

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

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, DECEMBER 5, 2011

AN ACT

1 Providing for the regulation of indoor tanning facilities and; ←
2 ESTABLISHING THE INDOOR TANNING REGULATION FUND; AND
3 PROVIDING for penalties.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Indoor
8 Tanning Regulation Act.

9 Section 2. Definitions.

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

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

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

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

5 Skin Type	Sunburning and Tanning History
6 1	Always burns easily, never tans
7 2	Always burns easily, tans minimally
8 3	Burns moderately, tans gradually
9 4	Burns minimally, always tans well
10 5	Rarely burns, tans profusely
11 6	Never burns, deeply pigmented

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

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

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

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

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

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

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

1 tanning booth or tanning bed that emits electromagnetic  
2 radiation with wavelengths in the air between 200 and 400  
3 nanometers. The term includes any accompanying equipment, such  
4 as protective eyewear, timers and handrails.

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

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

9 Section 3. Licensing and fees.

10 (a) Requirement.--No person shall establish, maintain,  
11 operate or hold itself out as authorized to establish, maintain  
12 or operate a tanning facility without first having obtained a  
13 license issued by the department.

14 (b) Application.--A person may apply for a license required  
15 under subsection (a) by submitting an application to the  
16 department on a form prescribed by the department. The form  
17 shall require all of the following 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 of the equipment supplier, installer and  
24 service agent of each ultraviolet lamp or tanning device used  
25 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 license to  
3 an applicant upon determination that the applicant meets all of  
4 the requirements of this act.

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

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

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

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

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

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

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

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

25 (ii) For conditions which violate this act.

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

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

1 (v) Failure to pay license fees.

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

10 Section 4. Inspection.

11 (a) Time.--The department may conduct an initial inspection,  
12 after receipt of an application for a license under section 3,  
13 of a tanning facility and shall randomly inspect licensed  
14 facilities each year thereafter.

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

17 (1) The operation of the tanning facility.

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

20 (3) Operator understanding and competency.

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

22 Section 5. Warning signs and statements.

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

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

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

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

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

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

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

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

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

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

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

1 (2) Overexposure to ultraviolet light causes burns.

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

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

6 (i) foods;

7 (ii) cosmetics; or

8 (iii) medications, including:

9 (A) tranquilizers;

10 (B) diuretics;

11 (C) antibiotics;

12 (D) high blood pressure medicines; or

13 (E) birth control pills.

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

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

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

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

26 Section 6. Tanning devices.

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

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

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

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

8 (3) Be maintained in good repair.

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

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

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

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

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

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

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

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

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

29 Section 7. Operation.

30 (a) Skin type.--Operators must be able to recognize the skin



1 type of the customer based on the Fitzpatrick scale and advise  
2 the customer accordingly in regard to maximum time of exposure.

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

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

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

15 Section 8. Restrictions on use by minors.

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

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

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

29 (d) Records.--Records of parental consent shall be  
30 maintained for all minor customers of the tanning facility for a

1 period of at least three years.

2 Section 9. Training.

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

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

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

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

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

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

19 (6) Use of protective eyewear.

20 (7) Emergency procedures in case of injury.

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

23 (9) Photosensitizing agents.

24 (10) The six different skin types.

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

1 Section 10. Inspections, violations and injunctions.

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

5 (b) Penalty.--

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

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

17 (c) 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 license to operate.

21 (d) Procedure.--

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

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

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

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

1           require modification of the plan.

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

8 SECTION 11. FUND ESTABLISHED; DISPOSITION OF FEES, FINES AND ←  
9 PENALTIES.

10       (A) FUND ESTABLISHED.--THERE IS HEREBY ESTABLISHED A  
11 RESTRICTED ACCOUNT WITHIN THE GENERAL FUND KNOWN AS THE INDOOR  
12 TANNING REGULATION FUND.

13       (B) DISPOSITION OF MONEYS.--ALL FEES, FINES AND CIVIL  
14 PENALTIES IMPOSED IN ACCORDANCE WITH THIS ACT SHALL BE PAID INTO  
15 THE INDOOR TANNING REGULATION FUND AND ARE HEREBY APPROPRIATED  
16 TO THE DEPARTMENT FOR USE IN THE PERFORMANCE OF ITS DUTIES UNDER  
17 THIS ACT.

18 Section 20. Severability.

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

24 Section 30. Effective date.

25       This act shall take effect in 180 days.