

COMMITTEE SUBSTITUTE

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## **Senate Bill No. 73**

(By Senators Foster, Klempa and Stollings)

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[Originating in the Committee on the Judiciary;  
reported February 15, 2012.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-44-1, §16-44-2, §16-44-3, §16-44-4 and §16-44-5, all relating to regulating tanning facilities; defining terms; setting forth requirements for registration, inspection and obtaining a permit; setting forth the duties and responsibilities of local boards of health; 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 by adding thereto a new article, designated §16-44-1, §16-44-2, §16-44-3, §16-44-4 and §16-44-5, all to read as follows:

**ARTICLE 44. TANNING FACILITIES.**

**§16-44-1. Definitions.**

1       As used in this article:

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

7       (2) “Tanning device” means any equipment that emits  
8       radiation used for tanning of the skin, such as a sun lamp,  
9       tanning booth or tanning bed, and includes any accompany-  
10      ing equipment, such as protective eye wear, timers and  
11      handrails.

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

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

1       (a) On or after July 1, 2013, any tanning facility located  
2 in this state shall obtain a business registration certificate  
3 and shall register with the local board of health, request an  
4 inspection of the facility by the board and obtain an operat-  
5 ing permit from the board before engaging in the business of  
6 a tanning facility. A tanning facility in operation on the  
7 effective date of this article may continue to operate, but  
8 shall come into compliance with the provisions of section  
9 two of this article within six months of the effective date.

10       (b) Each local board of health shall conduct annual  
11 inspections of tanning facilities to determine compliance  
12 with this article.

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

18       (d) Upon a determination by the board that any tanning  
19 facility is not in compliance with the provisions of this

20 article, or the rules promulgated hereunder, the board may  
21 order the tanning facility to cease operations until such time  
22 as the board determines that the tanning facility is in  
23 compliance.

24 (e) Nothing in this article may be construed as prohibit-  
25 ing any health care provider licensed under chapter thirty of  
26 this code from performing any action within the scope of his  
27 or her practice that results in prescribing the use of a  
28 phototherapy device to a patient regardless of the patient's  
29 age for treatment of a medical condition.

**§16-44-3. Operation standards.**

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

12 copy of the consent form shall be maintained by the tanning  
13 facility and remains valid for one year from the date it was  
14 signed.

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

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

1 The Bureau for Public Health within the Department of  
2 Health and Human Resources shall propose rules for legisla-  
3 tive approval in accordance with the provisions of article  
4 three, chapter twenty-nine-a of this code to regulate tanning  
5 facilities. The rules shall provide at a minimum:

6 (1) General physical requirements for facilities and  
7 equipment, including requirements for ventilation and  
8 lighting;

9 (2) Record-keeping requirements;

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

12       (4) Proper sanitation of a tanning facility and a tanning  
13 device including a requirement that the tanning device be  
14 cleaned immediately prior to each use;

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

17       (6) The use of protective eyewear provided by the tanning  
18 facility and the proper storage and cleanliness of the  
19 eyewear;

20       (7) Require that patrons be limited to using the tanning  
21 device to the exposure limits set by the manufacturer of the  
22 tanning device; and

23       (8) Establish the permit application process and fee  
24 requirements.

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

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

7       (b) For a second offense, the person is guilty of a misde-  
8 meanor and, upon conviction thereof, shall be fined not less

9 than \$1,000 nor more than \$2,000, or be confined in a  
10 regional jail for not less than ten days nor more than one  
11 year, or both fined and confined.

12 (c) For a third or subsequent offense, the person is guilty  
13 of a misdemeanor and, upon conviction thereof, the owner  
14 may have all the tanning device equipment and parapherna-  
15 lia confiscated, shall be fined not less than \$2,000 nor more  
16 than \$5,000, or be confined in a regional jail not less than  
17 thirty days nor more than one year, or both fined and  
18 confined.