

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

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HOUSE BILL NO. 1128

Introduced by: Representatives Van Etten, Ahlers, Boomgarden, Elliott, Jerke, Kirkeby, Lucas, Miles, Noem, Nygaard, Peters, Rave, Steele, and Wick and Senators Hoerth, Hanson (Gary), Hundstad, Jerstad, Katus, Maher, Sutton, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to provide for the regulation of tanning devices.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Department," the Department of Health;

5 (2) "Phototherapy device," equipment that emits ultraviolet radiation and is used in
6 treating disease;

7 (3) "Tanning device," equipment that emits electromagnetic radiation having
8 wavelengths in the air between two hundred and four hundred nanometers and that
9 is used for the tanning of human skin and any equipment used with that equipment,
10 including protective eyewear, timers, and handrails. However, the term, tanning
11 device, does not include a phototherapy device used by a physician;

12 (4) "Tanning facility," a place or business that provides persons access to a tanning
13 device.

14 Section 2. No person may operate a tanning facility without a permit. The holder of a permit



1 shall display the permit in a conspicuous place at the tanning facility for which the permit is
2 issued. A violation of this section is a Class 2 misdemeanor.

3 Section 3. A permit issued under this Act expires annually on June thirtieth. An applicant
4 for a permit shall submit an application for a permit to the department, on a form provided by
5 the department, with a permit fee not to exceed one hundred dollars established by the
6 department in rules adopted pursuant to chapter 1-26. The application shall include the name
7 and complete mailing address and street address of the tanning facility and any other
8 information reasonably required by the department for the administration of this section.

9 The permit fee shall be based on the cost of conducting routine and complaint inspections
10 and enforcement actions and the cost of preparing and sending license renewals. Any fee
11 collected pursuant to this section shall be deposited with the state treasurer. The state treasurer
12 shall credit the money to the tanning device regulation fund, which fund is hereby created. Any
13 expenditure from the fund shall be made only by appropriation by the Legislature through the
14 General Appropriation Act or a special appropriation bill. The secretary of health shall approve
15 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

16 Section 4. The department shall accept city or county enforcement of the provisions of this
17 Act if the department determines the city or county requirements meet or exceed the
18 requirements of this Act and any rules adopted pursuant to this Act.

19 Section 5. No tanning facility may state in any advertising that the tanning facility holds a
20 permit issued by the department to operate a tanning facility.

21 Section 6. Each tanning facility shall give to each of its customers written notice of all of
22 the following:

- 23 (1) Failure to wear the eye protection provided by the tanning facility may damage the
24 customer's eyes and cause cataracts;

- 1 (2) Overexposure to a tanning device causes burns;
- 2 (3) Repeated exposure to a tanning device may cause premature aging of the skin and
- 3 skin cancer;
- 4 (4) Abnormal skin sensitivity or burning of the skin while using a tanning device may
- 5 be caused by the following:
- 6 (a) Certain foods;
- 7 (b) Certain cosmetics;
- 8 (c) Certain medications, including tranquilizers, diuretics, antibiotics, high blood
- 9 pressure medicines, and birth control pills; and
- 10 (d) Certain diseases;
- 11 (5) Any person who takes a drug should consult a physician before using a tanning
- 12 device.

13 Section 7. Each tanning facility shall prominently display a sign in each area where a tanning
14 device is used. The warning sign shall convey the following directions and information:

- 15 (1) Follow instructions;
- 16 (2) Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a
- 17 tanning device can cause eye and skin injury and allergic reactions. Repeated
- 18 exposure can cause chronic sun damage, which is characterized by wrinkling,
- 19 dryness, fragility and bruising of the skin, and skin cancer;
- 20 (3) Wear food and drug administration-approved protective eyewear;
- 21 (4) Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do
- 22 not sunbathe during the twenty-four hours immediately preceding or immediately
- 23 following the use of a tanning device;
- 24 (5) Medications and cosmetics may increase your sensitivity to ultraviolet radiation.

1 Consult a physician before using a tanning device if you are using medications, have
2 a history of skin problems, or believe that you are especially sensitive to sunlight.
3 Women who are pregnant or using birth control pills and who use a tanning device
4 may develop discolored skin;

5 (6) If your skin does not tan when exposed to the sun it is unlikely that your skin will tan
6 when exposed to this tanning device.

7 Section 8. A tanning facility's compliance with the requirements of sections 6 and 7 of this
8 Act does not relieve the owner or any employee of the tanning facility from liability for injury
9 sustained by a customer from the use of a tanning device.

10 Section 9. Each tanning facility shall post a sign in each area where a tanning device is used
11 stating the date on which each fluorescent tube in that tanning device was last replaced. The
12 tanning facility shall maintain a record of the date on which each fluorescent tube is replaced.

13 Section 10. No owner or employee of a tanning facility may claim, or distribute materials
14 that claim, that using a tanning device is free of risk.

15 Section 11. The owner of a tanning facility shall ensure that all of the following
16 requirements are fulfilled:

17 (1) A customer under eighteen years of age may not be permitted to use the tanning
18 facility until the customer provides the facility with written consent, in a form
19 prescribed by the department, of a parent or legal guardian, to use the tanning facility.
20 The consent shall indicate that the parent or legal guardian has read the warnings
21 required by this Act and that the customer agrees to wear food and drug
22 administration-approved protective eyewear. The parent or legal guardian shall
23 provide a notarized statement of consent or sign the consent form in the presence of
24 the owner of the tanning facility or an employee responsible for the operation of the

1 tanning device of the facility. The written consent form expires twelve months from
2 the date signed. A customer under the age of fourteen years may not utilize a tanning
3 device at a tanning facility without a written order from a physician licensed in this
4 state and without being accompanied by a parent or legal guardian for every use of
5 the tanning facility;

6 (2) During operating hours there is present at the tanning facility a trained operator who
7 is able to inform customers about, and assist customers in, the proper use of tanning
8 devices;

9 (3) Each tanning bed is properly sanitized after each use;

10 (4) Properly sanitized and securely fitting food and drug administration-approved
11 protective eyewear that protects the wearer's eyes from ultraviolet radiation and
12 allows enough vision to maintain balance is made available to the customer;

13 (5) A customer is not allowed to use a tanning device unless the customer agrees to use
14 food and drug administration-approved protective eyewear;

15 (6) Each customer is shown how to use such physical aids as handrails and markings on
16 the floor to determine the proper distance from the tanning device;

17 (7) A timing device that is accurate within ten percent is used;

18 (8) Each tanning device is equipped with a mechanism that allows the customer to turn
19 the tanning device off;

20 (9) Each customer is limited to the maximum exposure time recommended by the
21 manufacturer;

22 (10) Customers are not allowed to use a tanning device more than once every forty-eight
23 hours;

24 (11) The interior temperature of the tanning facility does not exceed one hundred degrees

1 Fahrenheit; and

2 (12) The statements provided pursuant to subdivision (1) of section 12 of this Act are
3 retained for three years or until the customer signs a new statement.

4 A violation of this section is a Class 2 misdemeanor.

5 Section 12. A user of a tanning facility shall do all of the following:

6 (1) Immediately before the customer's first use of a tanning facility in a year, sign a
7 statement acknowledging that he or she has read and understands the notice required
8 pursuant to section 6 of this Act and the sign required pursuant to section 7 of this
9 Act and specifying that the customer agrees to use food and drug administration-
10 approved protective eyewear;

11 (2) Use food and drug administration-approved protective eyewear at all times while
12 using a tanning device.

13 Section 13. If any person requires medical attention due to the use of a tanning facility, the
14 owner of that tanning facility shall report that injury to the department in writing and send a
15 copy of that report to the injured person. The owner of the tanning facility shall retain a copy
16 of the report for three years.

17 Section 14. If a health care provider treats a patient for a sunburn injury and determines, in
18 the exercise of professional judgment, that the injury occurred as a result of using a tanning
19 device at a tanning facility, the health care provider shall report the circumstances of the injury
20 to the department. A health care provider making or not making a report in good faith pursuant
21 to this section is immune from liability for making or not making a report.

22 Section 15. The department may, in accordance with chapter 1-26, deny issuance of a permit
23 to an applicant or suspend or revoke any permit issued under this Act if the applicant or permit
24 holder, or an employee of the applicant or permit holder, violates this Act or any rule adopted

1 pursuant to this Act.

2 Section 16. The department may promulgate rules pursuant to chapter 1-26 to establish

3 procedures for the application for, and denial, suspension, or revocation of, a permit.