

No. 2014-41

AN ACT

HB 1259

Providing for the regulation of indoor tanning facilities; establishing the Indoor Tanning Regulation Fund; and providing for penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Indoor Tanning Regulation Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Customer." A member of the public who is provided access to a tanning facility in exchange for a fee or other compensation or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access.

"Department." The Department of Health of the Commonwealth.

"Fitzpatrick scale." A scale for classifying a skin type, based on the skin's reaction to the first ten to 45 minutes of sun exposure after the winter season as follows:

Skin Type	Sunburning and Tanning History
1	Always burns easily, never tans
2	Always burns easily, tans minimally
3	Burns moderately, tans gradually
4	Burns minimally, always tans well
5	Rarely burns, tans profusely
6	Never burns, deeply pigmented

"Legal entity." An individual, corporation, partnership, proprietorship or association.

"Operator." An individual designated by the legal entity to control operation of the tanning facility and who has been trained on the requirements of this act to instruct and assist the customer in the proper operation of the tanning equipment.

"Tanning bed" or "tanning booth." A structure lined with sunlamps in which one stands or reclines in order to tan the skin.

"Tanning equipment or device." Equipment that emits radiation used for tanning of the skin, such as a sunlamp, tanning booth or tanning bed that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers. The term includes any accompanying equipment, such as protective eyewear, timers and handrails. The term does not include any of the following:

- (1) Phototherapy devices providing therapeutic benefits to patients receiving medically supervised treatment prescribed by and under the

direct supervision of a licensed health care provider who is trained in the use of phototherapy devices.

(2) Devices used for personal use in a private residence.

(3) Devices intended for purposes other than the irradiation of human skin.

(4) Devices used to apply chemicals to the skin to achieve a bronze color, commonly referred to as spray-on, mist-on or sunless tans.

"Tanning facility." Any place where a tanning device is used for a fee, membership dues or any other compensation.

"Ultraviolet radiation." Electromagnetic radiation with wavelengths between 200 and 400 nanometers.

Section 3. Certificate of registration and fees.

(a) Requirement.—No legal entity shall establish, maintain, operate or hold itself out as authorized to establish, maintain or operate a tanning facility without first having obtained a certificate of registration issued by the department.

(b) Application.—A legal entity shall apply for a certificate of registration for each tanning facility as required under subsection (a) by submitting an application to the department on a form prescribed by the department. The form shall require all of the following information:

(1) The name, address and telephone number of the tanning facility and legal entity.

(2) A signed and dated certification that the legal entity has read and understands the requirements of this act.

(3) A copy of the operating and safety procedures of the tanning facility.

(4) Any additional information required by the department.

(c) Determination.—The department shall issue a certificate of registration to a legal entity upon determination that the legal entity meets all of the requirements of this act.

(d) Fee.—A legal entity submitting an application for a certificate of registration shall be required to pay an annual registration fee in accordance with the following:

(1) One hundred fifty dollars annually per tanning facility that operates two beds or less.

(2) Three hundred dollars annually per tanning facility that operates more than two beds and \$20 per additional bed operated over ten beds.

(3) The department may increase the registration fees under this subsection by regulation to ensure implementation of this act.

(e) Posting.—A legal entity shall post its certificate of registration in a location in each tanning facility that is clearly visible to customers.

(f) Term.—A certificate of registration shall be issued for a period of time not to exceed 12 months following the date of issuance and shall be renewable for each additional year thereafter.

(g) Renewal.—A legal entity shall submit an application for renewal of a certificate of registration for each tanning facility on a form prescribed by the department prior to expiration of its current certificate of registration.

(h) Nontransferability.—A certificate of registration shall not be transferable from one legal entity or one tanning facility to another.

Section 4. Inspection.

(a) Access.—The department shall have access at reasonable times to any tanning facility, including the records of the tanning facility, to inspect and determine whether the tanning facility is in compliance with this act.

(b) Certificate of registration.—A tanning facility that holds a certificate of registration is subject to inspections on an announced or unannounced basis for purposes of a random sample, at the request of an operator, a legal entity or in response to a complaint.

(c) Scope.—Inspections conducted by the department under this section shall encompass all of the following:

- (1) The operation of the tanning facility.
- (2) Review of required records and training documentation.
- (3) Operator understanding and competency.
- (4) Adherence to other requirements of this act.

Section 5. Warning signs and statements.

(a) Warning signs and statements describing hazards.—The legal entity shall ensure each tanning facility posts a warning sign in a place readily visible to persons entering the establishment. The sign shall have dimensions not less than 11 inches by 17 inches. Lettering must be clear, legible and at least 0.25 inch high, with all of the following provisions on the sign:

(1) The wording, "DANGER—ULTRAVIOLET RADIATION," in letters at least 0.5 inch high.

(2) Follow the manufacturer's instructions for use of this device.

(3) Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin and skin cancer.

(4) Customers should avoid sunbathing before or after exposure to ultraviolet radiation from sunlamps.

(5) Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

(6) Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems or believe you are especially sensitive to sunlight. Women who are pregnant or are taking oral contraceptives who use this product may develop discolored skin.

(7) Contact the Department of Health to report an alleged health concern or injury regarding this tanning facility.

(8) The wording, "IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN ULTRAVIOLET LAMP OR SUNLAMP."

(b) Written warning statement.—Each customer shall be provided with a written warning statement requiring a signature prior to initial exposure. The warning statement shall include all of the following:

(1) Failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes.

(2) Overexposure to ultraviolet light causes burns.

(3) Repeated exposure may result in premature aging of the skin and skin cancer.

(4) Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain:

- (i) foods;
- (ii) cosmetics; or
- (iii) medications, including:
 - (A) tranquilizers;
 - (B) diuretics;
 - (C) antibiotics;
 - (D) high blood pressure medicines; or
 - (E) birth control pills.

(5) Any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device.

(6) A person with skin that always burns easily and never tans should avoid a tanning device.

(7) A person with a family or past medical history of skin cancer should avoid a tanning device.

(c) Liability.—The warning statement provided under subsection (b) shall not affect the liability of the legal entity or operator of a tanning facility in the event that a customer fails to follow the warning statement and incurs damages.

Section 6. Tanning devices.

(a) Federal certification.—Only tanning devices manufactured and certified under 21 CFR 1040.20 (relating to sunlamp products and ultraviolet lamps intended for use in sunlamp products) may be used in tanning facilities.

(b) Condition.—All tanning devices shall do all of the following:

(1) Meet the National Fire Protection Association's National Electrical Code and any other State or local electrical codes.

(2) Have physical barriers to protect customers from injury due to touching or breaking lamps.

(3) Be maintained in good repair.

(c) Stand-up booths.—Stand-up booths shall meet all of the following conditions:

(1) Have physical barriers or other means to indicate proper exposure distance.

(2) Be constructed rigidly enough to withstand stress of use and impact of a falling person.

(3) Contain a rigid access, outwardly opening doors, handrails and nonslip floors.

(d) Protective eyewear.—The legal entity shall provide protective eyewear to each tanning facility. Operators shall provide customers of the tanning facility with protective eyewear in order to use a tanning device. When a tanning device is in use, no other person shall be allowed to remain in the area unless the person has access to protective eyewear. Protective eyewear shall do all of the following:

(1) Be provided free of charge. Customers may also be given the option to use their own eyewear.

(2) Meet the requirements of 21 CFR 1040.20.

(3) Be properly sanitized before each use. Ultraviolet rays shall not be considered a sanitizing agent.

Section 7. Operation.

(a) Skin type.—The legal entity shall ensure the operator is able to recognize the skin type of the customer based on the Fitzpatrick scale and advise the customer accordingly in regard to maximum time of exposure.

(b) Customer records.—The legal entity shall ensure a record is kept of each customer's total number of tanning visits, date, time and duration of each.

(c) Records.—All records or documentation required by this act shall be maintained in the tanning facility for a minimum of three years. Records on computer must be backed up on storage media other than the hard drive at least monthly and must be retrievable as a printed copy. Records shall be accessible by the department during an inspection.

(d) Duration and frequency.—Operators shall limit a customer's session duration and frequency to maximums recommended by the manufacturer.

Section 8. Limitations.

(a) Prohibition.—No person who is 16 years of age or younger shall be permitted to use a tanning facility.

(b) Written authorization required.—No person who is 17 years of age shall be permitted to use a tanning facility without the written authorization of the person's parent or legal guardian which indicates that the parent or legal guardian consents to the use of a tanning facility by the person.

Section 9. Training.

(a) Operator.—A legal entity with a certificate of registration to operate a tanning facility shall have an operator present in accordance with subsection (b) who is sufficiently knowledgeable in the operation of the tanning devices, including:

(1) Knowledge of the requirements of this section and of 21 CFR 1040.20 (relating to sunlamp products and ultraviolet lamps intended for use in sunlamp products).

(2) Proper use of the United States Food and Drug Administration's recommended exposure schedule.

(3) Procedures for correct operation of the tanning facility.

(4) Recognition of injuries and the tanning facility's procedures of handling the injuries from overexposure to ultraviolet radiation.

(5) Manufacturer's procedures for operation and maintenance of the tanning device.

(6) Use of protective eyewear.

(7) Emergency procedures in case of injury.

(8) Effects of ultraviolet radiation, acute and chronic exposure and health risks.

(9) Photosensitizing agents.

(10) The six different skin types.

(b) Presence.—A legal entity shall have an operator present at each tanning facility during all operating hours while tanning equipment is in operation and the operator shall inform and assist each customer in the operation and use of the tanning device. No customer may use the tanning equipment in the absence of an operator.

(c) Compliance.—A legal entity shall comply with this section by having a signed affidavit or attestation on file.

Section 10. Sanctions.

(a) Denial, suspension, penalties or revocation.—

(1) A certificate of registration shall be denied to a legal entity who has not met the requirements of section 3.

(2) The department may suspend or revoke a certificate of registration from a legal entity for:

(i) the submission of false statements in the application, reports, plans or specifications;

(ii) failure to allow the department to enter the tanning facility at reasonable hours for inspection or investigation;

(iii) a violation of this act that creates an immediate threat to the health and safety of the public; and

(iv) failure to comply with conditions of the written notice under subsection (b)(2).

(b) Enforcement.—

(1) The department may take the following steps in writing or use any other acts and regulations to enforce the provisions of this act:

(i) Cite each section of the act violated.

(ii) Specify the manner in which the legal entity or operator failed to comply with this act.

(iii) Require a corrective action plan, including a reasonable time schedule for completion. The department shall review the corrective action plan and approve or require modification of the plan.

(2) If a legal entity or operator fails to comply with conditions of the written notice provided under paragraph (1), the department shall notify the legal entity, by certified mail, that unless action is taken within five days of receipt of the written notice, the tanning facility's certificate of registration shall be suspended or revoked.

Section 11. Fund established; disposition of fees, fines and penalties.

(a) Fund established.—There is hereby established a restricted account within the General Fund known as the Indoor Tanning Regulation Fund.

(b) Disposition of moneys.—All fees and fines imposed in accordance with this act shall be paid into the Indoor Tanning Regulation Fund and are hereby appropriated to the department for use in the performance of its duties under this act.

Section 12. Duties of department.

The department shall administer the provisions of this act and promulgate and adopt such regulations as may be necessary to implement this act.

Section 13. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 14. Effective date.

This act shall take effect as follows:

- (1) Section 4 shall take effect in 730 days.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 6th day of May, A.D. 2014

TOM CORBETT