

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 73**

6 (By Senators Foster, Klempa and Stollings)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 15, 2012.]
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13 A BILL to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new article, designated §16-44-1, §16-44-2,
15 §16-44-3, §16-44-4 and §16-44-5, all relating to regulating
16 tanning facilities; defining terms; setting forth requirements
17 for registration, inspection and obtaining a permit; setting
18 forth the duties and responsibilities of local boards of
19 health; requiring a consent form; setting forth consent form
20 language; creating operating standards; prohibiting the use of
21 tanning devices by anyone under the age of eighteen; granting
22 rule-making authority to the Department of Health and Human
23 Resources to regulate tanning facilities; setting forth
24 minimum requirements for the rule; and establishing criminal
25 penalties.

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

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

4 **ARTICLE 44. TANNING FACILITIES.**

5 **§16-44-1. Definitions.**

6 As used in this article:

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

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

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

19 **§16-44-2. Registration requirements; inspections by local boards of**
20 **health; posting of permit power of local board of health to**
21 **order facility to close.**

22 (a) On or after July 1, 2013, any tanning facility located in
23 this state shall obtain a business registration certificate and
24 shall register with the local board of health, request an
25 inspection of the facility by the board and obtain an operating

1 permit from the board before engaging in the business of a tanning
2 facility. A tanning facility in operation on the effective date of
3 this article may continue to operate, but shall come into
4 compliance with the provisions of section two of this article
5 within six months of the effective date.

6 (b) Each local board of health shall conduct annual
7 inspections of tanning facilities to determine compliance with this
8 article.

9 (c) Upon a determination by the board that the tanning
10 facility is in compliance with the provisions of this article, the
11 board shall issue to the tanning facility an operating permit,
12 which shall be posted in a conspicuous place in the tanning
13 facility, clearly visible to the general public.

14 (d) Upon a determination by the board that any tanning
15 facility is not in compliance with the provisions of this article,
16 or the rules promulgated hereunder, the board may order the tanning
17 facility to cease operations until such time as the board
18 determines that the tanning facility is in compliance.

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

25 **§16-44-3. Operation standards.**

26 (a) A tanning facility shall provide to any patron who wishes

1 to use a tanning device located within its tanning facility a
2 consent form relating to use of a tanning device that must include,
3 at a minimum, the following warning: "Repeated exposure or
4 overexposure in a tanning device may cause health problems
5 including, but not limited to, burns, eye damage, skin sensitivity,
6 premature aging of the skin or skin cancer. Any person who takes
7 a prescription or over-the-counter medication should consult a
8 physician before using a tanning device." The consent form must
9 have a place for the patron's signature and the date. A signed and
10 dated copy of the consent form shall be maintained by the tanning
11 facility and remains valid for one year from the date it was
12 signed.

13 (b) All patrons are required to present proof of age prior to
14 use of a tanning device. Proof of age shall be satisfied with a
15 driver's license or other government issued identification
16 containing the date of birth and a photograph of the individual.
17 Persons under the age of eighteen shall not be permitted to use a
18 tanning device.

19 **§16-44-4. Rules to be proposed by the Department of Health and**
20 **Human Resources.**

21 The Bureau for Public Health within the Department of Health
22 and Human Resources shall propose rules for legislative approval in
23 accordance with the provisions of article three, chapter twenty-
24 nine-a of this code to regulate tanning facilities. The rules
25 shall provide at a minimum:

26 (1) General physical requirements for facilities and

1 equipment, including requirements for ventilation and lighting;

2 (2) Record-keeping requirements;

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

5 (4) Proper sanitation of a tanning facility and a tanning
6 device including a requirement that the tanning device be cleaned
7 immediately prior to each use;

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

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

12 (7) Require that patrons be limited to using the tanning
13 device to the exposure limits set by the manufacturer of the
14 tanning device; and

15 (8) Establish the permit application process and fee
16 requirements.

17 **§16-44-5. Violations and penalties.**

18 (a) Any person operating a tanning facility who does not
19 obtain a West Virginia business registration certificate, who does
20 not register with the local board of health or who fails to request
21 an inspection pursuant to section two of this article is guilty of
22 a misdemeanor and, upon conviction thereof, for a first offense,
23 shall be fined \$500.

24 (b) For a second offense, the person is guilty of a
25 misdemeanor and, upon conviction thereof, shall be fined not less
26 than \$1,000 nor more than \$2,000, or be confined in a regional jail

1 for not less than ten days nor more than one year, or both fined
2 and confined.

3 (c) For a third or subsequent offense, the person is guilty of
4 a misdemeanor and, upon conviction thereof, the owner may have all
5 the tanning device equipment and paraphernalia confiscated, shall
6 be fined not less than \$2,000 nor more than \$5,000, or be confined
7 in a regional jail not less than thirty days nor more than one
8 year, or both fined and confined.