all of the following:

- Require a customer to sign the statement at least once in a one-year period.
- Retain the signed statement for at least one year.
- Make the signed statement available for inspection upon request of a law enforcement officer.

In the case of a customer who was under 18 years of age, the statement also would have to be signed by the customer's parent or legal guardian while the parent or guardian was physically present at the tanning facility. The statement would have to be signed in the presence of the facility's owner or operator.

Injury Report

An individual injured while using a tanning device at any tanning facility could report the injury to the owner or operator or to the DCH, or both. If a person reported an injury to the DCH, he or she would have to submit the report on a form provided by the Department. Within five working days after the facility's owner or operator received notice of an injury alleged to have occurred in the tanning facility, he or she would have to report it to the DCH on a form provided by the Department. The DCH would have to develop a reporting form and make it available within 30 days after the bill's effective date.

The reporting form would have to contain at least all of the following information:

- The name of the person making the report.
- The name and location of the tanning facility.

- The nature of the alleged injury.
- The name and address of the health care provider to whom the injured person was referred, if any.
- Other information the DCH required.

The DCH would have to maintain in a retrievable form all submitted injury reports, and establish a registry of those reports. A report would be confidential, and the DCH could release the information contained in it only upon written request of the person or owner or operator of the tanning facility or his or her guardian, executor, attorney, or other person designated in writing by that person or owner or operator. The DCH also could release the statistical information in the reports, without identifying information.

Registration & Safety Rules

The DCH could promulgate rules establishing the registration of certain facilities and safety standards for all tanning facilities, including standards regarding proper disinfection of tanning devices between uses. The DCH could incorporate by reference existing industry or Federal standards, or existing standards adopted in other states, if it determined that those standards were designed to provide sufficient protection to the public. The rules could provide for up to a three-year registration cycle, as well as a one-time application fee of up to \$100 and an annual registration fee of up to \$50.

Beginning on the effective date of the rules, a person could not use the term "registered tanning facility" unless registered under Part 134. A tanning facility that was not registered could operate as long as it complied with the bill's requirements regarding the provision of a written statement, placement of a poster, signing of a statement, and injury reporting.

The DCH could suspend or revoke a registration, and could deny a registration to an applicant, for conduct violating the Code or rules adopted under it. In lieu of a suspension or revocation, the DCH could impose an administrative fine of up to \$1,000 per violation. Administrative

proceedings would have to be brought under the Administrative Procedures Act.

The DCH would have to issue a registration under Part 134 to a specific person or a tanning facility at a specific location. A registration would be nontransferable.

The owner or operator of a registered tanning facility would have to apply to the DCH for renewal of the registration within 30 days before it expired. Upon payment of the renewal fee, the DCH would have to renew the registration if the applicant were in compliance with Part 134 and any rules promulgated under it. The DCH would have to consult with the appropriate local health department to determine compliance.

Inspection

Before issuing a registration to an applicant under Part 134, the DCH would have to receive the results of an inspection of the tanning facility premises from the appropriate local health department. The local department would have to give the inspection results to the DCH as soon as practical after the inspection.

The appropriate local health department would have to inspect each tanning facility before it was registered under Part 134, and inspect each registered tanning facility at least annually to ensure compliance with Part 134. The DCH would have to authorize a local health department to perform the required inspections.

Local Enforcement & Regulation

Pursuant to Section 2235 of the Code (which allows the DCH to authorize a local health department to exercise a power or function of the Department where not otherwise prohibited by law or rule), the DCH would have to authorize a local health department to enforce Part 134 and any rules promulgated under it. The local health department would have to enforce Part 134 and the rules pursuant to Sections 2461(2) and 2462. (Under Section 2461(2), if a local health department representative believes that a person has violated the Code or a rule,

the representative may issue a citation to the alleged violator. Section 2462 allows a person issued a citation to petition the local health department for an administrative hearing; provides for review by a local governing entity or district board of health; allows an appeal to the circuit court; and provides for payment of a civil penalty.)

In addition to the penalties and remedies specified in Part 134, a local health department could enforce that part through an action commenced pursuant to Section 2465 of the Code or any other appropriate action authorized by law. (Section 2465 allows a local health officer to maintain injunctive action to restrain, prevent, or correct a violation of a law, rule, or order that the officer has the duty to enforce, or to restrain, prevent, or correct an activity or condition that the officer believes adversely affects the public health.)

If a local department or a county or city were unwilling or unable to perform the enforcement functions, and the county or city were not part of a district that had created a district health department pursuant to the Code, the county or city could contract through an intergovernmental agreement with another local governing entity to have that entity's local health department perform the enforcement functions required under the bill. The contracting parties would have to obtain the approval of the DCH before executing the intergovernmental agreement.

A local governing entity of a local health department authorized to enforce Part 134 could fix and require the payment of fees by applicants and registrants for services required to be performed by the local health department.

The local governing entity also could adopt and enforce local codes, ordinances or regulations that were more stringent than the minimum applicable standards set forth in Part 134 or rules promulgated under it. Part 134 would not relieve an applicant for registration, or a registrant, from the responsibility for securing a local

permit or complying with applicable local codes, regulations, or ordinances that were in addition to part 134.

Violations, Penalties, & Remedies

An owner or operator of a tanning facility who violated Part 134 would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$500 for each violation. State civil infraction proceedings would have to be conducted pursuant to Chapter 88 (State Civil Infractions) of the Revised Judicature Act. Fines and costs collected would have to be disbursed as provided by that chapter.

In addition to any other enforcement action authorized by law, a person alleging a violation of Part 134 could bring a civil action in a court of competent jurisdiction for appropriate injunctive relief.

The bill specifies that the remedies under Part 134 would be independent and cumulative. The use of one remedy by a person would not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

Repealer

The bill would repeal Section 13407 of the Code, which requires the owner or operator of a tanning facility, before allowing a minor to use the facility, to obtain the consent of the minor's parent or legal guardian; and requires a person using a tanning device in a tanning facility to use protective eyewear.

Proposed MCL 333.13401-333.1342I

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would require the State to incur costs associated with the establishment of a registry and registration process for tanning facilities, if the Department of Community Health promulgated registration rules. Participation by tanning facilities in the registration process would be voluntary, but the Department would

be required to take on additional administrative responsibilities if it promulgated those rules. Available information suggests that first year-costs could be \$100,000 to \$200,000, and annual costs of \$75,000 to \$100,000 could be expected in subsequent years. The bill would give the Department the authority to establish a registration fee schedule for those facilities that chose to participate and the associated revenue would, at least in part, offset the increase in administrative costs. The bill would permit the Department to establish a maximum application fee of \$100 and a maximum annual registration fee of \$50. Estimates indicate that about 1,300 businesses in the State would be eligible for registration as tanning facilities; this means the State could collect anywhere from \$0 to \$195,000 initially and between \$0 and \$65,000 in subsequent years through the application and registration fees.

In addition, local public health departments or their contracted agents would be charged with enforcing Part 134 and, if the DCH promulgated registration rules, conducting annual inspections of tanning facilities that chose to participate in the registration process. While this would increase the costs incurred by local units of government, the bill would give local public health departments the authority to charge fees for the costs of inspections and related services.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.