

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 464**

5 (BY SENATORS STOLLINGS, BEACH, WELLS, KESSLER (MR. PRESIDENT), YOST AND  
6 UNGER, *original sponsors*)

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9 [Passed April 13, 2013; in effect ninety days from passage.]  
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13 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
14 adding thereto a new article, designated §16-45-1, §16-45-2,  
15 §16-45-3, §16-45-4, §16-45-5 and §16-45-6, all relating  
16 generally to regulation of tanning facilities; defining terms;  
17 setting forth requirements for registration, inspection and  
18 obtaining a permit; requiring a consent form; setting forth  
19 consent form language; creating operating standards;  
20 prohibiting the use of tanning devices by anyone under the age  
21 of eighteen; granting rule-making authority to the Department  
22 of Health and Human Resources to regulate tanning facilities;  
23 setting forth minimum requirements for the rule; allowing  
24 fees; and establishing criminal penalties.

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

2       That the Code of West Virginia, 1931, as amended, be amended  
3 by adding thereto a new article, designated §16-45-1, §16-45-2,  
4 §16-45-3, §16-45-4 and §16-45-5, all to read as follows:

5 **ARTICLE 45. TANNING FACILITIES.**

6 **§16-45-1. Definitions.**

7       As used in this article:

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

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

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

20 **§16-45-2. Exception for health care providers.**

21       Nothing in this article may be construed as prohibiting any  
22 health care provider licensed under chapter thirty of this code  
23 from performing any action within the scope of his or her practice  
24 that results in prescribing the use of a photo therapy device to a

1 patient regardless of the patient's age for treatment of a medical  
2 condition.

3 **§16-45-3. Operation standards.**

4 (a) A tanning facility shall provide to any patron who wishes  
5 to use a tanning device located within its tanning facility a  
6 disclosure and consent form relating to use of a tanning device  
7 that contains the current United States Food and Drug  
8 Administration warning as follows: "Danger. Ultraviolet Radiation.  
9 Follow instructions. Avoid overexposure. As with natural sunlight,  
10 overexposure can cause eye and skin injury and allergic reactions.  
11 REPEATED EXPOSURE MAY CAUSE PREMATURE AGING OF THE SKIN AND SKIN  
12 CANCER. WEAR PROTECTIVE EYEWEAR; FAILURE TO DO SO MAY RESULT IN  
13 SEVERE BURNS OR LONG-TERM INJURY TO THE EYES. Medications or  
14 cosmetics may increase your sensitivity to the ultraviolet  
15 radiation. Consult physician before using tanning device if you  
16 are using medications or have a history of skin problems or believe  
17 yourself especially sensitive to sunlight. If you do not tan in  
18 the sun, you are unlikely to tan from use of this product."

19 The disclosure and consent form must have a place for the  
20 patron's signature and the date. A signed and dated copy of the  
21 disclosure and consent form shall be maintained by the tanning  
22 facility and remains valid for one year from the date it was  
23 signed.

24 (b) All patrons are required to present proof of age prior to

1 use of a tanning device. Proof of age shall be satisfied with a  
2 driver's license or other government-issued identification  
3 containing the date of birth and a photograph of the individual.  
4 Persons under the age of eighteen may not be permitted to use a  
5 tanning device without the prior written consent of the person's  
6 parent or legal guardian. Photographic identification of the  
7 parent or legal guardian is required. A copy of the signed  
8 parental or legal guardian consent shall be maintained by the  
9 tanning facility and remains valid for one year from the date it  
10 was signed. Persons under the age of fourteen may not be permitted  
11 to use a tanning device.

12 **§16-45-4. Local health department authority to inspect.**

13 Local health departments shall have the authority to enter and  
14 inspect a tanning facility to determine compliance with the  
15 requirements of this article.

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

17 (a) Any owner of a tanning facility who fails to obtain  
18 parental consent for a minor under the age of eighteen or otherwise  
19 violates the requirements of this article is guilty of a  
20 misdemeanor and, upon conviction thereof, for a first offense,  
21 shall be fined \$100.

22 (b) For a second offense, the owner is guilty of a misdemeanor  
23 and, upon conviction thereof, shall be fined not less than \$250 nor  
24 more than \$500.

1           (c) For a third offense or subsequent offense, the owner is  
2 guilty of a misdemeanor and, upon conviction thereof, shall be  
3 fined not less than \$500 nor more than \$1,000.