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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 977 Session of  
2013

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INTRODUCED BY SWANGER, V. BROWN, CLYMER, COHEN, DeLUCA,  
GINGRICH, KORTZ, MILLARD, WATERS AND YOUNGBLOOD,  
MARCH 12, 2013

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REFERRED TO COMMITTEE ON HEALTH, MARCH 12, 2013

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AN ACT

1 Providing for the regulation of tanning facilities and for  
2 penalties.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Tanning  
7 Facility Regulation Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Customer." A member of the public who is provided access to  
13 a tanning facility in exchange for a fee or other compensation  
14 or any individual who, in exchange for a fee or other  
15 compensation, is afforded use of a tanning facility as a  
16 condition or benefit of membership or access.

17 "Department." The Department of Health of the Commonwealth.

1 "Fitzpatrick scale." A scale for classifying a skin type,  
2 based on the skin's reaction to the first ten to 45 minutes of  
3 sun exposure after the winter season as follows:

4 Skin Type	Sunburning and Tanning History
5 1	Always burns easily, never tans
6 2	Always burns easily, tans minimally
7 3	Burns moderately, tans gradually
8 4	Burns minimally, always tans well
9 5	Rarely burns, tans profusely
10 6	Never burns, deeply pigmented

11 "Legal entity." An individual, corporation, partnership,  
12 proprietorship or association.

13 "Operator." An individual designated by a legal entity to  
14 control operation of the tanning facility of the licensee and to  
15 instruct and assist the customer in the proper operation of the  
16 tanning equipment.

17 "Phototherapy device." Equipment that emits ultraviolet  
18 radiation and is used by health care professionals in the  
19 treatment of disease. The term shall not include any of the  
20 following:

21 (1) Devices utilized by appropriate health care  
22 professionals under the direct supervision of a physician who  
23 is trained in the use of phototherapy devices.

24 (2) Devices used for personal use in a private  
25 residence.

26 (3) Devices intended for purposes other than the  
27 irradiation of human skin.

28 "Tanning equipment or device." Equipment that emits  
29 radiation used for tanning of the skin, such as a sunlamp,  
30 tanning booth or tanning bed that emits electromagnetic

1 radiation with wavelengths in the air between 200 and 400  
2 nanometers. The term includes any accompanying equipment, such  
3 as protective eyewear, timers and handrails.

4 "Tanning facility." Any place where a tanning device is used  
5 for a fee, membership dues or any other compensation.

6 "Ultraviolet radiation." Electromagnetic radiation with  
7 wavelengths between 200 and 400 nanometers.

8 Section 3. Certification of registration and fees.

9 (a) Requirement.--No legal entity shall establish, maintain,  
10 operate or hold itself out as authorized to establish, maintain  
11 or operate a tanning facility without first having obtained a  
12 certificate of registration issued by the department.

13 (b) Application.--A legal entity may apply for a certificate  
14 of registration required under subsection (a) by submitting an  
15 application to the department on a form prescribed by the  
16 department. The form shall require all of the following  
17 information:

18 (1) The name, address and telephone number of the  
19 tanning facility and owner.

20 (2) The manufacturer, model number and type of each  
21 ultraviolet lamp or tanning device used in the tanning  
22 facility.

23 (3) The name and contact information of the equipment  
24 supplier, installer and service agent of each ultraviolet  
25 lamp or tanning device used in the tanning facility.

26 (4) A signed and dated certification that the applicant  
27 has read and understands the requirements of this act.

28 (5) A copy of the operating and safety procedures of the  
29 tanning facility.

30 (6) Any additional information required by the

1 department.

2 (c) Determination.--The department shall issue a certificate  
3 of registration to an applicant upon determination that the  
4 applicant meets all of the requirements of this act.

5 (d) Fee.--An applicant shall be required to pay a  
6 registration fee of \$300 per salon, including ten devices, and  
7 \$20 per additional bed for each year that the facility applies  
8 for a certificate of registration. The department may increase  
9 registration fees by regulation to ensure implementation of this  
10 act.

11 (e) Posting.--A legal entity shall post its certificate of  
12 registration in a location clearly visible to its customers.

13 (f) Disclaimer.--The department shall promulgate language to  
14 be clearly placed on the certificate of registration explaining  
15 that such facility has not had an initial inspection by the  
16 department.

17 (g) Term.--A certificate of registration shall be issued for  
18 a period of time not to exceed 12 months following the date of  
19 issuance and shall be renewable for one additional year, subject  
20 to the extension as provided in section 4.

21 (h) Renewal.--A legal entity shall submit an application for  
22 renewal of a certificate of registration on a form prescribed by  
23 the department prior to expiration of its current certificate of  
24 registration.

25 (i) Nontransferability.--A certificate of registration shall  
26 not be transferable from one legal entity or one tanning  
27 facility to another.

28 (j) Denial, suspension or revocation.--The following shall  
29 apply to the denial, suspension or revocation of a certificate  
30 of registration:

1           (1) The department may deny, suspend or revoke a  
2 certificate of registration for any of the following reasons:

3           (i) Submission of false statements in application,  
4 reports, plans or specifications.

5           (ii) For conditions which violate this act.

6           (iii) Operation of the tanning facility in a manner  
7 that threatens public health or safety.

8           (iv) Failure to allow the department to enter the  
9 tanning facility at reasonable hours for inspection or  
10 investigation.

11           (v) Failure to pay registration fees.

12           (2) Except in cases involving an immediate threat to  
13 public health and safety under section 12(b), the department  
14 shall, prior to suspension or revocation of a certificate of  
15 registration, provide written notice to the legal entity to  
16 whom the certificate of registration has been issued of the  
17 facts or conduct which may warrant suspension or revocation  
18 and shall provide the legal entity with an opportunity to  
19 demonstrate or achieve compliance. The legal entity may  
20 request an administrative hearing upon receipt of the written  
21 notice.

22           (k) Expiration.--

23           (1) Except as otherwise provided in paragraph (2), this  
24 section shall expire two years from its effective date.

25           (2) Paragraph (1) shall not apply to the duty to post  
26 under subsection (e), the term provisions of subsection (g),  
27 the nontransferability provisions of subsection (i) or the  
28 powers of the department under subsection (j) and this  
29 subsection.

30           (3) A certificate of registration issued by the

1 department that is not extended in accordance with the  
2 provisions of section 4 shall automatically expire two years  
3 from the effective date of this section.

4 Section 4. Extension of certificates of registration.

5 If a legal entity that holds a valid certificate of  
6 registration issued by the department has applied for a license  
7 from the department prior to the expiration date of section 3(a)  
8 and the department has not inspected the tanning facility for  
9 purposes of reviewing the application for the license by the  
10 expiration date, then the term of the certificate of  
11 registration shall be extended until:

12 (1) the department approves or denies the application  
13 for license; or

14 (2) the department revokes or suspends the certificate  
15 of registration in accordance with section 3(j).

16 Section 5. Licensing and fees.

17 (a) Requirement.--No legal entity shall establish, maintain,  
18 operate or hold itself out as authorized to establish, maintain  
19 or operate a tanning facility unless the legal entity has:

20 (1) obtained a license issued by the department; or

21 (2) been issued a certificate of registration that is  
22 extended under the provisions of section 4.

23 (b) Application.--A legal entity may apply for a license  
24 required under subsection (a) by submitting an application to  
25 the department on a form prescribed by the department. The form  
26 shall require all of the following information:

27 (1) The name, address and telephone number of the  
28 tanning facility and owner.

29 (2) The manufacturer, model number and type of each  
30 ultraviolet lamp or tanning device used in the tanning

1 facility.

2 (3) The name and contact information of the equipment  
3 supplier, installer and service agent of each ultraviolet  
4 lamp or tanning device used in the tanning facility.

5 (4) A signed and dated certification that the applicant  
6 has read and understands the requirements of this act.

7 (5) A copy of the operating and safety procedures of the  
8 tanning facility.

9 (6) Any additional information required by the  
10 department.

11 (c) Determination.--The department shall issue a license to  
12 an applicant upon determination that the applicant meets all of  
13 the requirements of this act.

14 (d) Fee.--An applicant shall be required to pay a license  
15 fee in such amount as determined by regulation of the  
16 department. The department shall not establish the fee in excess  
17 of the amount necessary to conduct inspections and to enforce  
18 the provisions of this act.

19 (e) Posting.--A licensee shall post its license in a  
20 location clearly visible to its customers.

21 (f) Expiration.--A license shall expire annually on the date  
22 specified on the license.

23 (g) Renewal.--A licensee must file an application for  
24 renewal on a form prescribed by the department prior to  
25 expiration of its current license.

26 (h) Nontransferability.--A license shall not be transferable  
27 from one legal entity or one tanning facility to another.

28 (i) Denial, suspension or revocation.--The following shall  
29 apply to the denial, suspension or revocation of a license:

30 (1) The department may deny, suspend or revoke licensure

1 for any of the following reasons:

2 (i) Submission of false statements in applications,  
3 reports, plans or specifications.

4 (ii) For conditions which violate this act.

5 (iii) Operation of the tanning facility in a manner  
6 that threatens public health or safety.

7 (iv) Failure to allow the department to enter the  
8 tanning facility at reasonable hours for inspection or  
9 investigation.

10 (v) Failure to pay license fees.

11 (2) Except in cases involving an immediate threat to  
12 public health and safety under section 12(b), the department  
13 shall, prior to suspension or revocation of a license,  
14 provide written notice to the licensee of the facts or  
15 conduct which may warrant suspension or revocation and shall  
16 provide the licensee with an opportunity to demonstrate or  
17 achieve compliance. The licensee may request an  
18 administrative hearing upon receipt of the written notice.

19 Section 6. Inspection.

20 (a) Access.--The department shall have access at reasonable  
21 times to any tanning facility, including its records, to inspect  
22 and determine whether the tanning facility is in compliance with  
23 this act.

24 (b) Certificate of registration.--A tanning facility that  
25 holds a certificate of registration is subject to inspections as  
26 follows:

27 (1) For purposes of a random sample on an announced or  
28 unannounced basis.

29 (2) At the request of an operator on an announced or  
30 unannounced basis.

1 (3) In response to a complaint on an unannounced basis.

2 (c) Licensure.--A tanning facility that applies for a  
3 license or holds a license is subject to inspections as follows:

4 (1) An initial inspection shall be conducted by the  
5 department after receipt of the application.

6 (2) For purposes of a random sample on an announced or  
7 unannounced basis.

8 (3) In response to a complaint on an unannounced basis.

9 (d) Scope.--Inspections conducted by the department under  
10 this section shall encompass all of the following matters:

11 (1) The operation of the tanning facility.

12 (2) Review of required records and training  
13 documentation.

14 (3) Operator understanding and competency.

15 (4) Any other area concerning a requirement of this act.

16 Section 7. Warning signs and statements.

17 (a) Warning signs and statements describing hazards.--A  
18 tanning facility shall post a warning sign in a place readily  
19 visible to persons entering the establishment. The sign shall  
20 have dimensions not less than 11 inches by 17 inches. Lettering  
21 must be clear, legible and at least 0.25 inches high, with all  
22 of the following provisions on the sign:

23 (1) The wording, "DANGER--ULTRAVIOLET RADIATION," in  
24 letters at least 0.5 inches high.

25 (2) Follow the manufacturer's instructions for use of  
26 this device.

27 (3) Avoid overexposure. As with natural sunlight,  
28 overexposure can cause eye and skin injury and allergic  
29 reactions. Repeated exposure to ultraviolet radiation may  
30 cause chronic sun damage characterized by wrinkling, dryness,

1 fragility, bruising of the skin and skin cancer.

2 (4) Do not sunbathe before or after exposure to  
3 ultraviolet radiation from sunlamps.

4 (5) Wear protective eyewear. Failure to use protective  
5 eyewear may result in severe burns or permanent injury to the  
6 eyes.

7 (6) Medications or cosmetics may increase your  
8 sensitivity to the ultraviolet radiation. Consult a physician  
9 before using a sunlamp if you are using medications, have a  
10 history of skin problems or believe you are especially  
11 sensitive to sunlight. Women who are pregnant or are taking  
12 oral contraceptives who use this product may develop  
13 discolored skin.

14 (7) Contact the Department of Health to report an  
15 alleged injury regarding this tanning facility.

16 (8) The wording, "IF YOU DO NOT TAN IN THE SUN, YOU ARE  
17 UNLIKELY TO TAN FROM USE OF AN ULTRAVIOLET LAMP OR SUNLAMP."

18 (b) Written warning statement.--Each customer shall be  
19 provided with a written warning statement requiring a signature  
20 prior to initial exposure. The warning statement shall include  
21 all of the following:

22 (1) Failure to use the eye protection provided to the  
23 customer by the tanning facility may result in damage to the  
24 eyes.

25 (2) Overexposure to ultraviolet light causes burns.

26 (3) Repeated exposure may result in premature aging of  
27 the skin and skin cancer.

28 (4) Abnormal skin sensitivity or burning may be caused  
29 by reactions of ultraviolet light to certain:

30 (i) foods;

- 1 (ii) cosmetics; or
- 2 (iii) medications, including:
  - 3 (A) tranquilizers;
  - 4 (B) diuretics;
  - 5 (C) antibiotics;
  - 6 (D) high blood pressure medicines; or
  - 7 (E) birth control pills.

8 (5) Any person taking a prescription or over-the-counter  
9 drug should consult a physician before using a tanning  
10 device.

11 (6) A person with skin that always burns easily and  
12 never tans should avoid a tanning device.

13 (7) A person with a family or past medical history of  
14 skin cancer should avoid a tanning device.

15 (c) Liability.--The warning statement provided under  
16 subsection (b) shall not affect the liability of the owner,  
17 manager or operator of a tanning facility in the event that a  
18 customer fails to follow the warning statement and incurs  
19 damages.

20 Section 8. Tanning devices.

21 (a) Federal certification.--Only tanning devices  
22 manufactured and certified under 21 CFR 1040.20 (relating to  
23 sunlamp products and ultraviolet lamps intended for use in  
24 sunlamp products) may be used in tanning facilities.

25 (b) Condition.--All tanning devices shall do all of the  
26 following:

27 (1) Meet the National Fire Protection Association's  
28 National Electrical Code and any other State or local  
29 electrical codes.

30 (2) Have physical barriers to protect customers from

1 injury due to touching or breaking lamps.

2 (3) Be maintained in good repair.

3 (c) Stand-up booths.--Stand-up booths shall meet all of the  
4 following conditions:

5 (1) Have physical barriers or other means to indicate  
6 proper exposure distance.

7 (2) Be constructed rigidly enough to withstand stress of  
8 use and impact of a falling person.

9 (3) Access shall be of rigid construction, doors must  
10 open outwardly and handrails and nonslip floors must be  
11 provided.

12 (d) Protective eyewear.--Operators shall require customers  
13 to wear protective eyewear in order to use a tanning device.

14 When a tanning device is in use, no other person shall be  
15 allowed to remain in the area unless the person wears protective  
16 eyewear. Protective eyewear shall do all of the following:

17 (1) Be provided free of charge, along with instructions  
18 for use. Customers may also be given the option to purchase  
19 their own eyewear.

20 (2) Meet the requirements of 21 CFR 1040.20.

21 (3) Be properly sanitized before each use. Ultraviolet  
22 rays shall not be considered a sanitizing agent.

23 Section 9. Operation.

24 (a) Skin type.--Operators must be able to recognize the skin  
25 type of the customer based on the Fitzpatrick scale and advise  
26 the customer accordingly in regard to maximum time of exposure.

27 (b) Customer records.--A record shall be kept of each  
28 customer's total number of tanning visits, date, time and  
29 duration of each.

30 (c) Records.--All records or documentation required by this

1 act shall be maintained in the tanning facility for a minimum of  
2 seven years. Records on computer must be backed up on storage  
3 media other than the hard drive at least monthly and must be  
4 retrievable as a printed copy. Records shall be accessible by  
5 the department during an inspection.

6 (d) Duration and frequency.--Operators shall limit session  
7 duration and frequency to maximums recommended by the  
8 manufacturer.

9 Section 10. Restrictions on use by minors.

10 (a) General rule.--No person under 18 years of age may use a  
11 tanning device.

12 (b) Identification.--A legal entity or operator may request  
13 valid identification from a customer to determine the age of the  
14 customer.

15 Section 11. Training.

16 (a) Operator.--A tanning facility shall have an operator  
17 present in accordance with subsection (b) who is sufficiently  
18 knowledgeable in the operation of the tanning devices,  
19 including:

20 (1) Knowledge of the requirements of this section and of  
21 21 CFR 1040.20 (relating to sunlamp products and ultraviolet  
22 lamps intended for use in sunlamp products).

23 (2) Proper use of the United States Food and Drug  
24 Administration's recommended exposure schedule.

25 (3) Procedures for correct operation of the tanning  
26 facility.

27 (4) Recognition of injuries and the facility's  
28 procedures of handling the injuries from overexposure to  
29 ultraviolet radiation.

30 (5) Manufacturer's procedures for operation and

1 maintenance of the tanning device.

2 (6) Use of protective eyewear.

3 (7) Emergency procedures in case of injury.

4 (8) Effects of ultraviolet radiation, acute and chronic  
5 exposure and health risks.

6 (9) Photosensitizing agents.

7 (10) The six different skin types.

8 (b) Presence.--A trained operator shall be present at the  
9 tanning facility during all operating hours while tanning  
10 equipment is in operation and shall inform and assist each  
11 customer in the operation and use of the tanning device. No  
12 consumer may use the tanning equipment in the absence of a  
13 trained operator.

14 Section 12. Sanctions.

15 (a) Penalties.--

16 (1) A legal entity that operates a tanning facility in  
17 violation of this act commits a misdemeanor and shall be  
18 subject to suspension or revocation of the tanning facility's  
19 certificate of registration or license. A person who operates  
20 a tanning device in violation of this act commits a  
21 misdemeanor.

22 (2) A legal entity that is in violation of section 10  
23 shall be subject to a civil penalty of not more than \$250 for  
24 the first violation, up to \$500 for the second violation and  
25 up to \$1,000 for each subsequent violation. The penalty shall  
26 be paid to the department for deposit in the State Treasury.

27 (3) It is an affirmative defense for an owner, manager  
28 or operator to an offense under section 10 that, prior to the  
29 date of the alleged violation, the owner, manager or operator  
30 has complied with all of the following:

1 (i) adopted and implemented a written policy against  
2 permitting minors to use a tanning device at the tanning  
3 facility which includes:

4 (A) a requirement that an employee ask an  
5 individual who appears to be 21 years of age or  
6 younger for a valid photo identification as proof of  
7 age prior to permitting the use of a tanning device;

8 (B) a list of all types of acceptable photo  
9 identification;

10 (C) a list of factors to be examined in the  
11 photo identification, including photo likeness, birth  
12 date, expiration date, bumps, tears or other damage  
13 and signature;

14 (D) a requirement that, if the photo  
15 identification is missing any of the items listed in  
16 clause (C), it is not valid and cannot be accepted as  
17 proof of age for the use of a tanning device. A  
18 second photo identification may be required to permit  
19 the use of a tanning device, with questions referred  
20 to the manager; and

21 (E) a disciplinary policy which includes  
22 employee counseling and suspension for failure to  
23 require valid photo identification and dismissal for  
24 repeated improper use of tanning devices by minors.

25 (ii) informed all employees permitting use of a  
26 tanning device through an established training program of  
27 the applicable State law regarding the prohibited use of  
28 tanning devices by minors;

29 (iii) documented employee training indicating that  
30 all employees permitting the use of tanning devices have

1           been informed of and understand the written policy  
2           referred to in subparagraph (i);

3           (iv) trained all employees permitting the use of a  
4           tanning device to verify that a customer is at least 18  
5           years of age before permitting the use of a tanning  
6           device;

7           (v) conspicuously posted a notice that the use by a  
8           minor of a tanning device is illegal; and

9           (vi) established and implemented disciplinary  
10          sanctions for noncompliance with the policy under  
11          subparagraph (i).

12          (4) An affirmative defense under paragraph (3) must be  
13          proved by a preponderance of the evidence.

14          (5) An affirmative defense under paragraph (3) may be  
15          used by an owner, manager or operator not more than three  
16          times at a tanning facility during any 24-month period.

17          (b) Suspension or revocation.--If the department finds a  
18          violation of this act that creates an immediate threat to the  
19          health and safety of the public, the department may suspend or  
20          revoke the tanning facility's certificate of registration or  
21          license to operate.

22          (c) Enforcement.--

23          (1) The department may take the following steps in  
24          writing or use any other acts and regulations to enforce the  
25          provisions of this act:

26                  (i) Cite each section of the act violated.

27                  (ii) Specify the manner in which the owner, manager  
28                  or operator failed to comply with this act.

29                  (iii) Require a corrective action plan, including a  
30                  reasonable time schedule for completion. The department

1 shall review the corrective action plan and approve or  
2 require modification of the plan.

3 (2) If a tanning facility fails to comply with  
4 conditions of the written notice provided under paragraph  
5 (1), the department shall notify the owner, manager or  
6 operator, by certified mail, that unless action is taken  
7 within five days of receipt of the written notice, the  
8 tanning facility's certificate of registration or license  
9 shall be suspended or revoked.

10 Section 13. Departmental duties.

11 The department shall administer the provisions of this act  
12 and promulgate and adopt such regulations as may be necessary to  
13 implement this act.

14 Section 20. Severability.

15 The provisions of this act are severable. If any provision of  
16 this act or its application to any person or circumstance is  
17 held invalid, the invalidity shall not affect other provisions  
18 or applications of this act which can be given effect without  
19 the invalid provision or application.

20 Section 30. Effective date.

21 This act shall take effect as follows:

22 (1) Section 3 shall take effect in 90 days.

23 (2) Section 5 shall take effect in two years and 90  
24 days.

25 (3) The remainder of this act shall take effect  
26 immediately.