CHAPTER 23-39
TANNING FACILITIES

23-39-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of health and human services.
2. "Phototherapy device" means equipment that emits ultraviolet radiation and is used in treating disease.
3. "Tanning device" means equipment that emits electromagnetic radiation having wavelengths in the air between two hundred and four hundred nanometers and which is used for tanning of human skin and any equipment used with that equipment, including food and drug administration-approved protective eyewear, timers, and handrails. The term does not include a phototherapy device used by a physician.
4. "Tanning facility" means a place or business that provides individuals access to a tanning device.

23-39-02. Permit - Fee.

1. A person may not operate a tanning facility without a permit issued by the department under this chapter. The holder of a permit shall display the permit in a conspicuous place at the tanning facility for which the permit is issued. Permits issued under this chapter expire annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the tanning facility and any other information reasonably required by the department for the administration of this section.
2. The permit fee established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and the cost of preparing and sending license renewals. Any fee collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the permit fee for any tanning facility that is subject to local jurisdiction.
3. The department shall accept city or county enforcement of this chapter if the department determines the city or county requirements meet or exceed the requirements of this chapter and any rules adopted under this chapter.

23-39-02.1. License fees.

The fees established by the department must be based on the cost of conducting routine and complaint inspections, enforcement actions, and preparing and sending license renewals. License fees collected pursuant to this chapter must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the license fee for any tanning facility that is subject to local jurisdiction.

The department shall accept city or county enforcement of this chapter if the department determines the city or county requirements meet or exceed the requirements of this chapter and any rules adopted under this chapter.

23-39-03. Advertising - Notice - Warning sign - Tubes - Prohibited claims.

1. A tanning facility may not state in any advertising that the tanning facility holds a license or permit issued by the department to operate a tanning facility.
2. A tanning facility shall give to each of the tanning facility's customers written notice of the following:
   a. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;
   b. Overexposure to a tanning device causes burns;

c. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer;
d. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:
(1) Certain foods;
(2) Certain cosmetics; and
(3) Certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills; and
e. An individual who takes a drug should consult a physician before using a tanning device.

3. A tanning facility shall display prominently a warning sign in each area where a tanning device is used. The warning sign must convey the following directions and information:
a. Follow instructions.
b. Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.
c. Wear food and drug administration-approved protective eyewear.
d. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.
e. Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.
f. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to this tanning device.

4. The tanning facility shall maintain a record of the date on which each fluorescent tube is replaced.
5. An owner or employee of a tanning facility may not claim, or distribute materials that claim, that using a tanning device is free of risk.

23-39-04. Liability.

A tanning facility's compliance with this chapter does not relieve the owner or any employee of the tanning facility from liability for injury sustained by a user of a tanning device.

23-39-05. Duties.

1. The owner of a tanning facility shall ensure that all of the following are fulfilled:
a. A customer under eighteen years of age may not be permitted to use the tanning facility until the customer provides the facility with written consent, in a form prescribed by the department, of a parent or legal guardian to use the tanning facility. The consent must indicate that the parent or legal guardian has read the warnings required by this chapter and that the customer agrees to wear food and drug administration-approved protective eyewear. The parent or legal guardian shall provide a notarized statement of consent or sign the consent form in the presence of the owner of the tanning facility or an employee responsible for the operation of the ultraviolet radiation device of the facility. The written consent form expires twelve months from the date signed. A customer under the age of fourteen years may not be allowed to utilize a tanning device at a tanning facility without a written order from a physician licensed in this state and without being accompanied by a parent or legal guardian for every use of the tanning facility.
b. During operating hours there is present at the tanning facility a trained operator who is able to inform customers about, and assist customers in, the proper use of tanning devices.
c. Each tanning bed is properly sanitized after each use.

d. Properly sanitized and securely fitting food and drug administration-approved protective eyewear that protects the wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance is made available to the customer.
e. A customer is not allowed to use a tanning device unless the customer agrees to use food and drug administration-approved protective eyewear.
f. A customer is shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the tanning device.
g. A timing device that is accurate within ten percent is used.
h. Each tanning device is equipped with a mechanism that allows the customer to turn off the tanning device.
i. A customer is limited to the maximum exposure time recommended by the manufacturer.
j. A customer is not allowed to use a tanning device more than once every twenty-four hours.
k. The interior temperature of the tanning facility does not exceed one hundred degrees Fahrenheit.
l. The statements under subdivision a of subsection 2 are retained by the tanning facility for the lesser of three years or until the customer signs a new statement.

2. A user of a tanning facility shall do all of the following:
a. Immediately before the customer's first use of a tanning facility in a year, sign a statement acknowledging that the customer has read and understands the notice under subsection 2 of section 23-39-03 and the warning sign under subsection 3 of section 23-39-03 and specifying that the customer agrees to use food and drug administration-approved protective eyewear.
b. Use food and drug administration-approved protective eyewear at all times while using a tanning device.

23-39-06. Injury reports.

If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the department of health and human services. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning device at a tanning facility, the health care provider shall report the circumstances of the injury to the department of health and human services. A health care provider making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

23-39-07. Enforcement - Rules - Penalty.

The department shall enforce this chapter and shall adopt rules necessary to implement this chapter. The department may deny issuance of a permit to an applicant or suspend or revoke any permit issued under this chapter if the applicant or permitholder, or an employee of the applicant or permitholder, violates this chapter or any rule adopted to implement this chapter. Violation of this chapter or any rule adopted to implement this chapter is a class B misdemeanor.