

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 464

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

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

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, §16-45-5 and §16-45-6, 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; allowing fees;
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 §16-45-1, §16-45-2,
§16-45-3, §16-45-4, §16-45-5 and §16-45-6, all to read as follows:

ARTICLE 45. TANNING FACILITIES.

§16-45-1. Definitions.

1 As used in this article:

2 (1) "Photo therapy device" means a device used 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
10 accompanying equipment, such as protective eye wear,
11 timers and 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.

**§16-45-2. 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, 2014, any tanning facility located
2 in this state shall obtain a business registration certificate and
3 shall register with the local board of health, request an
4 inspection of the facility and obtain an operating permit
5 before engaging in the business of a tanning facility.

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

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

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

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

§16-45-3. 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 that
4 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
9 over-the-counter medication should consult a physician
10 before using a tanning device.” The consent form must have
11 a place for the patron’s signature and the date. A signed and
12 dated copy of the consent form shall be maintained by the
13 tanning facility and remains valid for one year from the date
14 it was 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
17 with a driver’s license or other government-issued
18 identification containing the date of birth and a photograph
19 of the individual. Persons under the age of eighteen may not
20 be permitted to use a tanning device.

**§16-45-4. 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
3 legislative approval in accordance with the provisions of

4 article three, chapter twenty-nine-a of this code to regulate
5 tanning 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 eye wear provided by the
18 tanning facility and the proper storage and cleanliness of the
19 eye wear; and

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.

§16-45-5. Fees.

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

§16-45-6. Violations and penalties.

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

7 (b) For a second offense, the owner is guilty of a
8 misdemeanor and, upon conviction thereof, shall be fined not
9 less than \$1,000 nor more than \$2,000 or be confined in the
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 offense the owner is guilty of a
13 misdemeanor and, upon conviction thereof, shall be fined not
14 less than \$2,000 nor more than \$5,000 or be confined in the
15 regional jail not less than thirty days nor more than one year,
16 or both fined and confined.

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

(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.)