

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Board of Cosmetology

Regulation/Package Title: Chapter-19, Tanning 4-2015

Rule Number(s): 4713-19-01, 4713-19-02, 4713-19-03, 4713-19-04, 4713-19-05, 4713-19-06, and 4713-19-09

Date: _____

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

These rules are intended to meet the requirements of H.B. 131 concerning the health and safety effects of using tanning beds and the consent form requirements. Pursuant to H.B. 131, eff. 6/20/2015, the Board must promulgate rules on the procedures an operator of tanning equipment must follow to make reasonable efforts to determine the age of an individual seeking to use sun lamp tanning services. Persons using sunlamp services are

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required to complete a consent form, based upon their age. In addition, these rules propose additional amendments to clarify the rules intent and/or delete unnecessary verbiage.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC 4713.08

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

This rule is intended to meet the requirements of H.B. 131 concerning the health and safety effects of using tanning beds and the consent form requirements. Pursuant to H.B. 131, eff. 6/20/2015, the Board must promulgate rules on the procedures an operator of tanning equipment must follow to make reasonable efforts to determine the age of an individual seeking to use sun lamp tanning services.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success is through the inspection and verification that operators of tanning equipment are implementing the procedures and using the form required to reasonable determine the age of a person seeking to use sun lamp services and acquire a signed consent form based upon the age of the person.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Board emailed all draft rules to licensees of the Board and Associations having interest in Tanning Services and Cosmetology in the state of Ohio.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The agency received six comments during stakeholder input. Two persons supported the draft rules. One person recommended language changes that were not consistent with the enabling Revised Code. One person commented on proposed rule 4713-19-09 regarding finger scanning and electronic forms. This person believed the rule required the company to invest in new technology. We responded to the individual and informed them that the rule only addresses persons that already use finger scan sign-in and electronic forms. One person complained that the rules, in particular the consent requirements, were over burdensome and impossible to comply with. We responded to the individual and provided a copy of the actual law, which the proposed rules mirror. One person inquired about any other things the Board was proposing.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

This rule addresses specific requirement of Sub. H.B. 131 concerning the use of tanning services. The law requires very specific forms to be developed to document a person's specific age and their/parental consent to use a tanning sun lamp. The consent form is required regardless of a person's age. The forms and draft rules were development using findings from scientific studies and information from the Ohio Department of Health. The DOH collaborated on the development of these forms.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

This rule addresses specific requirement of Sub. H.B. 131 concerning the use of tanning services. Alternative regulations were not permitted under the new law.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

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Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

This rule requires specific procedures to be implemented to reasonably determine a person's age before permitting a person to use a sun lamp tanning service and only after signing a consent form, regardless of the age (although exposure restrictions based on age differ depending upon the age of the person seeking to use sun lamp tanning services).

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Pursuant to H.B. 131, eff. 6/20/2015, the Board must promulgate rules on the procedures an operator of tanning equipment must follow to make reasonable efforts to determine the age of an individual seeking to use sun lamp tanning services. Persons using sunlamp services are required to complete a consent form, based upon their age. These rules are required by law and do not duplicate existing law. The Ohio Board of Cosmetology is the only agency authorized to regulate the tanning services industry in the state of Ohio.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

This rule will be placed on the agency's website and sent to a list-serve for distribution to all licensees in advance of the effective date. In addition, copies of the consent form(s) will be provided on the Board's website and sent by email to all providers with instructions on use and an explanation of the standards contained in these rules.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

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Sub. H.B. 131 requires persons seeking to use sun lamp services in the state of Ohio to read and sign a consent form. Under the new law, specific exposure limits are imposed. While the exposure limits are statutory, the rules and the form development under the rules reiterate aspects of these limits. Exposure limits are intended to protect the health, safety, and welfare of persons seeking to use sun lamp tanning services, based upon the age of the individual using the service. Exposure limits may have an undetermined economic impact on business, but negative impact of these rules and the requirements of Sub. H.B. 131 is justified by the intent to protect the health, safety, and welfare of persons seeking to use sun lamp tanning services.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The new law and these rules are intended to develop procedures to require tanning service operators to make reasonable attempts to determine the age of a person seeking to use sun lamp tanning services and then to have the person sign a consent form, which advises the individual of the risks of using sun lamp tanning services. The risk of using sun lamp tanning services is well known and the Ohio General Assembly has determined that persons seeking to use sun lamp services should be advised of those risks, based on the person's age, which should be confirmed through signed consent. In addition, persons seeking to use sun lamp tanning services must be held to specific exposure limits based upon their age.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Not in this rule.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the

Persons that violate this rule are subject to potential fine, suspension/revocation of permit. The nature of the standard has an impact on public safety. It is unlikely the Board would consider waiver of penalties for first time offenses involving this rule.

18. What resources are available to assist small businesses with compliance of the regulation?

The Board will provide information on the implementation of the provisions of H.B. 131 through the dissemination of these rules and the associated forms.