

The House Committee on Health and Human Services offers the following substitute to HB 853:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 38 of Title 31 of the Official Code of Georgia Annotated, relating to
2 tanning facilities, so as to add and revise certain definitions; to provide for warnings posted
3 in tanning facilities; to provide for licensure and inspection of tanning facilities; to provide
4 for rules for operation of tanning facilities; to provide for inspections by county boards of
5 health; to provide for inspection fees; to provide for penalties; to provide for other related
6 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 38 of Title 31 of the Official Code of Georgia Annotated, relating to tanning
10 facilities, is amended by revising Code Section 31-38-1, relating to definitions relative to
11 tanning facilities, as follows:

12 "31-38-1.

13 As used in this chapter, the term:

14 (1) 'CFR' means Code of Federal Regulations.

15 (1.1) 'Consumer' means any individual who is provided access to a tanning facility as
16 defined in this chapter.

17 (1.2) 'Fitzpatrick Scale' means a scale based on skin types and sunburning and tanning
18 history for classifying a skin type based on the skin's reaction to the first ten to 45
19 minutes of sun exposure after the winter season as follows:

20 (A) Always burns easily, never tans: I;

21 (B) Always burns easily, tans minimally: II;

22 (C) Burns moderately, tans gradually: III;

23 (D) Burns minimally, always tans well: IV;

24 (E) Rarely burns, tans profusely: V; and

25 (F) Never burns, deeply pigmented: VI.

26 (2) 'Individual' means any human being.

27 (3) 'Operator' means any individual designated by the tanning facility owner or tanning
 28 equipment lessee to operate or to assist and instruct the consumer in the operation and use
 29 of the tanning facility or tanning equipment.

30 (4) 'Person' means any individual, corporation, partnership, firm, association, trust,
 31 estate, public or private institution, group, agency, political subdivision of this state, any
 32 other state, or political subdivision or agency thereof, and any legal successor,
 33 representative, agent, or agency of these entities.

34 (4.1) 'Tanning booth' means any enclosed or semi-enclosed structure, whether vertical
 35 or horizontal, that is or contains a tanning device.

36 (4.2) 'Tanning device' means ultraviolet or other lamps and equipment containing such
 37 lamps intended to induce skin tanning through the irradiation of any part of the living
 38 human body with ultraviolet radiation.

39 (5) 'Tanning equipment' means ~~ultraviolet or other lamps and equipment containing such~~
 40 ~~lamps intended to induce skin tanning through the irradiation of any part of the living~~
 41 ~~human body with ultraviolet radiation.~~ any tanning device and any accompanying
 42 equipment, such as protective eyewear, timers, and handrails. The term shall not include
 43 any of the following:

44 (A) Phototherapy devices utilized by appropriate health care professionals under the
 45 direct supervision of a physician who is trained in the use of phototherapy devices;

46 (B) Devices used for personal use in a private residence; and

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

48 (6) 'Tanning facility' means any location, place, area, structure, or business or a part
 49 thereof which provides consumers access to tanning equipment. 'Tanning facility'
 50 includes, but is not limited to, tanning salons, health clubs, apartments, or condominiums
 51 regardless of whether a fee is charged for access to the tanning equipment.

52 (7) 'Ultraviolet radiation' means electromagnetic radiation with wavelengths in air
 53 between 200 nanometers and 400 nanometers."

54 **SECTION 2.**

55 Said chapter is further amended by revising Code Section 31-38-4, relating to warning sign
 56 to be posted and contents of warning sign, as follows:

57 "31-38-4.

58 (a) The facility owner or operator shall conspicuously post the warning sign described in
 59 subsection (b) of this Code section within three feet of each tanning station and in such a
 60 manner that the sign is clearly visible, not obstructed by any barrier, equipment, or other
 61 object, and can be easily viewed by the consumer before energizing the tanning equipment.

62 (b) The warning sign required in subsection (a) of this Code section shall use upper and
 63 lower case letters which are at least two inches and one inch in height, respectively, and
 64 shall have the following wording:

65 **DANGER - ULTRAVIOLET RADIATION**

66 -Follow instruction.

67 -Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin
 68 injury and allergic reactions. Repeated exposure may cause premature aging of the skin
 69 and skin cancer.

70 -Wear protective eyewear.

71 **FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR**
 72 **LONG-TERM INJURY TO THE EYES.**

73 -Medications or cosmetics may increase your sensitivity to the ultraviolet radiation.
 74 Consult a physician before using sunlamp or tanning equipment if you are using
 75 medications or have a history of skin problems or believe yourself to be especially
 76 sensitive to sunlight.

77 -If you do not tan in the sun, you are unlikely to tan from the use of this product.

78 **MAXIMUM EXPOSURE AT ANY ONE**

79 **SESSION SHOULD NEVER EXCEED 15 MINUTES.**

80 According to the research and clinical experience of the American Academy of
 81 Dermatology, excessive or improper exposure to ultraviolet light can cause harmful
 82 changes in the skin and other organs, including skin cancer, cataracts, impairment of the
 83 immune system, premature aging, and photosensitivity. These are virtually the same risks
 84 associated with outdoor tanning. Do not sunbathe before or after exposure to ultraviolet
 85 radiation from sunlamps. Women who are pregnant or are taking oral contraceptives who
 86 use this device may develop discolored skin.

87 A consumer may call the Department of Community Health at (insert telephone number)
 88 to report an alleged injury regarding this tanning facility.'

89 (c) Each consumer shall be provided with a written warning statement requiring his or her
 90 signature prior to initial exposure and before renewals of contracts. The warning statement
 91 shall include all of the following information:

92 (1) Failure to use the eye protection provided to the consumer by the tanning facility may
 93 result in damage to the eyes;

94 (2) Overexposure to ultraviolet radiation produced by the tanning devices causes burns;

95 (3) Repeated exposure to the ultraviolet radiation produced by the tanning devices may
 96 result in premature aging of the skin, skin cancer, or both;

97 (4) Abnormal skin sensitivity to ultraviolet radiation or burning may be caused by
 98 reactions to certain foods, cosmetics, or medication. Such medication includes, but is not

- 99 limited to, tranquilizers, diuretics, antibiotics, high blood pressure medicine, and birth
 100 control pills;
 101 (5) Any person taking a prescription or over-the-counter drug should consult a physician
 102 before using a tanning device;
 103 (6) A person with skin that always burns easily or never tans should avoid using a
 104 tanning device; and
 105 (7) A person with a family or past medical history of skin cancer should avoid using a
 106 tanning device.
 107 (d) Not later than September 1, 2010, the department shall post an approved example of
 108 the warning statement required by subsection (c) of this Code section on the department's
 109 Internet website in a form that is easily downloaded and printed by a tanning facility owner
 110 or operator.
 111 (e) A record of each consumer using a tanning device shall be maintained at the tanning
 112 facility for at least three years after the date of the consumer's last use of a tanning device.
 113 The department by rule shall prescribe the form and content of the record. The record shall
 114 include:
 115 (1) Any injury or illness resulting from the use of a tanning device; and
 116 (2) The consumer's skin type, as determined by the consumer by using the Fitzpatrick
 117 Scale for classifying a skin type."

118 **SECTION 3.**

119 Said chapter is further amended by adding new Code sections to read as follows:

120 "31-38-4.1.

- 121 (a) No person shall establish, maintain, or operate a tanning facility without first having
 122 obtained a license issued by the department.
 123 (b) A person may apply for a license required under subsection (a) of this Code section by
 124 submitting an application to the department on a form prescribed by the department. The
 125 form shall require all of the following information:
 126 (1) The name, address, and telephone number of the tanning facility and owner;
 127 (2) The manufacturer, model number, and type of each ultraviolet lamp or tanning device
 128 used in the tanning facility;
 129 (3) The name of the equipment supplier, installer, and service agent of each ultraviolet
 130 lamp or tanning device used in the tanning facility;
 131 (4) A signed and dated certification that the applicant has read and understands the
 132 requirements of this chapter;
 133 (5) A copy of the operating and safety procedures of the tanning facility; and
 134 (6) Any additional information required by the department.

135 (c) The department shall issue a license to an applicant upon determination that the
 136 applicant meets all of the requirements of this chapter.

137 (d) An applicant shall be required to pay an annual license fee of \$25.00 per tanning
 138 facility and an additional license fee of \$15.00 per tanning device owned, leased, or
 139 otherwise used by the tanning facility.

140 (e) A licensee shall post its license in a location clearly visible to its consumers.

141 (f) A license shall expire annually on the date specified in the license.

142 (g) A licensee shall file an application for renewal on a form prescribed by the department
 143 prior to expiration of its current license.

144 (h) The department may conduct an initial inspection, after receipt of an application for
 145 a license under this chapter and before the license is granted, of a tanning facility and may
 146 inspect such facility annually thereafter. Inspections conducted by the department pursuant
 147 to this subsection may encompass any or all of the following matters:

- 148 (1) The operation of the tanning facility;
 149 (2) Review of required records and training documentation;
 150 (3) Operator understanding and competency; and
 151 (4) Any other area concerning a requirement of this chapter.

152 31-38-4.2.

153 (a)(1) Except as provided in paragraph (2) of this subsection, an operator shall be present
 154 when tanning equipment is operated.

155 (2) The presence of an operator shall not be required when tanning equipment is operated
 156 if:

157 (A) Access to the tanning equipment is controlled by security measures designed to
 158 permit access only by persons 18 years of age or older who:

159 (i) Have been previously instructed, examined, and advised of maximum exposures
 160 pursuant to subsections (c) and (d) of this Code section;

161 (ii) Have used a tanning device at the facility on at least three prior occasions with
 162 an operator on the premises; and

163 (iii) Have access to an intercom or buzzer attended by an operator remotely or to an
 164 emergency response device such that emergency assistance and personnel can be
 165 summoned promptly; and

166 (B) The absence of an on-premises operator is clearly indicated by warning signs
 167 posted at the entrance to the tanning facility and in each tanning booth.

168 (b) The tanning equipment shall have a control that enables the consumer to manually
 169 terminate radiation without pulling the electrical plug or coming in contact with the
 170 ultraviolet lamp or other tanning device.

171 (c) Operators shall instruct consumers in all of the following:

172 (1) The proper position to maintain relative to the equipment;

173 (2) The position of the safety railing, if applicable;

174 (3) The operation of the manual switching device to terminate radiation; and

175 (4) The maximum time of exposure.

176 (d) Operators must be able to recognize the skin type of the consumer based on the
 177 Fitzpatrick Scale and advise the customer accordingly regarding maximum time of
 178 exposure.

179 (e) Contact surfaces of tanning devices shall be cleansed by the tanning facility or by the
 180 consumer when an operator is not present between uses with a cleansing agent approved
 181 by the department. After cleansing each time, a visible sign shall be placed on the bed or
 182 booth indicating that it has been properly cleansed. Bathrooms and dressing rooms shall
 183 also be properly sanitized and consumers shall be provided with clean towels and
 184 washcloths. The department shall promulgate rules and regulations related to the sanitation
 185 standards to be met in each tanning facility. These standards shall meet the minimum
 186 standards established for beauty salons.

187 (f) The tanning facility shall limit session duration and frequency to maximums
 188 recommended by the manufacturer of the tanning device."

189 **SECTION 4.**

190 Said chapter is further amended by revising Code Section 31-38-8, relating to written report
 191 of injury requirement, use of tanning equipment by minors, and equipment maintenance
 192 requirements, as follows:

193 "31-38-8.

194 (a) The tanning facility owner or operator shall compile a written report of actual or
 195 alleged injury from use of tanning equipment within five working days after occurrence or
 196 notice thereof and send the report to the department within five working days. Such report
 197 shall be maintained by the tanning facility for a period of not less than three years and shall
 198 be available for inspection and copying by any consumer. The report shall include:

199 (1) The name of the affected individual;

200 (2) The name and location of the tanning facility and identification of the specific
 201 tanning equipment involved;

202 (3) The nature of the actual or alleged injury; and

203 (4) Any other information relevant to the actual or alleged injury to include the date and
 204 duration of exposure.

205 The department shall send reports of all injuries to the United States Food and Drug
 206 Administration.

207 (b) The tanning facility owner or operator shall not allow minors under 14 years of age to
 208 use tanning equipment. The tanning facility owner or operator shall not allow minors 14
 209 years of age or over but under 18 years of age to use tanning equipment unless the minor's
 210 parent or legal guardian signs a written consent form meeting the requirements of this Code
 211 section. Such consent form shall be signed by the parent or legal guardian at the tanning
 212 facility before the minor may use the equipment or facility.

213 (c) The tanning facility owner or operator shall replace defective or burned out lamps,
 214 bulbs, or filters with a type intended for use in the affected tanning equipment as specified
 215 on the product label and having the same spectral distribution.

216 (d) The tanning facility owner or operator shall replace ultraviolet lamps and bulbs, which
 217 are not otherwise defective or damaged, at such frequency or after such duration of use as
 218 may be recommended by the manufacturer of such lamps and bulbs.

219 (e) A tanning facility shall not advertise or distribute promotional materials that claim that
 220 using a tanning device is safe or free from risk or that the use of a tanning device will result
 221 in medical or health benefits. Violation of the provisions of this subsection shall constitute
 222 an unfair or deceptive act pursuant to the terms of Part 2 of Article 15 of Chapter 1 of Title
 223 10, the Georgia Fair Business Practices Act."

224 **SECTION 5.**

225 Said chapter is further amended by revising Code Section 31-38-9, relating to noncompliance
 226 with chapter, as follows:

227 "31-38-9.

228 (a) The department shall have access to any tanning facility during the hours the tanning
 229 facility is open to consumers to inspect such facility and its records and determine whether
 230 a violation of this chapter has occurred.

231 (b) A license may be denied, suspended, or revoked by the department for any violation
 232 of this chapter, including but not limited to:

233 (1) Submission of false statements in an application, reports, plans, or specifications;

234 (2) Maintenance of conditions which violate this chapter;

235 (3) Operation of the tanning facility in a manner that threatens public health or safety;

236 (4) Failure to allow representatives of the department to enter the tanning facility at
 237 reasonable hours for inspection or investigation; or

238 (5) Failure to pay license fees imposed by this chapter.

239 The department shall, prior to suspension or revocation of a license, provide written notice
 240 to the licensee of the facts or conduct which may warrant suspension or revocation and
 241 shall provide the licensee with an opportunity to demonstrate or achieve compliance. The
 242 licensee may request an administrative hearing upon receipt of the written notice.

243 (c) Notwithstanding the provisions of subsection (b) of this Code section, if the department
 244 determines that an emergency exists that presents an immediate threat to the health and
 245 safety of the public, the department may immediately suspend the license of the tanning
 246 facility pending a hearing in accordance with the time frames and requirements for
 247 emergency hearings under Title 50 through the Office of State Administrative Hearings to
 248 determine whether cancellation, revocation, or other disciplinary action should be imposed
 249 on the licensee.

250 (d) Any person who leases tanning equipment or who owns a tanning facility as defined
 251 by this chapter who operates or permits to be operated that equipment or facility in
 252 noncompliance with the requirements of this chapter shall be guilty of a misdemeanor."

253 **SECTION 6.**

254 Said chapter is further amended by adding a new Code section to read as follows:

255 "31-38-9.1.

256 (a) The appropriate staff of the county board of health may conduct inspection activities
 257 on behalf of the department in the manner and subject to the terms and conditions provided
 258 by this chapter. The county board of health shall provide a report of the results and
 259 findings of such inspections to the department.

260 (b) The department shall notify any county board of health of any application for a license
 261 required by this chapter made by a tanning facility within the board of health's jurisdiction
 262 and shall provide a copy of such application. The department shall take action based upon
 263 the report and results of such inspections as prescribed by this chapter.

264 (c) The county board of health may levy an annual inspection fee as provided by
 265 paragraph (6) of Code Section 31-3-4."

266 **SECTION 7.**

267 Said chapter is further amended by revising Code Section 31-38-11, relating to a permitted
 268 variance, as follows:

269 "31-38-11.

270 (a) Any tanning facility which finds that it is not possible to comply with Code Section
 271 31-38-4 may apply to the administrator appointed pursuant to subsection (a) of Code
 272 Section 10-1-395 for a variance from the requirements of Code Section 31-38-4. Any such
 273 variance granted by the administrator shall be in writing and shall be drawn as narrowly
 274 as possible.

275 (b) On or after January 1, 2011, the administrator shall not grant any variances pursuant
 276 to this Code section. Any variance granted pursuant to this Code section prior to January

277 1, 2011, shall no longer be valid and shall not relieve any tanning facility from complying
278 with the provisions of Code Section 31-38-4."

279 **SECTION 8.**

280 Said chapter is further amended by revising Code Section 31-38-12, relating to effect of
281 chapter on administrator and administrator's immunity, as follows:

282 "31-38-12.

283 Nothing contained in this chapter shall be construed as imposing any duty, requirement,
284 or enforcement authority upon the administrator appointed pursuant to Code Section
285 10-1-395 except as described in Code Section 31-38-11, provided that nothing contained
286 in this chapter shall be construed in any manner as limiting the administrator from
287 exercising any of ~~his~~ the administrator's duties, powers, or authority under any other law.

288 The administrator shall not be liable to any person for any reason as a result of granting or
289 failing to grant any variance under Code Section 31-38-11 prior to January 1, 2011."

290 **SECTION 9.**

291 This Act shall become effective on January 1, 2011.

292 **SECTION 10.**

293 All laws and parts of laws in conflict with this Act are repealed.