

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 464**

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

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8 [Originating in the Committee on Health and Human Resources;  
9 reported March 13, 2013.]

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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 §16-45-1, §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, §16-45-5 and §16-45-6, 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. Registration requirements; inspections by local boards**  
21 **of health; posting of permit power of local board of**  
22 **health to order facility to close.**

23       (a) On or after July 1, 2014, any tanning facility located in  
24 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.**

24 (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 may not be permitted to use a  
18 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 eye wear provided by the tanning  
13 facility and the proper storage and cleanliness of the eye wear;  
14 and

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

18 **§16-45-5. Fees.**

19 Local health departments may charge fees to a tanning facility  
20 in accordance with their existing fee schedule.

21 **§16-45-6. Violations and penalties.**

22 (a) Any owner of a tanning facility who does not obtain a West  
23 Virginia business registration certificate, who does not register  
24 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, upon conviction thereof, shall be fined not less than \$1,000  
6 nor more than \$2,000 or be confined in the regional jail for not  
7 less than ten days nor more than one year, or both fined and  
8 confined.

9 (c) For a third offense the owner is guilty of a misdemeanor  
10 and, upon conviction thereof, shall be fined not less than \$2,000  
11 nor more than \$5,000 or be confined in the regional jail not less  
12 than thirty days nor more than one year, or both fined and  
13 confined.

14 (d) For a third or subsequent offense, the local health  
15 department may also suspend or revoke the owner's business  
16 registration certificate to operate a tanning facility.

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(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.)