Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 131[1*]

130th General Assembly
(As Reported by S. Commerce and Labor)

Reps. Johnson and Stinziano, Antonio, Beck, Boyd, Dovilla, Driehaus, Duffey, Fedor, Grossman, C. Hagan, R. Hagan, Letson, Ramos, Ruhl, Slaby, Stebelton, Wachtmann, Bishoff, Anielski, Baker, Butler, Carney, Kunze, Mallory, Milkovich, O'Brien, Rogers, Sprague, Terhar

BILL SUMMARY

- Establishes consent requirements, which vary depending on the age of the individual, that must be satisfied before a tanning facility operator or employee may allow an individual to use sun lamp tanning services.
- Requires a tanning facility operator or employee to follow procedures established by the Board of Cosmetology to determine the age of an individual seeking to use the facility's sun lamp tanning services.
- Requires the Board to impose a fine on a tanning facility operator or employee for certain violations.
- Requires that the Board regulate tanning facilities that use tanning chemicals, such as spray-on tans, and facilities that use visible light for cosmetic purposes.
- Requires a mammography facility to include certain information in a patient's mammogram summary if the patient's mammogram demonstrates the presence of dense breast tissue.

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[*] This analysis was prepared before the report of the Senate Commerce and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Tanning

Consent requirements for fluorescent sun lamp tanning services

The bill establishes consent requirements that must be satisfied before an individual uses fluorescent sun lamp tanning services at a tanning facility. It prohibits a tanning facility operator or employee from allowing an individual to use those services without first satisfying the consent requirements, which vary depending on the age of the individual.[2] The bill also repeals a provision requiring the State Board of Cosmetology to adopt rules requiring a consumer under age 18 to obtain written consent from the individual's parent or legal guardian prior to receiving tanning services.[3]

Adults

For an individual age 18 or older, the bill specifies that the consent requirements are satisfied if the individual signs the consent form developed by the Board (see "**Consent form**," below). The consent is valid indefinitely.[4]

Children who are 16 or 17

For an individual who is at least age 16 but less than age 18, the bill specifies that the consent requirements are satisfied if the individual's parent or legal guardian signs the consent form in the presence of the tanning facility operator or employee. The consent is valid for 90 days, and the operator or employee may not allow the individual to use the sun lamp services for more than 45 sessions during that 90-day period. A session may not last longer than the maximum safe time of exposure specified by the Board.[5]

Children under 16

For an individual under age 16, the bill specifies that the consent requirements are satisfied if the individual's parent or legal guardian does both of the following:

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[2] R.C. 4713.50(B).

[3] R.C. 4713.08(A)(17)(f) (repealed).

[4] R.C. 4713.50(B)(1).

[5] R.C. 4713.50(B)(2).

(1) Signs the consent form in the presence of a tanning facility operator or employee before each sun lamp tanning session;

(2) Is present at the tanning facility for the duration of each sun lamp tanning session.[6]

Consent form

The bill requires the Board to develop the consent form that is to be used to satisfy the consent requirements discussed above. The form must describe the health effects of sun lamp radiation, including the possible relationship of the radiation to skin cancer. In developing the form, the Board is to consult with the Department of Health, dermatologists, and tanning facility operators. The Board is required to make the form available on its Internet website.[7]

Electronic signature

The bill specifies that the consent form may be signed electronically.[8]

Age verification

To determine which consent requirements must be satisfied, the bill requires a tanning facility operator or employee to make reasonable efforts to determine the age of an individual seeking to use sun lamp tanning services.[9] In a corresponding change, the bill requires the Board to adopt rules establishing procedures a tanning facility operator must follow in making reasonable efforts to determine the age of an individual seeking to use sun lamp tanning services.[10]

Penalties

For a first-time offender, the bill requires the Board to fine a tanning facility operator or employee $500 for (1) failure to make reasonable efforts to determine the age of an individual seeking to use the facility's sun lamp tanning services or (2) allowing an individual under age 18 to use the sun lamp tanning services without satisfying the consent requirements. For subsequent offenders, the bill permits the

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[6] R.C. 4713.50(B)(3).

[7] R.C. 4713.51.

[8] R.C. 4713.50(C).

[9] R.C. 4713.50(A).

[10] R.C. 4713.08(A)(17)(g).

Board to determine the appropriate punishment in accordance with its existing authority, which could include a fine, suspension or revocation of a license or permit the Board issues, or requiring the license or permit holder to take corrective action courses.[11]

Regulation of other tanning facilities

The bill provides for the regulation of additional tanning facilities. Under current law, a tanning facility is defined as a room or booth that houses equipment or beds used for tanning human skin by the use of fluorescent sun lamps using ultraviolet or other artificial radiation. The bill expands this definition to also include premises that contain a room or booth with:

(1) Equipment that applies chemicals to human skin to create the appearance of being suntanned, including chemical applications commonly referred to as spray-on, mist-on, or sunless tans; or

(2) Equipment or beds that use visible light for cosmetic purposes.[12]

Under the bill, the Board is to regulate these tanning facilities in much the same manner as it regulates fluorescent sun lamp tanning facilities. For example, the operator of one of these tanning facilities also must obtain a permit from the Board, renew the permit biennially, and pay the required fees established by Board rule ($65 for an initial permit; $50 for biennial renewal).[13] Failure to do so is a fourth degree misdemeanor on a first offense and a third degree misdemeanor on subsequent offenses.[14] Such a tanning facility also becomes subject to standards, adopted by the Board in rules, for installing and operating a tanning facility in a manner that ensures the health and safety of consumers.[15] Finally, the Board is authorized to inspect facilities and to discipline operators for failing to comply with any requirement found in statute or rule.[16]

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[11] R.C. 4713.64(D).

[12] R.C. 4713.01.

[13] R.C. 4713.08(A)(16) and R.C. 4713.48, not in the bill; Ohio Administrative Code 4713-19-03.

[14] R.C. 4713.14(Q) and 4713.99, not in the bill.

[15] R.C. 4713.08(A)(17).

[16] R.C. 4713.06 and 4713.48, not in the bill, and R.C. 4713.64.

Mammogram results

Dense breast tissue notice to patients

Federal law requires a mammography facility to send to each patient who has a mammogram performed there a summary of the written report of the results of the patient's mammogram (see "**Written report to health care providers**," below).[17] The summary must be written in lay terms and sent to the patient not later than 30 days after the mammogram was performed. If the written report's overall final assessment of findings is "suspicious" or "highly suggestive of malignancy," as defined by federal law, the facility must make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.[18]

In general, the bill codifies federal law concerning summaries of written mammography reports. In addition, the bill requires a summary to include the following notice if a patient's mammogram demonstrates, based on American College of Radiology Standards, that the patient has dense breast tissue:[19]

> Your mammogram demonstrates that you have dense breast tissue, which could hide abnormalities. Dense breast tissue, in and of itself, is a relatively common condition. Therefore, this information is not provided to cause undue concern; rather, it is to raise your awareness and promote discussion with your health care provider regarding the presence of dense breast tissue in addition to other risk factors.

Written report to health care providers

Federal law requires a mammography facility to (1) prepare a written report of the results of each mammogram performed there and (2) send the report to a patient's health care provider. In general, the report must contain the following information:[20]

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[17] Public Law 102-539. The Mammography Quality Standards Act of 1992 was reauthorized by Congress in 1998 and 2004, with some changes to the law. *See* U.S. Food and Drug Administration, *Radiation-Emitting Products: About Mammography Quality Standards Act (MQSA)* (last updated November 6, 2012), available at <http://www.fda.gov/Radiation-EmittingProducts/MammographyQualityStandardsActandProgram/AbouttheMammographyProgram/default.htm>.

[18] 21 Code of Federal Regulations (C.F.R.) 900.12(c)(2).

[19] R.C. 3702.40(B).

[20] 21 C.F.R. 900.12(c)(1).

(1) The name of the patient and an additional patient identifier;

(2) The date of examination;

(3) The name of the physician who interpreted the mammogram;

(4) An overall final assessment of findings, classified in one of five categories: negative, benign, probably benign, suspicious, or highly suggestive of malignancy;

(5) Recommendations to the health care provider about what additional actions, if any, should be taken.

When a patient has a referring health care provider or the patient has named a health care provider, the facility must send the report to that provider as soon as possible, but not later than 30 days after the mammogram was performed. If an assessment is "suspicious" or "highly suggestive of malignancy," as defined by federal law, the facility must make reasonable attempts to communicate with the health care provider as soon as possible or, if the health care provider is unavailable, to a responsible designee of the health care provider.[21]

The bill largely codifies federal law concerning written mammography reports, by requiring a facility to send to the patient's health care provider, if known, a copy of the written report containing the results of the patient's mammogram. The report must be sent not later than 30 days after the mammogram was performed.[22]

Scope of the bill

The bill specifies that its provisions do not create either of the following:[23]

(1) A new cause of action or substantive legal right against a person, facility, or other entity; or

(2) A standard of care, obligation, or duty for a person, facility, or other entity that would provide the basis for a cause of action or substantive legal right, other than the duty to send the summary and written report described above.

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[21] 21 C.F.R. 900.12(c)(3).

[22] R.C. 3702.40(B).

[23] R.C. 3702.40(C).

Definitions

The bill specifies that the terms, "mammogram" and "facility," have the same meanings as in federal law,[24] which are:

"**Mammogram**" – A radiographic image produced through mammography. ("Mammography" is radiography of the breast.)[25]

"**Facility**" – Any of the following that conducts breast cancer screening or diagnosis through mammography activities: a hospital, outpatient department, clinic, radiology practice, or mobile unit; an office of a physician; or another facility determined by the U.S. Secretary of Health and Human Services. The term does not, however, include a facility of the U.S. Department of Veterans Affairs. ("Mammography activities" include the operation of equipment to produce the mammogram, the processing of the film, the initial interpretation of the mammogram, and the viewing conditions for that interpretation.)[26]

HISTORY

ACTION	DATE
Introduced	04-17-13
Reported, H. Health & Aging	05-28-14
Passed House (92-4)	06-04-14
Reported, S. Commerce & Labor	---

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[24] R.C. 3702.40(A).

[25] 42 United States Code (U.S.C.) 263b(a)(5) and (6).

[26] 42 U.S.C. 263b(a)(3).