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SECOND SUBSTITUTE HOUSE BILL 1363

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State of Washington

62nd Legislature

2011 Regular Session

**By** House Health & Human Services Appropriations & Oversight  
(originally sponsored by Representatives Darneille, Kirby, Dickerson,  
Orwall, Green, Jinkins, Billig, Eddy, Appleton, Dunshee, Roberts, and  
Kenney)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to the regulation of tanning facilities; adding a  
2 new chapter to Title 18 RCW; prescribing penalties; and providing an  
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Department" means the department of health.

8 (2) "Fitzpatrick scale" means a scale for classifying skin type,  
9 based on the skin's reaction to the first ten to forty-five minutes of  
10 sun exposure after the winter season as follows:

11 (a) Skin type 1: Always burns easily, never tans;

12 (b) Skin type 2: Always burns easily, tans minimally;

13 (c) Skin type 3: Burns moderately, tans gradually;

14 (d) Skin type 4: Burns minimally, always tans well;

15 (e) Skin type 5: Rarely burns, tans profusely;

16 (f) Skin type 6: Never burns, deeply pigmented.

17 (3) "Licensee" means a person licensed under this chapter.

18 (4) "Operator" means an individual designated by a licensee to

1 control the operation of a tanning facility and to instruct and assist  
2 the customer in the proper operation of tanning equipment or devices.

3 (5) "Person" means any individual, partnership, corporation, joint  
4 stock association, joint venture, or any other entity authorized to do  
5 business in this state.

6 (6) "Tanning device" or "tanning equipment" means equipment that  
7 emits radiation with wavelengths in the air between two hundred and  
8 four hundred nanometers used for tanning of the skin. "Tanning device"  
9 or "tanning equipment" includes any accompanying equipment, such as  
10 protective eyewear, timers, and handrails. "Tanning device" or  
11 "tanning equipment" does not include any of the following:

12 (a) Devices exempt under section 10 of this act;

13 (b) Devices for personal use in a private residence; or

14 (c) Devices intended for purposes other than the irradiation of  
15 human skin.

16 (7) "Tanning facility" means any place where a tanning device is  
17 used for a fee, membership dues, or any other compensation.

18 (8) "Ultraviolet radiation" means electromagnetic radiation with  
19 wavelengths between two hundred and four hundred nanometers.

20 NEW SECTION. **Sec. 2.** (1) No person may establish, maintain,  
21 operate, or hold himself or herself out as being authorized to  
22 establish, maintain, or operate a tanning facility without first having  
23 obtained a license under this chapter.

24 (2) A person seeking licensure under this chapter shall submit an  
25 application to the department on a form prescribed by the department.  
26 The application must contain the following information:

27 (a) The name, address, and telephone number of the tanning facility  
28 and owner;

29 (b) The manufacturer, model number, and type of each ultraviolet  
30 lamp or tanning device used in the tanning facility;

31 (c) A signed and dated certification that the applicant has read  
32 and understands the requirements of this chapter;

33 (d) A copy of the operating and safety procedures of the tanning  
34 facility; and

35 (e) Any additional information required by the department.

36 (3) The department shall issue a license to an applicant upon

1 determination that the applicant meets the requirements of this  
2 chapter.

3 (4) Each applicant shall pay a fee in an amount set by the  
4 department by rule. In no case may the fee exceed the amount necessary  
5 to defray the costs of administering this chapter.

6 (5) A licensee shall post its license in a location clearly visible  
7 to its customers.

8 (6) A license shall expire annually on the date specified on the  
9 license. The department shall establish the administrative procedures,  
10 administrative requirements, and fees for license renewals. In no case  
11 may the renewal fees exceed the amounts specified in subsection (4) of  
12 this section.

13 (7) Licenses issued under this chapter are not transferable from  
14 one person or one tanning facility to another.

15 NEW SECTION. **Sec. 3.** (1) The department may deny, suspend, or  
16 revoke a license for any of the following reasons:

17 (a) Submission of false statements in applications, reports, plans,  
18 or specifications;

19 (b) Operation of a tanning facility in a manner that threatens  
20 public health or safety;

21 (c) Failure to allow the department to have access to the tanning  
22 facility at reasonable hours for inspection or investigation;

23 (d) Failure to pay fees for licensure or renewal; and

24 (e) Any other violations of this chapter.

25 (2) Except for cases involving the public health, safety, or  
26 welfare, the department shall, prior to taking action to suspend or  
27 revoke the licensee's license, provide written notice to the licensee  
28 of the facts or conduct that may warrant suspension or revocation and  
29 shall provide the licensee with an opportunity to demonstrate or  
30 achieve compliance. In cases involving the public health, safety, or  
31 welfare, the department shall take immediate action to revoke or  
32 suspend the licensee's license.

33 (3) The denial, suspension, or revocation of a license under this  
34 section is governed by RCW 43.70.115.

35 (4) In addition to the denial, suspension, or revocation of a  
36 license, the department may, pursuant to chapter 34.05 RCW:

1 (a) Assess civil penalties not to exceed five thousand dollars per  
2 violation; or

3 (b) Require a corrective action plan, subject to approval or  
4 modification by the department, including a reasonable time schedule  
5 for completion.

6 NEW SECTION. **Sec. 4.** (1) A tanning facility shall allow the  
7 department to have access to the facility at reasonable times for  
8 purposes of inspection and accessing records required under this  
9 chapter.

10 (2) When conducting an inspection under this section, the  
11 department may examine and review all of the following:

- 12 (a) The construction and operation of the tanning facility;
- 13 (b) Any required records and training documentation;
- 14 (c) Operator understanding and competency; and
- 15 (d) Any other areas pertaining to the requirements of this chapter  
16 as the department deems appropriate.

17 NEW SECTION. **Sec. 5.** An operator or employee of a tanning  
18 facility may not allow a person under the age of eighteen to use a  
19 tanning device of the facility unless the person presents a written  
20 prescription for receiving ultraviolet radiation treatments from a  
21 physician licensed under chapter 18.57 or 18.71 RCW.

22 NEW SECTION. **Sec. 6.** A tanning facility shall provide a written  
23 report to the department of any tanning injury for which medical  
24 attention was either sought or obtained. The facility shall submit the  
25 report within five days after either the date the injury occurred or  
26 the date the tanning facility became aware of the injury. The report  
27 must include the name of the affected customer, the name and location  
28 of the tanning facility, the nature of the injury, the name and address  
29 of the health care provider, if applicable, and any other relevant  
30 information. The department shall send reports of all injuries to the  
31 United States food and drug administration.

32 NEW SECTION. **Sec. 7.** (1) All tanning equipment in a tanning  
33 facility must have a control that enables the user to manually

1 terminate radiation without pulling the electrical plug or coming in  
2 contact with the ultraviolet lamp.

3 (2) A tanning facility shall cleanse contact surfaces of tanning  
4 equipment between uses. After each cleansing, a visible sign must be  
5 placed on the bed or booth indicating that it has been properly  
6 cleansed. The facility shall also properly sanitize bathrooms and  
7 dressing rooms and shall provide customers with clean towels and  
8 washcloths. The department shall adopt rules related to the sanitation  
9 standards to be met in each tanning facility.

10 NEW SECTION. **Sec. 8.** (1)(a) Except as provided in subsection (2)  
11 of this section, a trained operator must be present when tanning  
12 equipment is operated in a tanning facility. The operator must be  
13 within hearing distance of the equipment to allow the customer to  
14 easily summon help if necessary or the customer must have access to an  
15 intercom or buzzer for the operator and the operator must be able to  
16 reach the customer in thirty seconds or less.

17 (b) An operator shall instruct each customer in all of the  
18 following:

- 19 (i) The proper position to maintain relative to the equipment;  
20 (ii) The position of the safety railing, if applicable;  
21 (iii) The operation of the control to manually terminate radiation;  
22 (iv) The maximum time of exposure.

23 (c) An operator must be able to recognize the skin type of the  
24 customer based on the Fitzpatrick scale and advise the customer  
25 accordingly with regard to maximum time of exposure.

26 (d) An operator shall limit a customer's tanning session duration  
27 and frequency to the maximums recommended by the manufacturer.

28 (e) Beginning July 1, 2013, all operators must successfully  
29 complete a department-approved training course.

30 (2) Tanning equipment may be operated without a trained operator  
31 being present only if:

32 (a) The tanning equipment is remotely monitored by the tanning  
33 facility during the period of time the operator is not present;

34 (b) Customers are provided with personal security devices capable  
35 of summoning first responders in case of an emergency; and

36 (c) Each customer using the tanning equipment without a tanning

1 operator being present has had at least one prior tanning session with  
2 an operator present in which the customer received the instruction  
3 required in subsection (1)(b) of this section.

4 NEW SECTION. **Sec. 9.** A tanning facility may not advertise or  
5 distribute promotional materials that claim that using a tanning device  
6 is safe or free from risk or that the use of a tanning device will  
7 result in medical or health benefits.

8 NEW SECTION. **Sec. 10.** Phototherapy or ultraviolet radiation  
9 devices providing therapeutic benefits to patients receiving medically  
10 supervised treatment for medical conditions from a health care  
11 professional regulated under chapter 18.130 RCW acting within the scope  
12 of his or her profession are exempt from the provisions of this  
13 chapter.

14 NEW SECTION. **Sec. 11.** In addition to the civil penalties for  
15 violating this chapter in section 2 of this act, a person who operates  
16 or uses a tanning device in violation of this chapter is guilty of a  
17 misdemeanor.

18 NEW SECTION. **Sec. 12.** By July 1, 2012, the department may by rule  
19 modify, as necessary, the prescribed form and content for the tanning  
20 facility records required by this chapter.

21 NEW SECTION. **Sec. 13.** By July 1, 2012, the department shall adopt  
22 rules necessary to implement this chapter.

23 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act  
24 constitute a new chapter in Title 18 RCW.

25 NEW SECTION. **Sec. 15.** Sections 1 through 11 of this act take  
26 effect July 1, 2012.

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