

1 **H. B. 2768**

2
3 (By Delegates Fleischauer, Marshall, Barill, Moore,
4 Perdue, Guthrie, Pasdon, Skinner, Raines,
5 Wells and Iaquina)
6

7 [Introduced March 1, 2013; referred to the
8 Committee on Health and Human Resources then the
9 Judiciary.]

**FISCAL
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-45-1, §16-45-2,
12 §16-45-3, §16-45-4 and §16-45-5, all relating to regulating
13 tanning facilities; defining terms; setting forth requirements
14 for registration, inspection and obtaining a permit; setting
15 forth the duties and responsibilities of local boards of
16 health; 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 §16-45-1, §16-45-2,
26 §16-45-3, §16-45-4 and §16-45-5, all to read as follows:

1 **ARTICLE 45. TANNING FACILITIES.**

2 **§16-45-1. Definitions.**

3 As used in this article:

4 (1) "Phototherapy device" means a device used for exposure to
5 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 **§16-45-2. Registration requirements; inspections by local boards**
17 **of health; posting of permit power of local board of**
18 **health to order facility to close.**

19 (a) On or after July 1, 2014, any tanning facility located in
20 this state shall obtain a business registration certificate and
21 shall register with the local board of health, request an
22 inspection of the facility by the board and obtain an operating
23 permit from the board before engaging in the business of a tanning

1 facility. A tanning facility in operation on the effective date of
2 this article may continue to operate, but shall come into
3 compliance with the provisions of this article within six months
4 of the effective date.

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

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

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

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

24 **§16-45-3. Operation standards.**

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

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

19 **§16-45-4. 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
24 twenty-nine-a of this code to regulate tanning facilities. The

1 rules shall provide at a minimum:

2 (1) General physical requirements for facilities and
3 equipment, including requirements for ventilation and lighting;

4 (2) Record-keeping requirements;

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

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

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

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

14 (7) Require that patrons are limited to using the tanning
15 device to the exposure limits set by the manufacturer of the
16 tanning device; and

17 (8) Establish the permit application process and fee
18 requirements.

19 **§16-45-5. Violations and penalties.**

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

1 shall be fined \$500.

2 (b) For a second offense, the person is guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined not less
4 than \$1,000 nor more than \$2,000, or be confined in jail for not
5 less than ten days nor more than one year, or both fined and
6 confined.

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

NOTE: The purpose of this bill is to provide for the regulation of tanning facilities.

This article is new; therefore, it has been completely underscored.