

LEGISLATIVE BILL 132

Approved by the Governor March 28, 2014

Introduced by Nordquist, 7; Avery, 28; Campbell, 25; Howard, 9.

FOR AN ACT relating to public health; to amend sections 38-165 and 38-1057, Reissue Revised Statutes of Nebraska; to adopt the Indoor Tanning Facility Act; to provide a restriction on membership for boards appointed under the Uniform Credentialing Act; to change membership provisions for the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art; to eliminate obsolete provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Indoor Tanning Facility Act.

Sec. 2. For purposes of the Indoor Tanning Facility Act:

(1) Board means the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(2) Department means the Division of Public Health of the Department of Health and Human Services;

(3) Operator means a person designated by the tanning facility owner or tanning equipment lessee to operate, or to assist and instruct in the operation and use of, the tanning facility or tanning equipment;

(4) Tanning equipment means any device that emits electromagnetic radiation with wavelengths in the air between two hundred nanometers and four hundred nanometers and that is used for tanning of the skin. Tanning equipment includes, but is not limited to, a sunlamp, tanning booth, or tanning bed; and

(5) Tanning facility means a location, place, area, structure, or business that provides access to tanning equipment. Tanning facility includes, but is not limited to, any tanning business, salon, health club, apartment, or condominium, which has tanning equipment that is made available for public or commercial use, regardless of whether a fee is charged for access to the tanning equipment.

Sec. 3. It is the intent of the Legislature that the Indoor Tanning Facility Act be implemented and enforced in a manner that ensures equal treatment of all tanning facilities regardless of the type of business or facility or number of pieces of tanning equipment at the tanning facility.

Sec. 4. The Indoor Tanning Facility Act does not apply to:

(1) A physician licensed under the Uniform Credentialing Act who uses, in the practice of medicine, medical diagnostic and therapeutic equipment that emits ultraviolet radiation; or

(2) Any individual who owns tanning equipment exclusively for personal, noncommercial use.

Sec. 5. It shall be unlawful for an operator, an owner of a tanning facility, or a lessee of a tanning facility to allow any person less than sixteen years of age to use tanning equipment at the tanning facility unless the person is accompanied by a parent or legal guardian. Before each use of tanning equipment by any person less than sixteen years of age, the operator, owner, or lessee shall secure a statement signed at the tanning facility by the minor's parent or legal guardian stating that the person signing the statement is the minor's parent or legal guardian, that the parent or legal guardian has read and understood the warnings given by the tanning facility, that the parent or legal guardian consents to the minor's use of tanning equipment, and that the parent or legal guardian agrees that the minor will use protective eyewear while using the tanning equipment. The operator, owner, or lessee shall require proof of age from each person before allowing the person access to tanning equipment. For purposes of this section, proof of age shall include, but not be limited to, a driver's license or other government-issued identification containing the person's date of birth and photograph or digital image.

Sec. 6. Any operator, owner of a tanning facility, or lessee of a tanning facility who allows any person less than sixteen years of age to use tanning equipment at the tanning facility without being accompanied by the parent or legal guardian who signed the statement required under section 5 of this act shall be subject to a civil penalty of one hundred dollars to be imposed and collected by the department. The department shall remit the civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 7. (1) An operator, an owner of a tanning facility, or a lessee of a tanning facility shall post a warning sign in a conspicuous location in

the tanning facility where it is readily visible by any person entering the tanning facility. The warning sign shall have black letters which are at least one-fourth inch in height.

(2) The warning sign shall include the following information:

DANGER - Ultraviolet Radiation

Follow instructions.

Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injuries and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

WEAR PROTECTIVE EYEWEAR - Failure to do so may result in severe burns or long-term injury to eyes.

Medicines or cosmetics can increase your sensitivity to ultraviolet radiation. Consult your physician before using sunlamps if you are using medication or have a history of skin problems or believe yourself to be especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from the use of tanning equipment.

It is unlawful for a tanning facility to allow a person under sixteen years of age to use tanning equipment without being accompanied by the person's parent or legal guardian.

Any person may report a violation of the Indoor Tanning Facility Act to the Department of Health and Human Services.

Sec. 8. An operator, an owner of a tanning facility, or a lessee of a tanning facility shall ensure that the tanning facility complies with all applicable federal laws and regulations and the Indoor Tanning Facility Act.

Sec. 9. Upon receipt of a complaint regarding a tanning facility, the department, with the recommendation of the board, may inspect any tanning facility during the hours of operation of the tanning facility to ensure compliance with the Indoor Tanning Facility Act.

Sec. 10. Section 38-165, Reissue Revised Statutes of Nebraska, is amended to read:

38-165 A public member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. At the time of appointment and while serving as a board member, a public member appointed to a board on or after December 1, 2008, shall:

- (1) Have been a resident of this state for one year;
- (2) Remain a resident of Nebraska while serving as a board member;
- (3) Have attained the age of nineteen years;
- (4) Represent the interests and viewpoints of the public;
- (5) Not hold an active credential in any profession or business which is subject to the Uniform Credentialing Act, issued in Nebraska or in any other jurisdiction, at any time during the five years prior to appointment;
- (6) Not be eligible for appointment to a board which regulates a profession or business in which that person has ever held a credential;
- (7) Not be or not have been, at any time during the year prior to appointment, an employee of a member of a profession credentialed by the department, of a facility credentialed pursuant to the Health Care Facility Licensure Act, ~~or~~ of a business credentialed pursuant to the Uniform Credentialing Act, or of a business regulated by the board to which the appointment is being made;
- (8) Not be the parent, child, spouse, or household member of any person presently regulated by the board to which the appointment is being made;
- (9) Have no material financial interest in the profession or business regulated by such board; and
- (10) Not be a member or employee of the legislative or judicial branch of state government.

Sec. 11. Section 38-1057, Reissue Revised Statutes of Nebraska, is amended to read:

38-1057 (1) The board shall consist of ten professional members, one owner of a tanning facility as defined in section 2 of this act, and two public members appointed pursuant to section 38-158. The professional and public members shall meet the requirements of sections 38-164 and 38-165, respectively.

(2) The professional members shall include:

- (a) One school owner who is also licensed as either a cosmetologist, nail technician, or esthetician;
- (b) One salon owner who is licensed as a cosmetologist;
- (c) Two cosmetologists who are not school owners;
- (d) One nail technician who is not a school owner;

- (e) One esthetician who is not a school owner;
- (f) One electrologist;
- (g) One practitioner of body art;
- (h) One nail technology instructor or esthetics instructor who is not a school owner; and
- (i) One cosmetology instructor who is not a school owner.

(3) No members of the board who are school owners, salon owners, tanning facility owners, electrologists, nail technicians, instructors, cosmetologists, or practitioners of body art may be affiliated with the same establishment.

~~(4) As the terms of the members serving on December 1, 2008, expire, successors shall be appointed in accordance with subsection (2) of this section.~~

Sec. 12. Original sections 38-165 and 38-1057, Reissue Revised Statutes of Nebraska, are repealed.