ARTICLE 33-42
TANNING FACILITIES

Chapter
33-42-01 Tanning Facilities

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33-42-01-01. Applicability.

This chapter applies to all persons who possess or operate tanning devices available to the public for the purpose of artificial light skin tanning, including those offered for use as part of a membership or premium offer in a health club, condominium, apartment complex activity center, or hotel or motel rental.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-02. Definitions.

The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23-39 except:

1. "Applicant" means any person who applies to the department for a license to operate a tanning facility.

2. "Customer" means any member of the public who is provided access to a tanning device 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 device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental, or other offer.

3. "Department" means the department of health and human services.

4. "Operator" means an individual designated by the licenseholder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.

5. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.

6. "Protective eyewear" means any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B, and visible light up to five hundred nanometers

but permits sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.

7. "Radiation" means ultraviolet radiation.

8. "Ultraviolet radiation" means electromagnetic radiation with a wavelength in air of two hundred to four hundred nanometers.

9. "UV-A" means ultraviolet radiation having a wavelength in air of three hundred twenty to four hundred nanometers.

10. "UV-B" means ultraviolet radiation having a wavelength in air of two hundred ninety to three hundred twenty nanometers.

History: Effective January 1, 2008; amended effective January 1, 2026.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-03. Advertising.

1. No tanning facility may state in any advertising, written or verbal, that tanning is free of hazards from ultraviolet radiation or has any health benefits other than those recognized by a credible scientific or medical source.

2. No person may state or imply that any activity under a license has been approved by the department.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-04. Warning sign.

1. **Location and content.** Tanning facilities shall prominently display a warning sign in each area where a tanning device is used. A sign shall be located within one meter of each device. The sign shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item present so that the customer can easily view the warning sign before turning on the tanning device.

2. **Lettering.** The lettering on each warning sign shall be at least five millimeters high for the word "WARNING", All capital letters shall be at least five millimeters high and all lowercase letters shall be at least three millimeters high. The warning sign must contain the following warnings:

WARNING
DANGER - ULTRAVIOLET RADIATION
Follow Instructions.
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.
WEAR FOOD AND DRUG ADMINISTRATION-APPROVED PROTECTIVE EYEWEAR. FAILURE TO WEAR PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

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.

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.

If your skin does not tan when exposed to sun, it is unlikely that your skin will tan when exposed to this tanning device.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-05. Lamp replacement.

1. The tanning facility shall maintain a record of the dates on which the tubes, bulbs, or lamps were replaced.

2. The tubes, bulbs, or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs, or lamps become damaged or defective. A replacement lamp for a tanning unit shall be compatible with the original lamp as specified by the manufacturer of the unit or shall be substantially equivalent to the manufacturer's original lamp type. In this subsection, "substantially equivalent" means within ten percent of the UV-B emission of the original lamp and meeting the performance requirements of the United States food and drug administration in 21 CFR 1040.20(c)(1).

3. The facility shall maintain the device manufacturer's literature indicating the rating, output, or intensity of the tube, lamp, or bulb required for replacement.

4. No tube, bulb, or lamp designated for medical use only may be used.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-06. Duties of the operator.

1. Use only tanning equipment manufactured and certified to comply with 21 CFR part 1040, section 1040.20, "sunlamp products and ultraviolet lamps intended for use in sunlamp products", in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR part 1010 section 1010.3.

2. Use only tanning equipment that has a timer which complies with the requirements of 21 CFR part 1040, section 1040.20(c)(2). The timer shall be incorporated in the tanning device. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.

3. Ensure that protective acrylic sheets are in place when a tanning device is in use, except that the protect acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-07. Cleanliness and sanitation.

1. Walls, floors, and fixtures shall be kept clean at all times in the entire facility.

2. No article or equipment shall be used or offered for use by a patron unless that article has first been cleaned with an environmental protection agency-approved sanitizer. A test kit or other device that accurately measures the concentration of the sanitizing solution in parts per million shall be used to measure the strength of the sanitizing solution when the concentrate and water dilution is initially prepared and at least daily thereafter to ensure sufficient strength of the sanitizing solution.

3. Paper towels or a clean cloth towel shall be provided. If reusable cloth towels are provided, they shall be mechanically washed with detergent and mechanically dried after each use. The cloth towels must be stored in a dry, clean environment until used.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-08. Reports of injury.

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 on a form prescribed by the department. The report shall be sent to the department as soon as possible and shall include:

1. The name of the affected individual and date of the actual or alleged injury.

2. The name and location of the tanning facility.

3. The nature of the alleged injury and duration of the tanning exposure.

4. Information on the device involved, such as manufacturer and model number and any other information considered relevant to the situation.

5. The name and address of the health care provider and treatment, if any.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-09. Recordkeeping.

1. The operator of a tanning facility shall maintain the following records:

   a. Each customer's total number of tanning visits and dates and duration of tanning exposure.

   b. Each customer's signature and acknowledgment that the customer has read and understands the written notice as required in subsection 2 of section 23-39-03 of the North Dakota Century Code and the warning sign as prescribed in section 33-42-01-04 of this chapter.

   c. Each parental or legal guardian's written consent for customers under eighteen years of age as required in subdivision a of subsection 1 of section 23-39-05 of the North Dakota Century Code.

All customer records shall be maintained for three years after the last tanning visit.

2. The operator shall maintain the following information for each tanning device:

   a. Manufacturer's equipment or operator's manual and any service-related material.

   b. Inspections, maintenance, and notifications performed on the tanning device, including the date of service and dates of bulb replacement. Device records shall be maintained for three years.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-10. Permits - Licenses.

A person may not operate a tanning facility without a license issued by the department. The department shall conduct a preoperational inspection prior to initial licensure or changes in ownership to insure operator compliance and understanding of all laws and regulations. License renewals must be submitted to the department during December every year. A tanning facility license expires on December thirty-first of each year. If the license renewal application and renewal fee are not received by December thirty-first, the license expires and the licensee may not operate. Within sixty days after December thirty-first, an expired license may be renewed by submitting the renewal application, renewal fee, and a late fee in the amount of fifty percent of the license fee. Licenses are not transferable. The annual license fee for a tanning facility containing one to five tanning beds is ninety dollars plus ten dollars per bed and one hundred eighty dollars for facilities with more than five beds. A plan review application fee for a licensee is fifty percent of the annual license fee if a plan review application is required. For a person's initial license application, an annual license fee and a license application administration fee of one hundred dollars is required in addition to fifty percent of the annual license fee if a plan review application is required.

History: Effective January 1, 2008; amended effective January 1, 2014; January 1, 2026.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

33-42-01-11. Denial, suspension, or revocation of license.

1. The department may deny issuance of a license or suspend or revoke a license issued under this chapter if the applicant or licenseholder does not comply with or violates chapter 23-39 of the North Dakota Century Code or any provision of this chapter or if the applicant or licenseholder does any of the following:

   a. Submits false or misleading information in the application or in reports.

   b. Fails to construct, operate, or maintain the tanning facility in accordance with the application.

   c. Operates the tanning facility in a way that causes or creates a nuisance or hazard to the public health or safety.

   d. Violates any condition upon which the license was issued.

   e. Fails to allow the department or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.

   f. Fails to pay the license fee.

2. Whenever the proprietor of any tanning facility fails to comply with this chapter, the operator must be given notice of the time within which the proprietor must meet the requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.

History: Effective January 1, 2008.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07