

Senate Bill No. 464

(By Senators Stollings, Beach, Wells, Kessler (Mr. President),
Yost and Unger)

[Introduced March 6, 2013; referred to the Committee on Health
and Human Resources; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §16-45-1, §16-45-2,
§16-45-3, §16-45-4 and §16-45-5, all relating generally to
regulation of tanning facilities; defining terms; setting
forth requirements for registration, inspection and obtaining
a permit; requiring a consent form; setting forth consent form
language; creating operating standards; prohibiting the use of
tanning devices by anyone under the age of eighteen; granting
rule-making authority to the Department of Health and Human
Resources to regulate tanning facilities; setting forth
minimum requirements for the rule; and establishing criminal
penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §16-45-1, §16-45-2,
2 §16-45-3, §16-45-4 and §16-45-5, all to read as follows:

3 **ARTICLE 45. TANNING FACILITIES.**

4 **§16-45-1. Definitions.**

5 As used in this article:

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

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

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

18 **§16-45-2. Registration requirements; inspections by local boards of**
19 **health; posting of permit power of local board of**
20 **health to order facility to close.**

21 (a) On or after July 1, 2013, any tanning facility located in
22 this state shall obtain a business registration certificate and

1 shall register with the local board of health, request an
2 inspection of the facility, and obtain an operating permit before
3 engaging in the business of a tanning facility.

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

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

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

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

23 **§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 shall be satisfied with a
16 driver's license or other government issued identification
17 containing the date of birth and a photograph of the individual.
18 Persons under the age of eighteen may not be permitted to use a
19 tanning device.

20 **§16-45-4. Rules to be proposed by the Department of Health and**
21 **Human Resources.**

22 The Bureau for Public Health within the Department of Health
23 and Human Resources shall propose rules for legislative approval in

1 accordance with the provisions of article three, chapter
2 twenty-nine-a of this code to regulate tanning facilities. The
3 rules shall provide at a minimum:

4 (1) General physical requirements for facilities and
5 equipment, including requirements for ventilation and lighting;

6 (2) Record keeping requirements;

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

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

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

14 (6) The use of protective eye wear provided by the tanning
15 facility and the proper storage and cleanliness of the eye wear;
16 and

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

20 **§16-45-5. Violations and penalties.**

21 (a) Any owner of a tanning facility who does not obtain a West
22 Virginia business registration certificate, who does not register
23 with the local board of health, or who fails to request an

1 inspection pursuant to section two of this article is guilty of a
2 misdemeanor and, upon conviction thereof, for a first offense,
3 shall be fined \$500.

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

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

NOTE: The purpose of this bill is to regulate tanning facilities and establish criminal penalties for violations.

Article §16-45-1 *et seq.* is new; therefore, strike-throughs and underscoring have been omitted.