

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1464

Introduced by Assembly Member Bloom

February 27, 2015

An act to amend Sections 7414.1, 7414.3, 7414.4, 7414.6, 22702, 22704, 22705, 22706, and 22707 of, and to add Sections 22704.5, 22704.7, and 22705.5 to, the Business and Professions Code, and to amend Sections 114985 and 115085 of the Health and Safety Code, relating to tanning.

LEGISLATIVE COUNSEL'S DIGEST

AB 1464, as amended, Bloom. Tanning.

Existing law, the Filante Tanning Facility Act of 1988, provides for the regulation of tanning facilities by the Department of Consumer Affairs. A violation of the act is a crime. Existing law, the Radiation Control Law, requires the State Department of Public Health to regulate the use and control of radiologic materials. A violation of the Radiation Control Law, or a regulation adopted pursuant to that law, is a crime.

This bill would require the State Department of Public Health to license and regulate the owners of tanning facilities, as specified, and to administer the provisions that regulate tanning facilities. The bill would impose a licensure fee on the owners of tanning facilities, to be deposited into a newly created fund, subject to appropriation. The bill would require tanning device operators to receive training in the operation of tanning equipment, as specified, and would require the State Department of Public Health to adopt regulations to implement

those training requirements. The bill would make changes to the Radiation Control Law to impose additional inspection requirements for nonionizing radiation devices, as defined. The bill would make conforming changes to related provisions.

By extending the application of a crime pursuant to the Filante Tanning Facility Act of 1988 and the Radiation Control Law, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 NonIonizing Radiation Protection Act.
- 3 SEC. 2. In enacting this act, the Legislature finds and declares
- 4 all of the following:
- 5 (a) In May 2014, the federal Food and Drug Administration
- 6 issued a final order reclassifying sunlamp products and ultraviolet
- 7 (UV) lamps intended for use in sunlamp products from low-risk
- 8 (class I) to moderate-risk (class II) devices, requiring that sunlamp
- 9 products carry a visible black-box warning on the device that
- 10 explicitly states that the sunlamp product should not be used on
- 11 persons under 18 years of age, and requiring that marketing
- 12 materials for sunlamp products and UV lamps include additional
- 13 and specific warning statements and contraindications.
- 14 (b) The public health interest requires that the people of this
- 15 state be protected from excessive and improper exposure to
- 16 nonionizing radiation.
- 17 (c) In order to provide that protection, it is necessary to require
- 18 increased inspections and calibration of tanning devices that are
- 19 located in tanning parlors, fitness facilities, and other settings.
- 20 (d) It is the purpose of this act to establish tanning equipment
- 21 inspection and safety standards and standards of education, training,
- 22 and experience for persons who use nonionizing radiation on

1 human beings, and to prescribe means for ensuring that these
2 standards are met.

3 SEC. 3. Section 7414.1 of the Business and Professions Code
4 is amended to read:

5 7414.1. All records required by law to be kept by tanning
6 facilities subject to the Filante Tanning Facility Act of 1988
7 (Chapter 23 (commencing with Section 22700) of Division 8),
8 including, but not limited to, records relating to written warning
9 statements, the sign required to be posted, the qualifications of
10 facility operators, statements of acknowledgment, and injury
11 reports, shall be open to inspection by the State Department of
12 Public Health, or its authorized representatives, during any
13 inspection, or during any investigation initiated in response to a
14 complaint that the tanning facility has violated any provision of
15 the Filante Tanning Facility Act of 1988. A copy of any or all of
16 those records shall be provided to the State Department of Public
17 Health, or its authorized representatives, immediately upon request.

18 SEC. 4. Section 7414.3 of the Business and Professions Code
19 is amended to read:

20 7414.3. (a) Any representative of the State Department of
21 Public Health designated by the officer shall have the authority to
22 issue a written notice to appear in court pursuant to Chapter 5c
23 (commencing with Section 853.5) of Title 3 of Part 2 of the Penal
24 Code. Representatives so designated are not peace officers and are
25 not entitled to safety member retirement benefits, as a result of
26 that designation. Except as otherwise provided, the representative's
27 authority is limited to the issuance of written notices to appear for
28 infraction violations of the Filante Tanning Facility Act of 1988
29 and only when the violation is committed in the presence of the
30 representative.

31 (b) There shall be no civil liability on the part of, and no cause
32 of action shall arise against, any representative, acting pursuant to
33 subdivision (a) and within the scope of his or her authority, for
34 false arrest or false imprisonment arising out of any arrest which
35 is lawful or which the representative, at the time of that arrest, had
36 reasonable cause to believe was lawful.

37 (c) This section shall become effective July 1, 1994.

38 SEC. 5. Section 7414.4 of the Business and Professions Code
39 is amended to read:

1 7414.4. The State Department of Public Health, and its
2 authorized representatives, may disseminate information to tanning
3 facilities regarding compliance with the Filante Tanning Facility
4 Act of 1988.

5 SEC. 6. Section 7414.6 of the Business and Professions Code
6 is amended to read:

7 7414.6. The State Department of Public Health may adopt
8 regulations concerning the operation of tanning facilities in licensed
9 establishments.

10 SEC. 7. Section 22702 of the Business and Professions Code
11 is amended to read:

12 22702. As used in this chapter:

13 (a) "Tanning facility" means any location, place, area, structure,
14 or business that provides persons access to any tanning device.

15 (b) "Department" means the State Department of Public Health.

16 (c) "Phototherapy device" means equipment that emits
17 ultraviolet radiation used by a health care professional in the
18 treatment of disease.

19 (d) "Tanning device" means an ultraviolet tanning device and
20 any accompanying equipment, including, but not limited to,
21 protective eyewear, timers, and handrails.

22 (e) "Ultraviolet tanning device" means equipment that emits
23 electromagnetic radiation with wavelengths in the air between 200
24 and 400 nanometers used for tanning of the skin, including, but
25 not limited to, a sunlamp, tanning booth, or tanning bed.

26 (f) "Tanning device operator" means any person who is
27 designated by the owner of a tanning facility to operate, or assist
28 and instruct a customer in the operation and use of, the tanning
29 facility or tanning equipment. "Tanning device operator" includes,
30 but is not limited to, a tanning device operator who conducts one
31 or more of the following activities:

32 (1) Determines consumer's skin type.

33 (2) Determines the suitability of prospective consumers for
34 tanning equipment use.

35 (3) Informs the consumer of dangers of ultraviolet radiation
36 exposure, including photoallergic reactions and photosensitizing
37 agents.

38 (4) Ensures that the consumer reads and properly signs all forms
39 as required by this chapter.

40 (5) Maintains required consumer exposure records.

1 (6) Recognizes and reports consumer injuries or alleged injuries
2 to the owner of the tanning facility.

3 (7) Determines the consumer's exposure schedule.

4 (8) Sets timers that control the duration of exposure.

5 (9) Instructs the consumer in the proper use of protective
6 eyewear.

7 SEC. 8. Section 22704 of the Business and Professions Code
8 is amended to read:

9 22704. Any tanning device used by a tanning facility shall
10 comply with all applicable state and federal laws and regulations.

11 SEC. 9. Section 22704.5 is added to the Business and
12 Professions Code, to read:

13 22704.5. (a) Any person who owns ~~and operates~~ a tanning
14 facility shall be licensed by the department to operate a tanning
15 facility. ~~The license shall be renewed annually.~~ *frequency of the*
16 *license renewal shall be determined by the department by adopting*
17 *regulations.*

18 (b) The department shall issue a license to own and operate a
19 tanning facility to any person who submits an application for a
20 license to the department and meets the following requirements:

21 (1) Is at least 18 years of age.

22 (2) Pays the licensure fee established pursuant to subdivision

23 (c).

24 (c) A licensee shall be subject to the imposition of a reasonable
25 fee for his or her license or license renewal, which shall not exceed
26 *thirty-five dollars (\$35) and shall include only* the reasonable costs
27 to the department in implementing this chapter.

28 (d) There is hereby established the Tanning Facility Fund, for
29 purposes of depositing the moneys collected pursuant to this
30 section. The moneys in the fund shall be subject to appropriation
31 by the Legislature.

32 (e) The department may adopt any regulation as may be
33 necessary to effectuate this section.

34 SEC. 10. Section 22704.7 is added to the Business and
35 Professions Code, to read:

36 22704.7. (a) On or before January 1, 2017, the department
37 shall adopt regulations that establish training requirements for
38 tanning device ~~operators.~~ *operators by contractors approved by*
39 *the department.* At a minimum, the training requirements shall
40 include training on the following procedures:

1 (1) Procedures for the correct operation of the tanning facility
2 and tanning equipment.

3 (2) Recognition of injury ~~or~~ *resulting from* overexposure to
4 ultraviolet radiation.

5 (3) The tanning equipment manufacturer’s procedures for
6 operation and maintenance of the tanning equipment.

7 (4) The determination of skin type of customers and appropriate
8 determination of duration of exposure to tanning equipment.

9 (5) Emergency procedures to be followed in case of ~~injury~~.
10 *injury resulting from overexposure to ultraviolet radiation.*

11 (b) The training requirements established pursuant to this section
12 shall be effective on and after January 1, 2018. A tanning device
13 operator who fails to meet these requirements after that date shall
14 not operate as a tanning device operator.

15 SEC. 11. Section 22705 of the Business and Professions Code
16 is amended to read:

17 22705. (a) A tanning facility shall require that each customer
18 read a copy of the warning established by this section and sign a
19 statement that the information has been read and understood. For
20 illiterate or visually impaired persons unable to sign their name,
21 the warning statement shall be read by the tanning device operator,
22 in the presence of a witness, and the witness and the operator shall
23 sign the statement. This warning shall be presented to a customer
24 prior to the customer’s use of an ultraviolet tanning device, and
25 shall include a written statement warning of all of the following:

26 (1) Not wearing the eye protection provided to the customer by
27 the tanning center may cause damage to the eyes.

28 (2) Overexposure causes burns.

29 (3) Repeated exposure may cause premature aging of the skin
30 and skin cancer.

31 (4) Abnormal skin sensitivity or burning may be caused by
32 certain:

33 (A) Foods.

34 (B) Cosmetics.

35 (C) Medications, including, but not limited to, the following:

36 (i) Tranquilizers.

37 (ii) Diuretics.

38 (iii) Antibiotics.

39 (iv) High blood pressure medicines.

40 (v) Birth control pills.

1 (5) Any person taking a prescription or over-the-counter drug
2 should consult a physician before using an ultraviolet tanning
3 device.

4 (6) Any person with skin that burns easily should avoid an
5 ultraviolet tanning device.

6 (7) Any person with a family history or past medical history of
7 skin cancer should avoid an ultraviolet tanning device.

8 (8) The federal Food and Drug Administration classifies tanning
9 devices, such as those used in this facility, as ~~Class~~ *class* II devices
10 that may contribute to skin cancer linked to radiation-emitting
11 devices.

12 (b) A tanning facility shall conspicuously post a warning sign
13 in any area where an ultraviolet tanning device is used that is
14 readily visible to a person using an ultraviolet tanning device. The
15 sign shall read as follows:

16
17 **DANGER: ULTRAVIOLET RADIATION**
18

19 1. The federal Food and Drug Administration states that people
20 repeatedly exposed to UV radiation should be regularly evaluated
21 for skin cancer and that the use of indoor tanning devices does all
22 of the following:

23 (a) Is contraindicated for use on persons under 18 years of age.

24 (b) Must not be used if skin lesions or open wounds are present.

25 (c) Should not be used on people who have had skin cancer or
26 a family history of skin cancer.

27 2. Avoid too frequent or too lengthy exposure. As with natural
28 sunlight, exposure can cause eye and skin injury and allergic
29 reactions. Repeated exposure may cause chronic sun damage
30 characterized by wrinkling, dryness, fragility and bruising of the
31 skin, and skin cancer.

32 3. Wear protective eyewear.

33 **FAILURE TO USE PROTECTIVE EYEWEAR**
34 **MAY RESULT IN SEVERE BURNS OR**
35 **LONG-TERM INJURY TO THE EYES.**

36 4. Ultraviolet radiation from sunlamps will aggravate the effects
37 of the sun. Therefore, do not sunbathe before or after exposure to
38 ultraviolet radiation.

39 5. Medications or cosmetics may increase your sensitivity to
40 ultraviolet radiation. Consult a physician before using a sunlamp

1 if you are using medications, have a history of skin problems, or
2 believe you are especially sensitive to sunlight. Pregnant women
3 or women on birth control pills who use this product may develop
4 discolored skin.

5 IF YOU DO NOT TAN IN THE SUN YOU WILL
6 NOT TAN FROM USE OF THIS DEVICE.

7 (d) A tanning facility may include in the warning sign described
8 in subdivision (b) the following statement: “Spray on tans and
9 other sunless tanning products are not subject to the same effects
10 as ultraviolet tanning devices.”

11 (e) A tanning facility shall not claim, or distribute promotional
12 materials that claim, that using an ultraviolet tanning device is safe
13 or free from risk or that indoor tanning has any known health
14 benefits.

15 (f) The liability of a tanning facility operator or a manufacturer
16 of an ultraviolet tanning device is not changed by giving the
17 warning under this section.

18 SEC. 12. Section 22705.5 is added to the Business and
19 Professions Code, to read:

20 22705.5. The owner of a tanning facility shall do all of the
21 following:

22 (a) Maintain a record of each customer’s total number of tanning
23 visits, including dates and durations of tanning exposures.

24 (b) In addition to the requirements set forth in Section 22707,
25 submit to the department a written report of injury *resulting from*
26 *overexposure to ultraviolet radiation* for which medical attention
27 was sought or obtained from the use of tanning equipment within
28 five working days after occurrence. The report shall include all of
29 the following:

- 30 (1) The name of the affected individual.
- 31 (2) The name and location of the tanning facility involved.
- 32 (3) The nature of the actual or alleged injury.
- 33 (4) The date and duration of exposure.
- 34 (5) Any documentation of medical attention sought or obtained
35 by the customer.
- 36 (6) Any other information that is relevant to the actual or alleged
37 injury.

38 (c) Not allow individuals under 18 years of age to use or operate
39 tanning equipment.

1 (d) Replace defective or burned out lamps, bulbs, or filters with
2 a type intended for use in the affected tanning equipment, as
3 specified by the manufacturer's product label, such as a certified
4 equivalent lamp having the same spectral distribution.

5 (e) Replace ultraviolet lamps and bulbs, which are not otherwise
6 defective or damaged, at any frequency or after a certain duration
7 of use as may be recommended by the manufacturer of the lamps
8 or bulbs.

9 (f) On and after January 1, 2018, certify to the department that
10 any tanning device operator in his or her employment has
11 completed the training requirements established pursuant to Section
12 22704.7.

13 (g) On and after January 1, 2018, allow operation of tanning
14 equipment only by, and in the physical presence, ~~of~~ of, a tanning
15 device operator who has successfully met the training requirements
16 established pursuant to Section 22704.7.

17 (h) On and after January 1, 2018, maintain a record of the
18 training completed by tanning device operators in his or her
19 employment pursuant to Section 22704.7 for inspection by
20 authorized representatives of the department.

21 (i) Make available to all employees current copies of the
22 following documents:

23 (1) The owner's license and business license.

24 (2) Conditions or documents incorporated into the license and
25 amendments thereto, if any.

26 (3) Proof that all tanning device operators are 18 years of age
27 or older.

28 (4) Self-certification and knowledge of, and commitment to
29 meet, any state law or relevant local regulation pertaining to the
30 operation of tanning devices.

31 (5) His or her business address and the address at which he or
32 she will perform any activity regulated by this chapter.

33 (j) Display, in a place readily visible to the public at the tanning
34 facility, his or her license issued by the department.

35 SEC. 13. Section 22706 of the Business and Professions Code
36 is amended to read:

37 22706. (a) A tanning facility shall:

38 (1) Have an operator present during operating hours who is
39 sufficiently knowledgeable in the correct operation of the tanning
40 devices used at the facility so that he or she is able to inform and

1 assist each customer in the proper use of the tanning devices,
2 subject to the training requirements set forth in Section 22704.7.

3 (2) Before each use of an ultraviolet tanning device, provide
4 each customer with properly sanitized protective eyewear that
5 protects the eye from ultraviolet radiation and allows adequate
6 vision to maintain balance; and not allow a person to use an
7 ultraviolet tanning device if that person does not use the protective
8 eyewear.

9 (3) Show each customer how to use suitable physical aids, such
10 as handrails and markings on the floor, to maintain proper exposure
11 distance as recommended by the manufacturer.

12 (4) Use a timer on an ultraviolet tanning device that has an
13 accuracy of plus or minus 10 percent of any selected timer interval.
14 The timer shall also be remotely located so that customers cannot
15 set their own exposure time.

16 (5) Limit each customer using an ultraviolet tanning device to
17 the maximum exposure time as recommended by the manufacturer.

18 (6) Control the interior temperature of a tanning facility so that
19 it does not exceed 100 degrees Fahrenheit.

20 (b) (1) Every person who uses a tanning facility shall sign a
21 written statement acknowledging that he or she has read and
22 understood the warnings before using the device; and agrees to
23 use the protective eyewear that the tanning facility provides. The
24 statement of acknowledgment shall be retained by the tanning
25 facility until the end of the calendar year at which time each person
26 who is a current customer of the facility shall be required to renew
27 that acknowledgment.

28 (2) Whenever using a tanning device a person shall use the
29 protective eyewear that the tanning facility provides.

30 (3) Persons under 18 years of age are prohibited from using an
31 ultraviolet tanning device.

32 (4) Proof of age shall be satisfied with a driver's license or other
33 government issued identification containing the date of birth and
34 a photograph of the individual.

35 SEC. 14. Section 22707 of the Business and Professions Code
36 is amended to read:

37 22707. If a patron is injured whereupon he or she must seek
38 medical attention, a tanning facility shall do the following:

39 (a) Report any injury to the department, as required pursuant to
40 Section 22705.5.

1 (b) Send a copy of the injury report to the person who is injured.

2 (c) Send a copy of the injury report to the federal Food and Drug
3 Administration.

4 SEC. 15. Section 114985 of the Health and Safety Code is
5 amended to read:

6 114985. As used in this chapter:

7 (a) "Secretary" means the Secretary of the Resources Agency.

8 (b) "Ionizing radiation" means gamma rays and X-rays; alpha
9 and beta particles, high-speed electrons, neutrons, protons, and
10 other nuclear particles; but not sound or radio waves, or visible,
11 infrared, or ultraviolet light.

12 (c) "Person" means any individual, corporation, partnership,
13 limited liability company, firm, association, trust, estate, public or
14 private institution, group, agency, political subdivision of this state,
15 any other state or political subdivision or agency thereof, and any
16 legal successor, representative, agent, or agency of the foregoing,
17 other than the United States Nuclear Regulatory Commission, the
18 United States Department of Energy, or any successor thereto, and
19 other than federal government agencies licensed by the United
20 States Nuclear Regulatory Commission, under prime contract to
21 the United States Department of Energy, or any successor thereto.

22 (d) "Byproduct material" means any radioactive material, except
23 special nuclear material, yielded in, or made radioactive by
24 exposure to the radiation incident to, the process of producing or
25 utilizing special nuclear material.

26 (e) "Source material" means (1) uranium, thorium, or any other
27 material which the department declares by rule to be source
28 material after the United States Nuclear Regulatory Commission,
29 or any successor thereto, has determined the material to be such;
30 or (2) ores containing one or more of the foregoing materials, in
31 such concentration as the department declares by rule to be source
32 material after the United States Nuclear Regulatory Commission,
33 or any successor thereto, has determined the material in such
34 concentration to be source material.

35 (f) "Special nuclear material" means (1) plutonium, uranium
36 233, uranium enriched in the isotope 233 or in the isotope 235,
37 and any other material which the department declares by rule to
38 be special nuclear material after the United States Nuclear
39 Regulatory Commission, or any successor thereto, has determined
40 the material to be such, but does not include source material; or

1 (2) any material artificially enriched by any of the foregoing, but
2 does not include source material.

3 (g) “General license” means a license, pursuant to regulations
4 promulgated by the department, effective without the filing of an
5 application, to transfer, acquire, own, ~~possess~~ *possess*, or use
6 quantities of, or devices or equipment utilizing, byproduct, source,
7 or special nuclear materials or other radioactive material occurring
8 naturally or produced artificially.

9 (h) “Specific license” means a license, issued after application,
10 to use, manufacture, produce, transfer, receive, acquire, own, or
11 possess quantities of, or devices or equipment utilizing, byproduct,
12 source, or special nuclear materials or other radioactive material
13 occurring naturally or produced artificially.

14 (i) “Registration” means the reporting of possession of a source
15 of radiation and the furnishing of information with respect thereto,
16 in accordance with subdivision (b) of Section 115060.

17 (j) “Department” means the State Department of Public Health.

18 (k) “Director” means the State Public Health Officer.

19 (l) “Federal research and development activity” means any
20 activity of the Secretary of Energy conducted at any research
21 facility owned or operated by the United States Department of
22 Energy.

23 (m) “Low-level waste” means radioactive waste not classified
24 as high-level radioactive waste, transuranic waste, spent nuclear
25 fuel, or the byproduct material defined in Section 11(e)(2) of the
26 Atomic Energy Act of 1954 (42 U.S.C. Sec. 2014 (e)(2)). For
27 purposes of this subdivision, the following definitions shall apply:

28 (1) “High-level radioactive waste” means either of the following:

29 (A) The highly radioactive material resulting from the
30 reprocessing of spent nuclear fuel, including liquid waste produced
31 directly in reprocessing and any solid material derived from this
32 liquid waste that contains fission products in sufficient
33 concentrations.

34 (B) Other highly radioactive material that the Nuclear
35 Regulatory Commission, consistent with existing law, determines
36 by rule requires permanent isolation.

37 (2) “Spent nuclear fuel” means fuel that has been withdrawn
38 from a nuclear reactor following irradiation, the constituent
39 elements of which have not been separated by reprocessing.

1 (3) “Transuranic waste” means any waste containing more than
2 100 nanocuries of alpha emitting transuranic nuclides with half-life
3 greater than five years per gram of waste material.

4 (n) “Mammogram” means an X-ray image of the human breast.

5 (o) “Mammography” means the procedure for creating a
6 mammogram.

7 (p) “Mammography quality assurance” means the detection of
8 a change in X-ray and ancillary equipment that adversely affects
9 the quality of films and the glandular radiation dose, and the
10 correction of this change.

11 (q) “Mammogram certification” means a certification, issued
12 by the department after registration, that the equipment dedicated
13 to or used for mammography meets the standards prescribed
14 pursuant to this chapter.

15 (r) “Nonionizing radiation” means sound or radio waves, or
16 visible, infrared, or ultraviolet light, as described in subdivision
17 (e) of Section 22702 of the Business and Professions Code.

18 SEC. 16. Section 115085 of the Health and Safety Code is
19 amended to read:

20 115085. The average inspection frequency for ionizing radiation
21 machines shall be once each year for mammography X-ray units
22 and nonionizing radiation devices, once every three years for
23 high-priority sources of ionizing radiation, and once every four
24 and one-quarter years for medium-priority sources. Sources of
25 ionizing radiation used in dentistry shall be screened for defects
26 by mail or other offsite methodology not less frequently than once
27 every five years, with physical inspection of the 50 percent,
28 determined by the department to be most in need of inspection, to
29 average at least once every six years.

30 SEC. 17. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

O