

House Bill 853

By: Representatives Drenner of the 86th, Benfield of the 85th, and Henson of the 87th

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 provide a short title; to define certain terms; to provide for
3 registration of tanning facilities; to provide for inspections; to provide for revocation,
4 suspension, and renewal of certificates of registration; to provide for administrative, civil,
5 and criminal penalties; to provide for the adoption of rules; to provide for consumer
6 warnings; to provide for reports on complaints of injury; to provide for parental consent for
7 minors' use of tanning facilities; to provide for variances; to provide for related matters; to
8 provide an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 This Act shall be known as the "Tanning Facilities Regulation Act."

12 style="text-align:center">**SECTION 2.**

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

16 "31-38-1.

17 As used in this chapter, the term:

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

19 ~~(1.1)~~(2) 'Consumer' means any individual who is provided access to a tanning facility as
20 defined in this chapter.

21 ~~(2)~~(3) 'Individual' means any human being.

22 ~~(3)~~(4) 'Operator' means any individual designated by the tanning facility owner or
23 tanning equipment lessee to operate or to assist and instruct the consumer in the operation
24 and use of the tanning facility or tanning equipment.

25 ~~(4)~~(5) 'Person' means any individual, corporation, partnership, firm, association, trust,
 26 estate, public or private institution, group, agency, political subdivision of this state, any
 27 other state, or political subdivision or agency thereof, and any legal successor,
 28 representative, agent, or agency of these entities.

29 ~~(5)~~(6) 'Tanning equipment' means ultraviolet or other lamps and equipment containing
 30 such lamps intended to induce skin tanning through the irradiation of any part of the
 31 living human body with ultraviolet radiation.

32 ~~(6)~~(7) 'Tanning facility' means any location, place, area, structure, or business or a part
 33 thereof which provides consumers access to tanning equipment. 'Tanning facility'
 34 includes, but is not limited to, tanning salons, health clubs, apartments, or condominiums
 35 regardless of whether a fee is charged for access to the tanning equipment.

36 ~~(7)~~(8) 'Ultraviolet radiation' means electromagnetic radiation with wavelengths in air
 37 between 200 nanometers and 400 nanometers."

38 SECTION 3.

39 Said chapter is further amended by inserting new Code sections to read as follows:

40 "31-38-1.1.

41 The department shall adopt rules and regulations as prescribed by Chapter 13 of Title 50,
 42 the 'Georgia Administrative Procedure Act,' to administer this chapter. The rules and
 43 regulations may include, but need not be limited to, requirements for training tanning
 44 facility operators and employees; definitions of terms; the approval of training courses;
 45 safety; plan review; and the design, construction, operation, maintenance, and cleanliness
 46 of tanning facilities and tanning devices.

47 31-38-1.2.

48 (a) A person may not operate a tanning facility in this state unless such tanning facility
 49 holds a certificate of registration under this chapter.

50 (b) The department shall establish procedures for the issuance and annual renewal of
 51 certificates of registration and shall establish annual license and renewal fees and late fees
 52 in a reasonable amount.

53 (c) The department shall inspect or investigate a tanning facility as necessary but at least
 54 annually. A tanning facility must have a copy of the facility's most recent inspection report
 55 available to the public and conspicuously posted in a location in which the report is clearly
 56 visible, not obstructed by any barrier, equipment, or other object, and can be easily viewed
 57 by a consumer.

58 (d) Every tanning facility operating in this state shall conspicuously post a current, valid
 59 certificate of registration obtained under this chapter in a location in which the certificate

60 of registration is clearly visible, not obstructed by any barrier, equipment, or other object,
 61 and can be easily viewed by a consumer.

62 (e) The department may cancel, revoke, or suspend a certificate of registration to operate
 63 a tanning facility if the registrant:

64 (1) Fails to pay any fee required by this chapter or by rule or regulation of the
 65 department;

66 (2) Owns or operates, or solicits business as, a tanning facility in this state without first
 67 procuring a certificate of registration from the department, unless specifically exempted
 68 by this chapter;

69 (3) Obtains or attempts to obtain a certificate of registration by fraud; or

70 (4) Violates any provision of this chapter."

71 **SECTION 4.**

72 Said chapter is further amended by revising Code Section 31-38-3, relating to construction,
 73 operation, and maintenance requirement of tanning facilities, as follows:

74 "31-38-3.

75 ~~Each tanning facility in this state shall be constructed, operated, and maintained in~~
 76 ~~accordance with the requirements of Code Sections 31-38-4 through 31-38-8.~~

77 Each tanning facility in this state shall:

78 (1) During operating hours, have an operator present at all times who is sufficiently
 79 knowledgeable and trained in accordance with rules of the department in the correct
 80 operation of the tanning devices to inform and assist each consumer in the proper use of
 81 the devices;

82 (2) Before each use of a tanning device, properly sanitize that tanning device equipment,
 83 including, without limitation, handrails, headrests, and bed surfaces;

84 (3) Show each consumer how to use suitable physical aids, such as handrails and floor
 85 markings, to maintain proper exposure distances recommended by the manufacturer;

86 (4) Use a timer on each tanning device which is accurate for any selected time interval
 87 to plus or minus 10 percent;

88 (5) Limit each consumer to the maximum exposure time recommended by the
 89 manufacturer of the tanning device;

90 (6) Provide each consumer on each visit a written warning statement that must be signed
 91 by the customer prior to use of a tanning device during such visit. Such statement shall
 92 contain at a minimum the following:

93 (A) Failure to use the required eye protection provided to the customer may result in
 94 damage to the eyes;

95 (B) Overexposure to ultraviolet light may cause severe sunburn reactions;

- 96 (C) Repeated exposure to ultraviolet light may result in skin cancer and premature
 97 aging of the skin;
- 98 (D) Abnormal skin sensitivity or severe burning may be caused by reactions when
 99 tanning devices are used in conjunction with certain foods, cosmetics, or medications,
 100 including, without limitation, tranquilizers, diuretics, antibiotics, high-blood pressure
 101 medicines, or birth control pills;
- 102 (E) Any person who takes a prescription or over-the-counter medication should consult
 103 a physician before using a tanning device;
- 104 (F) Any person with skin that tends to burn easily or freckle or never tans should avoid
 105 use of a tanning device until after he or she has consulted a physician;
- 106 (G) A person with a family or personal past medical history of skin cancer should
 107 avoid use of a tanning device;
- 108 (H) A person should allow a minimum of 24 hours between uses of a tanning device;
- 109 (I) Pregnant women or women using oral contraceptives may develop discolored skin
 110 due to the use of tanning devices; and
- 111 (J) If applicable, that the tanning facility does not carry liability insurance for injuries
 112 caused by tanning devices or stating the limits of any liability insurance the tanning
 113 facility carries;
- 114 (7) Require as to each minor consumer between the ages of 14 and 18 whose parent or
 115 legal guardian is not present in the tanning facility when such minor consumer is using
 116 a tanning device, a statement signed by a parent or legal guardian of such consumer in
 117 the presence of the operator containing the warning statements in paragraph (6) of this
 118 Code section in which such parent or legal guardian consents to the minor consumer's use
 119 of the tanning facility and specifies which devices the minor consumer may use, how
 120 many times the minor consumer may use such tanning devices, and for what exposure
 121 time. A new consent form shall be required every 30 calendar days; and
- 122 (8) Require that a minor under the age of 14 have a parent or legal guardian present in
 123 the tanning facility when using a tanning device."

124 **SECTION 5.**

125 Said chapter is further amended by revising Code Section 31-38-4, relating to warning signs
 126 to be posted, as follows:

127 "31-38-4.

- 128 (a) The facility owner or operator shall conspicuously post the warning sign described in
 129 subsection (b) of this Code section within three feet of each tanning station and in such a
 130 manner that the sign is clearly visible, not obstructed by any barrier, equipment, or other

131 object, and can be easily viewed by the consumer before energizing the tanning equipment.
 132 Posting this warning sign does not absolve the facility of any liability.

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

136 ~~DANGER - ULTRAVIOLET RADIATION~~

137 ~~-Follow instruction.~~

138 ~~-Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin~~
 139 ~~injury and allergic reactions. Repeated exposure may cause premature aging of the skin~~
 140 ~~and skin cancer.~~

141 ~~-Wear protective eyewear.~~

142 ~~FAILURE TO USE PROTECTIVE EYEWEAR~~

143 ~~MAY RESULT IN SEVERE BURNS OR~~

144 ~~LONG-TERM INJURY TO THE EYES.~~

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

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

150 ~~MAXIMUM EXPOSURE AT ANY ONE SESSION~~

151 ~~SHOULD NEVER EXCEED 15 MINUTES.~~

152 ~~According to the research and clinical experience of the American Academy of~~
 153 ~~Dermatology, excessive or improper exposure to ultraviolet light can cause harmful~~
 154 ~~changes in the skin and other organs, including skin cancer, cataracts, impairment of the~~
 155 ~~immune system, premature aging, and photosensitivity. These are virtually the same risks~~
 156 ~~associated with outdoor tanning.~~

157 DANGER, ULTRAVIOLET RADIATION

158 Follow these instructions:

159 1. Avoid frequent or lengthy exposure. As with natural sunlight, exposure can cause eye
 160 and skin injury or allergic reactions. Repeated exposure can cause chronic sun damage
 161 characterized by wrinkling, dryness, fragility, and bruising of the skin or skin cancer.

162 2. Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR CAN
 163 RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

164 3. Ultraviolet radiation from sunlamps will aggravate the effects of the sun. Therefore,
 165 do not sunbathe before or after exposure to ultraviolet radiation.

166 4. Using medications or cosmetics can increase your sensitivity to ultraviolet radiation.
 167 Consult a physician before using tanning equipment if you are using medications, have

168 a history of skin problems, or believe you are especially sensitive to sunlight. Women
 169 who are pregnant or on birth control who use this product can develop discolored skin.
 170 IF YOU DO NOT TAN IN THE SUN YOU WILL NOT TAN BY USING THIS
 171 DEVICE.

172 5. MAXIMUM EXPOSURE AT ANY ONE SESSION SHOULD NEVER EXCEED
 173 15 MINUTES. According to the research and clinical experience of the American
 174 Academy of Dermatology, excessive or improper exposure to ultraviolet light can cause
 175 harmful changes in the skin and other organs, including skin cancer, cataracts,
 176 impairment of the immune system, premature aging, and photosensitivity. These are
 177 virtually the same risks associated with outdoor tanning."

178 **SECTION 6.**

179 Said chapter is further amended by revising subsections (a) and (b) of Code Section 31-38-8,
 180 relating to written reports of injuries, as follows:

181 "(a) The tanning facility owner or operator shall compile a written report of ~~actual or~~
 182 ~~alleged~~ any injury or complaint of injury from use of tanning equipment within five
 183 working days after occurrence or notice thereof. Such report shall be maintained for a
 184 period of not less than ~~three~~ four years and shall be available for inspection and copying
 185 by any consumer. The report shall include:

- 186 (1) The name of the affected individual;
 187 (2) The name and location of the tanning facility and identification of the specific
 188 tanning equipment involved;
 189 (3) The nature of the actual or alleged injury; and
 190 (4) Any other information relevant to the actual or ~~alleged~~ complained of injury to
 191 include the date and duration of exposure.

192 This report shall be sent to the department on forms prescribed by the department and a
 193 copy of the report shall be provided to the complainant. The department shall send to the
 194 federal Food and Drug Administration a copy of any report of an injury occurring in a
 195 tanning facility.

196 ~~(b) The tanning facility owner or operator shall not allow minors to use tanning equipment~~
 197 ~~unless the minor's parent or legal guardian signs a written consent form meeting the~~
 198 ~~requirements of this Code section. Such consent form shall be signed by the parent or legal~~
 199 ~~guardian at the tanning facility before the minor may use the equipment or facility."~~

200 **SECTION 7.**

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

202 "31-38-8.1.

203 (a)(1) The department may impose an administrative fine not to exceed \$1,000.00 per
 204 violation per day for the violation of any provision of this chapter, rule or regulation
 205 issued by the department pursuant to this chapter, or term or condition of any certificate
 206 of registration issued by the department.

207 (2) In determining the amount of fine to be levied for a violation, as provided in
 208 paragraph (1) of this subsection, the following factors shall be considered:

209 (A) The severity of the violation and the extent to which the provisions of this chapter,
 210 the rules and regulations issued by the department pursuant to this chapter, or any terms
 211 or conditions of any certificate of registration were violated;

212 (B) Actions taken by the registrant to correct the violation; and

213 (C) Any previous violations by the registrant.

214 (b) The department may institute legal action for injunctive or other relief to enforce this
 215 chapter. If a tanning facility or other person violates this chapter or any rule or regulation
 216 issued by the department pursuant to this chapter, the department may issue a stop-use
 217 order to remove a tanning device from service."

218 **SECTION 8.**

219 Said chapter is further amended by revising Code Section 31-38-9, relating to penalties for
 220 noncompliance with this chapter, as follows:

221 "31-38-9.

222 In addition to any administrative or civil penalties imposed by the department, any ~~Any~~
 223 person who leases tanning equipment or who owns a tanning facility as defined by this
 224 chapter who operates or permits to be operated that equipment or facility in noncompliance
 225 with the requirements of this chapter shall be guilty of a misdemeanor."

226 **SECTION 9.**

227 Said chapter is further amended by revising Code Section 31-38-11, relating to variances, as
 228 follows:

229 "31-38-11.

230 Any tanning facility which finds that it is not possible to comply with ~~Code Section~~
 231 ~~31-38-4~~ the requirements of this chapter may apply to the ~~administrator appointed pursuant~~
 232 ~~to subsection (a) of Code Section 10-1-395~~ department for a variance from the
 233 requirements of ~~Code Section 31-38-4~~ this chapter. Any such variance granted by the
 234 ~~administrator~~ department shall be in writing and shall be drawn as narrowly as possible."

235 **SECTION 10.**

236 Said chapter is further amended by repealing Code Section 31-38-12, relating to the effect
237 of the chapter on the administrator and the administrator's immunity, as follows:

238 "31-38-12.

239 Nothing contained in this chapter shall be construed as imposing any duty, requirement,
240 or enforcement authority upon the administrator appointed pursuant to Code Section
241 10-1-395 except as described in Code Section 31-38-11, provided that nothing contained
242 in this chapter shall be construed in any manner as limiting the administrator from
243 exercising any of his duties, powers, or authority under any other law. The administrator
244 shall not be liable to any person for any reason as a result of granting or failing to grant any
245 variance under Code Section 31-38-11."

246 **SECTION 11.**

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

248 **SECTION 12.**

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