

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 2050

By: Laughlin

AS INTRODUCED

An Act relating to professions and occupations; creating the Oklahoma Tanning Facilities Practice Act; providing short title; defining terms; providing exemptions; authorizing the State Board of Health to adopt and promulgate certain rules; empowering Board to perform investigations, require production of certain records and seek certain injunctive relief; requiring certain permit; providing for certain application; defining term; requiring certain information; providing for fees; providing for certain inspection; providing for issuance of permit; providing for expiration, renewal, and refusal to renew certain permit; providing for inspections; providing for violation and penalty; providing certain reasons for denial, suspension, revocation, or refusal to renew certain permits; providing for hearing; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4001 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be know and may be cited as the "Oklahoma Tanning Facilities Practice Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4002 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Tanning Facilities Practice Act:

1. "Agent" means a local health department recognized by the Department of Health;
2. "Applicant" means any person who applies to the Department of Health for a permit to maintain and operate a tanning facility;
3. "Change of ownership" means any of the following:

- a. in the case of a tanning facility owned by a corporation, the transfer by the corporation to another corporation, to a partnership or association, or to a natural person. Transfer of stock in a corporation does not constitute change of ownership,
- b. In the case of a tanning facility owned by a partnership or association, the transfer of the facility by the partnership or association to another partnership or association, to a corporation, or to a natural person. Transfer of interest in the partnership or association or substitution of any or all partners or members of the association does not constitute change of ownership, or
- c. in the case of a tanning facility owned by a natural person, the transfer of the facility to any corporation, partnership, association or other natural person whether or not the owner retains any interest in the facility;

4. "Consumer" means any member of the public who is provide access to a tanning facility in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access;

5. "Commissioner" means the Commissioner of Public Health or his designee;

6. "Department" means the Oklahoma Department of Public Health or other health authority designated as its agent;

7. "Disinfect or disinfection" means a process which provides an effective concentration of a United States Environmental Protection Agency approved chemical for enough time as specified by the manufacturer to reduce bacterial count, including pathogens, to a safe level (when those disease organisms which may be present are

destroyed so as to prevent transfer) on tanning equipment surfaces and in toilet and hand washing facilities;

8. "Existing facility" means a tanning facility that submitted an application for a permit to operate a tanning facility on or before June 1, 2006 and remains in operation with an unexpired tanning facility permit at the same location under the same ownership as listed in the original tanning facility permit application.

9. "Expired facility" means a previously permitted tanning facility that has not renewed its tanning facility permit on or before the expiration date of the permit except as provided in the definition of new facility;

10. "Extensively remodeled" means conversion of an existing structure for use as a tanning facility; structural additions or alterations to existing facilities; or changes, modifications or extensions of plumbing or electrical systems, excluding routine maintenance of such systems;

11. "Facility" means tanning facility;

12. "Fee" means the payment or exchange of goods, or anything of value, for the use of the tanning facility or facilities;

13. "Individual" means any human being;

14. "Injury" means any circumstance or incident, resulting from the use of a tanning device, which prompts a consumer to seek medical attention;

15. "Inspection" means an official examination or observation which includes, but is not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the Department;

16. "Licensee" means the same as "permitee";

17. "New facility" includes any tanning facility that submitted an initial application for a tanning facility on or after June 2, 2006. Previously permitted facilities that have changed location or

ownership are considered to be new facilities upon their relocation or change of ownership. Expired facilities that fail to renew their tanning facility permit within ninety (90) days after the permit expiration shall be considered new facilities;

18. "Operator" means the trained person designated by the licensee for the facility to control the operation of a tanning facility in compliance with this act and to assist and instruct the public in the correct operation of the tanning facility and its equipment;

19. "Other compensation" means the payment or exchange of goods, or anything of value, for the use of the tanning facility or facilities;

20. "Permanent" means a minimum of five (5) years for records related to an adult and a minimum of five (5) years past the emancipation for records related to a minor;

21. "Permit" means a permit issued by the Department of Health in accordance with this act;

22. "Permitee" means a permit issued by the Department of Health in accordance with this act;

23. "Person" means any individual, corporation, partnership, firm, association, society, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing;

24. "Photosensitizing agent" means any food, drug, cosmetic, toiletry or other substance, whether ingested or topically applied, which may induce hypersensitivity of an individual to exposure to the sun or other sources of ultraviolet radiation, resulting in inflammation of the skin and its underlying structures, often accompanied by edema;

25. "Protective eyewear" means eyewear that has been designed and tested in accordance with the provisions set forth in 21 CFR

1040.20. Such protective eyewear must have been determined to allow for the required protection to ultraviolet radiation while also allowing for adequate vision to maintain balance and location of the tanning equipment's 'emergency cutoff' switch;

26. "Radiation" means ultraviolet radiation;

27. "Radiation machine" means any device capable of producing radiation;

28. "Registrant" means any person who obtains a permit or other entitlement from the Department of Health, and who is obligated to obtain such permit or other entitlement from the Department pursuant to this act;

29. "Registration" means registration with the Department of Health in accordance with this act;

30. "Tanning equipment" means sunlamp products and ultraviolet lamps intended to induce skin tanning through the irradiation of any part of the living body. Tanning equipment includes, but is not limited to, protective eyewear, accurate timers, original equipment lamp type, protective barriers, handrails, warning labels, recommended exposure schedules, and recommended exposure distances. Tanning equipment shall be manufactured in accordance with 21 CFR 1040.20;

31. "Tanning facility" or "tanning facilities" means a room or a booth or a group of rooms or booths, structure or business that houses ultraviolet lamps or products containing lamps intended for the irradiation of any part of the living body for cosmetic or nonmedical related purposes but does not include any hotel or motel guest rooms where sunlamps are installed in the restroom area; and

32. "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between two hundred (200) nanometers and four hundred (400) nanometers.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4003 of Title , unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tanning Facilities Practice Act shall not apply to:

1. Equipment intended for purposes other than the deliberate exposure of parts of the living human body to ultraviolet radiation and that produce or emit ultraviolet radiation incidental to its proper operation;
2. Radiation machines while in transit or storage;
3. Any physician licensed to practice medicine in all of its branches, any licensed dentist or any licensed podiatrist is exempt from the provisions of this act to the extent that such practitioner uses, in the practice of medicine, dentistry or podiatry, medical diagnostic and therapeutic equipment which emits ultraviolet radiation; and
4. Personal use by an individual to the extent that such individual owns tanning equipment exclusively for personal use and no fee or other compensation is involved in the use of tanning equipment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4004 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health is hereby authorized to adopt and promulgate rules, pursuant to the Administrative Procedures Act, that it deems necessary for the implementation and enforcement of the Oklahoma Tanning Facilities Practice Act, including but not limited to, scope of practice, qualifications for licensure, renewals, fees, reinstatements, continuing education requirements, complaints, violations and penalties.

B. The Board is hereby empowered to perform investigations, require the production of records and other documents relating to

practices regulated by the Oklahoma Tanning Facilities Practice Act, and seek injunctive relief.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4005 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Each person having a tanning facility in operation on the effective date of this act shall apply to the State Board of Health for a permit to operate such facility within ninety (90) days following the effective date of this act and prior to acquiring or establishing the operation of a tanning facility. Application for the permit shall be completed on forms prescribed by and available from the Department of Health and shall contain all the information required by the form and any accompanying instructions. Unless otherwise stated, the term "application" as used herein shall include original and renewal applications.

B. In the event of a change of ownership, the new owner shall apply for a permit to operate a tanning facility prior to taking possession of the property. A provisional permit may be issued by the Department until an initial inspection for a permit can be performed by the Department or its designated agent.

C. The Board shall require at least the following information on the application for a permit to operate a tanning facility: name, physical address, mailing address and telephone number(s) of the following:

1. The tanning facility;
2. The applicant (owner[s]) of the tanning facility;
3. The manufacturer, model number, serial number, year and month of manufacture, and type of each ultraviolet lamp or piece of tanning equipment located within the facility;
4. The primary function of the business in which the tanning facility is located;

5. The geographic areas within the state to be covered, if the facility is mobile;

6. Copies of any posted warnings or other notices which are not required by this act and which address the safe or proper use of tanning equipment and protective devices;

7. Copies of consent forms and statements which consumers, parents or guardians will be required to sign pursuant to this act;

8. Names and addresses of the tanning equipment supplier(s), installer(s), and service agent(s);

9. A copy of the operating procedures to be used in the tanning facility;

10. The hours of operation of the tanning facility;

11. The name of the on-site manager of the tanning facility;
and

12. A signed and dated certification that the applicant has received, read and understood the requirements of this act.

B. Each applicant shall provide such additional information as the Department may reasonably require.

C. Each initial application shall be submitted with a nonrefundable Two Hundred and Fifty Dollar (\$250.00) fee.

D. Each annual renewal application shall be submitted with a nonrefundable \$150 fee, except that each expired facility shall pay a nonrefundable Two Hundred and Fifty Dollar (\$250.00) fee for renewal of the permit.

E. If the owner owns or operates more than one tanning facility, the owner shall file a separate application and submit a separate fee for each facility owned and operated.

F. Expired facilities that fail to pay a nonrefundable Two Hundred and Fifty Dollar (\$250.00) permit renewal fee within ninety (90) days after the permit expiration shall submit a new permit application and comply with requirements for new facilities in order to receive a tanning facility permit.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4006 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after receipt of each application, the Department of Health or its designated agent shall complete the initial inspection of the premises of such tanning facility and ensure that the premises and tanning facilities are installed and will be operated in accordance with this act.

B. Upon submission of the application and the required fee, and if the initial and subsequent inspections indicate that the premises and tanning facilities are installed and will be operated in accordance with this act, the Department shall issue a permit to operate the tanning facility.

C. With the exception of tanning facilities in operation on the effective date of this act, pursuant to Section 6(a), no person shall operate a tanning facility until the Department has issued the permit to operate.

D. Permits issued by the Department shall be displayed in a conspicuous place within sight of the public when entering the premises of the tanning facility.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4007 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Each permit to operate a tanning facility shall expire at the end of the specified last day of the month and year stated therein.

B. In order to renew a permit, a permittee shall file a complete application for renewal with the State Department of Health not less than thirty (30) days prior to the expiration of his or her permit, whereupon the permittee's existing permit shall not expire until the renewal application status has been finally determined by the Department.

C. The Department may refuse to renew the permit of any owner or operator who has been found to be in violation of this act for the safe operation of tanning facilities.

D. Each tanning facility shall be inspected at least once each year after the initial year in which the facility was granted a permit.

E. Each tanning facility which fails to submit an application for renewal of its permit to operate a tanning facility prior to the expiration of the permit shall pay a nonrefundable Two Hundred and Fifty Dollar (\$250.00) fee for the renewal of the permit.

F. Any facility that fails to submit a complete renewal application and fee as required in this act shall be deemed to be operating without a permit and shall be subject to the penalties as provided in this act.

G. A facility subject to violation of subsection (F) of this section may continue operation upon submission by the facility owner of a new, fully completed permit, including a nonrefundable Two Hundred and Fifty Dollar (\$250.00) fee, and correction, to the satisfaction of the Department of Health, of every deficiency found by the Department and its agents in the most recent inspection. Permits issued pursuant to such application shall expire one year from the expiration date of the previously issued permit.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4008 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Health may deny, suspend, revoke or refuse to renew a permit to operate a tanning facility sought or issued pursuant to this Part for any of the following reasons:

1. The failure to submit information required which demonstrates that the tanning facility will be constructed, operated and maintained in accordance with the requirements of this act;

2. Submission of incorrect, false or misleading information in the documents required under this act;

3. Failure to construct, operate or maintain the tanning facility in accordance with this act, except as such maintenance may involve the replacement of lamps by "equivalent" lamps which have been defined in Section 10 above;

4. Operation of the tanning facility in a way that causes or creates a nuisance or hazard to the public health or safety;

5. Violation of the provisions of the act or the rules and regulations adopted by the Department of Health;

6. Violation of any condition upon which the permit was issued;

7. Failure to allow duly authorized agents of the Department or its designated health authorities to conduct inspections of the facility;

8. Conviction of an applicant or permit holder of an offense arising from false, fraudulent, deceptive or misleading advertising. The record of conviction or a certified copy of such record shall be conclusive evidence of the conviction;

9. Revocation of a permit during the past five (5) years, or surrender or expiration of the permit during the pendency of action by the Department of Health to revoke or suspend the permit during the previous five (5) years, if before the permit was issued to the individual applicant, a controlling owner or controlling combination of owners of the applicant, or any affiliate of the individual applicant or controlling owner of the applicant or affiliate of the applicant was a controlling owner of the prior permit;

10. Payment of permit fees or fines with checks returned for non-sufficient funds; or

11. Failure to pay any permit fees or application fines.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4009 of Title 59, unless there is created a duplication in numbering, reads as follows:

If any permit is denied, suspended, revoked or denied renewal by the State Board of Health, the applicant may request a hearing in accordance with any rules promulgated by the Department and in accordance with the Administrative Procedures Act.

SECTION 10. This act shall become effective November 1, 2006.

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