

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 349 Session of 2011

INTRODUCED BY BROWNE, FONTANA, GORDNER, BRUBAKER, GREENLEAF, M. WHITE, BREWSTER, COSTA, BOSCOLA, VANCE AND FARNESE, JANUARY 31, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, OCTOBER 24, 2011

AN ACT

1 Providing for the regulation of indoor tanning facilities and
2 for 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 Indoor
7 Tanning 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 "Operator." An individual designated by the licensee to  
12 control operation of the tanning facility and to instruct and  
13 assist the customer in the proper operation of the tanning  
14 equipment.

15 "Person." An individual, partnership, corporation or  
16 association.

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. Licensing and fees.

9 (a) Requirement.--No person 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 license issued by the department.

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

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

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

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

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

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

29 (6) Any additional information required by the  
30 department.

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

4 (d) Fee.--An applicant shall be required to pay a license  
5 fee of \$300 per salon, including ten devices, and \$20 per  
6 additional bed. The department may increase fees by regulation  
7 in an amount sufficient to cover the cost of annual inspection  
8 and administration of this act.

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

11 (f) Expiration.--A license shall expire annually on the date  
12 specified in the license.

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

16 (h) Transfer.--A license shall not be transferable from one  
17 person or one tanning facility to another.

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

20 (1) The department shall have the authority to deny,  
21 suspend or revoke licensure for any of the following reasons:

22 (i) Submission of false statements in application,  
23 reports, plans or specifications.

24 (ii) For conditions which violate this act.

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

27 (iv) Failure to allow the department to enter the  
28 tanning facility at reasonable hours for inspection or  
29 investigation.

30 (v) Failure to pay license fees.

1 (2) Except in cases involving an immediate threat to  
2 public health and safety under section 10(c), the department  
3 shall, prior to suspension or revocation of a license,  
4 provide written notice to the licensee of the facts or  
5 conduct which may warrant suspension or revocation and shall  
6 provide the licensee with an opportunity to demonstrate or  
7 achieve compliance. The licensee may request an  
8 administrative hearing upon receipt of the written notice.

9 Section 4. Inspection.

10 (a) Time.--The department ~~shall~~ MAY conduct an initial ←  
11 inspection, after receipt of an application for a license under  
12 section 3, of a tanning facility and ~~may inspect~~ SHALL RANDOMLY ←  
13 INSPECT LICENSED FACILITIES each year thereafter.

14 (b) Conduct.--Inspections conducted by the department under  
15 this section shall encompass all of the following matters:

16 (1) The operation of the tanning facility.

17 (2) Review of required records and training  
18 documentation.

19 (3) Operator understanding and competency.

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

21 Section 5. Warning signs and statements.

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

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

30 (2) Follow the manufacturer's instructions for use of

1 this device.

2 (3) Avoid overexposure. As with natural sunlight,  
3 overexposure can cause eye and skin injury and allergic  
4 reactions. Repeated exposure to ultraviolet radiation may  
5 cause chronic sun damage characterized by wrinkling, dryness,  
6 fragility, bruising of the skin and skin cancer.

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

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

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

19 (7) A customer may call the Department of Health to  
20 report an alleged injury regarding this tanning facility.

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

23 (b) Written warning statement.--Each customer shall be  
24 provided with a written warning statement requiring a signature  
25 prior to initial exposure. The warning statement shall include  
26 all of the following:

27 (1) Failure to use the eye protection provided to the  
28 customer by the tanning facility may result in damage to the  
29 eyes.

30 (2) Overexposure to ultraviolet light causes burns.

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

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

5 (i) foods;

6 (ii) cosmetics; or

7 (iii) medications, including:

8 (A) tranquilizers;

9 (B) diuretics;

10 (C) antibiotics;

11 (D) high blood pressure medicines; or

12 (E) birth control pills.

13 (5) Any person taking a prescription or over-the-counter  
14 drug should consult a physician before using a tanning  
15 device.

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

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

20 (c) Liability.--The warning statement provided under  
21 subsection (b) shall not affect the liability of the owner,  
22 manager or operator of a tanning facility in the event that a  
23 customer fails to follow the warning statement and incurs  
24 damages.

25 Section 6. Tanning devices.

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

30 (b) Condition.--All tanning devices shall do all of the

1 following:

2 (1) Meet the National Fire Protection Association's  
3 National Electrical Code and any other State or local  
4 electrical codes.

5 (2) Have physical barriers to protect customers from  
6 injury due to touching or breaking lamps.

7 (3) Be maintained in good repair.

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

10 (1) Have physical barriers or other means to indicate  
11 proper exposure distance.

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

14 (3) Access shall be of rigid construction, doors must  
15 open outwardly and handrails and nonslip floors must be  
16 provided.

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

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

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

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

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

28 Section 7. Operation.

29 (a) Skin type.--Operators must be able to recognize the skin  
30 type of the customer based on the Fitzpatrick scale and advise



1 the customer accordingly in regard to maximum time of exposure.

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

5 (c) Records.--All records or documentation required by this  
6 act shall be maintained in the tanning facility for a minimum of  
7 three years. Records on computer must be backed up on storage  
8 media other than the hard drive at least monthly and must be  
9 retrievable as a printed copy. Records shall be accessible by  
10 the department during an inspection.

11 (d) Duration and frequency.--Operators shall limit session  
12 duration and frequency to maximums recommended by the  
13 manufacturer.

14 Section 8. Restrictions on use by minors.

15 (a) Accompaniment.--All minors shall be accompanied by their  
16 parent or legal guardian in order to use a tanning device for  
17 the first time.

18 (b) Identification.--Before the first use by a minor and  
19 every six months thereafter, the owner or operator shall witness  
20 the parent's or legal guardian's signing and dating of the  
21 warning statement required under section 5(b). The parent or  
22 legal guardian shall also sign a statement stating the  
23 relationship with a child who is under 14 years of age.

24 (c) Medical permission.--Persons under 14 years of age may  
25 not use a tanning device unless they present written permission  
26 by a properly licensed doctor of medicine or doctor of  
27 osteopathic medicine.

28 (d) Records.--Records of parental consent shall be  
29 maintained for all minor customers of the tanning facility for a  
30 period of at least three years.

1 Section 9. Training.

2 (a) Operator.--A tanning facility shall have an operator  
3 present in accordance with subsection (b) who is sufficiently  
4 knowledgeable in the operation of the tanning devices,  
5 including:

6 (1) Knowledge of the requirements of this section and of  
7 21 CFR 1040.20 (relating to sunlamp products and ultraviolet  
8 lamps intended for use in sunlamp products).

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

11 (3) Procedures for correct operation of the tanning  
12 facility.

13 (4) Recognition of injuries and the facility's  
14 procedures of handling the injuries from overexposure to  
15 ultraviolet radiation.

16 (5) Manufacturer's procedures for operation and  
17 maintenance of the tanning device.

18 (6) Use of protective eyewear.

19 (7) Emergency procedures in case of injury.

20 (8) Effects of ultraviolet radiation, acute and chronic  
21 exposure and health risks.

22 (9) Photosensitizing agents.

23 (10) The six different skin types.

24 (b) Presence.--A trained operator shall be present at the  
25 tanning facility during all operating hours while tanning  
26 equipment is in operation and shall inform and assist each  
27 customer in the operation and use of the tanning device. No  
28 consumer may use the tanning equipment in the absence of a  
29 trained operator.

30 Section 10. Inspections, violations and injunctions.

1 (a) Access.--The department shall have access at reasonable  
2 times to any tanning facility, including its records, to inspect  
3 and determine whether a violation of this act has or will occur.

4 (b) Penalty.--

5 (1) A person who operates a tanning facility in  
6 violation of this act commits a misdemeanor and shall be  
7 subject to suspension or revocation of the tanning facility's  
8 license. A person who operates a tanning device in violation  
9 of this act commits a misdemeanor.

10 (2) A person who is in violation of section 8 shall be  
11 subject to a civil penalty of not more than \$250 for the  
12 first violation, up to \$500 for the second violation and up  
13 to \$1,000 for each subsequent violation. The penalty shall be  
14 paid to the Department of Health for deposit in the State  
15 Treasury.

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

20 (d) Procedure.--

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

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

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

27 (iii) Require a corrective action plan, including a  
28 reasonable time schedule for completion. The department  
29 shall review the corrective action plan and approve or  
30 require modification of the plan.

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

7 Section 20. Severability.

8           The provisions of this act are severable. If any provision of  
9 this act or its application to any person or circumstance is  
10 held invalid, the invalidity shall not affect other provisions  
11 or applications of this act which can be given effect without  
12 the invalid provision or application.

13 Section 30. Effective date.

14           This act shall take effect in 180 days.