

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 73**

4 (By Senators Foster, Klempa and Stollings)

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6 [Originating in the Committee on Health and Human Resources;  
7 reported February 3, 2012.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new article, designated §16-44-1, §16-44-2,  
13 §16-44-3, §16-44-4 and §16-44-5, all relating generally to  
14 regulation of tanning facilities; defining terms; setting  
15 forth requirements for registration, inspection and obtaining  
16 a permit; requiring a consent form; setting forth consent form  
17 language; creating operating standards; prohibiting the use of  
18 tanning devices by anyone under the age of eighteen; granting  
19 rule-making authority to the Department of Health and Human  
20 Resources to regulate tanning facilities; setting forth  
21 minimum requirements for the rule; and establishing criminal  
22 penalties.

23 *Be it enacted by the Legislature of West Virginia:*

24 That the Code of West Virginia, 1931, as amended, be amended  
25 by adding thereto a new article, designated §16-44-1, §16-44-2,  
26 §16-44-3, §16-44-4 and §16-44-5, all to read as follows:

1 **ARTICLE 44. TANNING FACILITIES.**

2 **§16-44-1. Definitions.**

3 As used in this article:

4 (1) "Phototherapy Device" means a device utilized for exposure  
5 to daylight or to specific wavelengths of light using lasers,  
6 light-emitting diodes, fluorescent lamps, dichroic lamps or very  
7 bright, full-spectrum light, usually controlled with various  
8 devices.

9 (2) "Tanning device" means any equipment that emits radiation  
10 used for tanning of the skin, such as a sun lamp, tanning booth or  
11 tanning bed, and includes any accompanying equipment, such as  
12 protective eye wear, timers and handrails.

13 (3) "Tanning facility" means any commercial location, place,  
14 area, structure or business where a tanning device is used for a  
15 fee, membership dues or other compensation.

16 **§16-44-2. Registration requirements; inspections by local boards of**  
17 **health; posting of permit power of local board of health to**  
18 **order facility to close.**

19 (a) On or after the first day July, two thousand twelve, any  
20 tanning facility located in this state shall obtain a business  
21 registration certificate and shall register with the local board of  
22 health, request an inspection of the facility, and obtain an  
23 operating permit before engaging in the business of a tanning  
24 facility.

25 (b) Each local board of health shall conduct annual

1 inspections of tanning facilities to determine compliance with this  
2 article.

3 (c) Upon a determination by the board that the tanning  
4 facility is in compliance with the provisions of this article, the  
5 board shall issue to the tanning facility an operating permit,  
6 which shall be posted in a conspicuous place in the tanning  
7 facility, clearly visible to the general public.

8 (d) Upon a determination by the board that any tanning  
9 facility is not in compliance with the provisions of this article,  
10 or the rules promulgated hereunder, the board may order the tanning  
11 facility to cease operations until such time as the board  
12 determines that the tanning facility is in compliance.

13 (e) Nothing in this article may be construed as prohibiting  
14 any health care provider licensed under chapter thirty of this code  
15 from performing any action within the scope of his or her practice  
16 that results in prescribing the use of a phototherapy device to a  
17 patient regardless of the patient's age for treatment of a medical  
18 condition.

19 **§16-44-3. Operation standards.**

20 (a) A tanning facility shall provide to any patron who wishes  
21 to use a tanning device located within its tanning facility a  
22 consent form relating to use of a tanning device that must include,  
23 at a minimum, the following warning: "Repeated exposure or  
24 overexposure in a tanning device may cause health problems  
25 including, but not limited to, burns, eye damage, skin sensitivity,  
26 premature aging of the skin or skin cancer. Any person who takes

1 a prescription or over-the-counter medication should consult a  
2 physician before using a tanning device." The consent form must  
3 have a place for the patron's signature and the date. A signed and  
4 dated copy of the consent form shall be maintained by the tanning  
5 facility and remains valid for one year from the date it was  
6 signed.

7 (b) All patrons are required to present proof of age prior to  
8 use of a tanning device. Proof of age shall be satisfied with a  
9 driver's license or other government issued identification  
10 containing the date of birth and a photograph of the individual.  
11 Persons under the age of eighteen shall not be permitted to use a  
12 tanning device.

13 **§16-44-4. Rules to be proposed by the Department of Health and**  
14 **Human Resources.**

15 The Bureau for Public Health within the Department of Health  
16 and Human Resources shall proposed rules for legislative approval  
17 in accordance with the provisions article three, chapter twenty-  
18 nine-a of this code to regulate tanning facilities. The rules  
19 shall provide at a minimum:

20 (1) General physical requirements for facilities and  
21 equipment, including requirements for ventilation and lighting;

22 (2) Record keeping requirements;

23 (3) Requirements for the posting of warning signs about the  
24 dangers inherent in the use of a tanning device;

25 (4) Proper sanitation of a tanning facility and a tanning  
26 device including a requirement that the tanning device be cleaned

1 immediately prior to each use;

2 (5) Proper maintenance and operation of a tanning device  
3 including accuracy and placement of a timing device;

4 (6) The use of protective eyewear provided by the tanning  
5 facility and the proper storage and cleanliness of the eyewear; and

6 (7) Require that patrons be limited to using the tanning  
7 device to the exposure limits set by the manufacturer of the  
8 tanning device.

9 **§16-37-5. Violations and penalties.**

10 (a) Any owner of a tanning facility who does not obtain a West  
11 Virginia business registration certificate, who does not register  
12 with the local board of health, or who fails to request an  
13 inspection pursuant to section two of this article is guilty of a  
14 misdemeanor and, upon conviction thereof, for a first offense,  
15 shall be fined five hundred dollars.

16 (b) For a second offense, the owner is guilty of a misdemeanor  
17 shall be fined not less than one thousand dollars nor more than two  
18 thousand dollars or be imprisoned in the county or regional jail  
19 for not less than ten days nor more than one year, or both fined  
20 and imprisoned.

21 (c) For a third offense, which is a misdemeanor, the owner may  
22 have all the tanning device equipment and paraphernalia  
23 confiscated, shall be fined not less than two thousand dollars nor  
24 more than five thousand dollars, or be imprisoned in the county or  
25 regional jail not less than thirty days nor more than one year, or  
26 both fined and imprisoned.