

**House Bill 92-1169**

by

Representatives Martin, Entz, R. Hernandez, Knox, Pankey, Sullivan, and S. Williams.; also Senators Fenlon, Groff, Mendez, and Pascoe.

**Concerning Artificial Tanning Devices and Making an Appropriation Therefor.**

Be it enacted by the General Assembly of the State of Colorado:

Section 1. Article 5 of title 25, Colorado Revised Statutes, 1989 repl.

Vol., as amended, is amended by the addition of a new part to read:

**Part 10**

**Artificial Tanning Devices**

**25-5-1001. Short Title.**

This Part 10 shall be known and may be cited as the "Artificial Tanning Device Operation Act".

**25-5-1002. Legislative Declaration.**

(1) The General Assembly hereby finds, determines, and declares that injuries may result from improperly supervised use of artificial tanning devices which expose the human body to ultraviolet radiation. Artificial tanning devices may emit more than ten times the amount of ultraviolet radiation than normal exposure to the sun. Injuries from intense exposure may result in cases of premature aging, adverse reactions to medication, skin burns, eye burns, retinal damage, formation of cataracts, precancers, and the promotion of several types of skin cancers including, but not limited to melanoma.

(2) The General Assembly further finds, determines, and declares that artificial tanning device users may be unaware of and lack access to information that they may experience a heightened photosensitivity to artificial tanning as a result of the use of medications such as birth control pills, antibiotics, high blood pressure medications, diuretics, and oral diabetes medications; commonly available cosmetics; and certain citrus products such as limes.

(3) The General Assembly further finds, determines, and declares that establishments which provide users with access to artificial tanning devices may fail to establish basic sanitary precautions against the transmission of communicable skin disorders, may fail to protect the user from either direct contact with bulbs or from shards of glass if a bulb explodes, and may fail to provide users with appropriate health or physical safety information.

**25-5-1003. Definitions.** as used in this Part 10, unless the context otherwise requires:

(1) "Artificial tanning device" means any equipment that emits ultraviolet radiation with wavelengths in the air between two hundred and four hundred nanometers and that is used for the tanning of human skin, including, but not limited to sunlamps, tanning beds, and tanning booths. "Artificial tanning device" does not include phototherapy devices.

(2) "Board" means the State Board of Health.

(3) "Department" means the Department of Health.

(4) "Fund" means the Artificial Tanning Device Education Fund created in section 25-5-1004.

(5) "Phototherapy device" means a piece of equipment that emits ultraviolet radiation and that is used by or under the supervision of a licensed health care professional in the treatment of disease.

(6) "Tanning facility" means any location, premises, place, area, structure, or business, whether permanent or mobile, which provides persons access to artificial tanning devices.

(7) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in the air between two hundred and four hundred nanometers.

**25-5-1004 Registration Required - Fee - Artificial Tanning Device Education Fund - Creation.**

(1) Commencing January 1, 1993, and on each January 1 thereafter, the owner of any artificial tanning facility which makes artificial tanning devices available for public use shall register said facility with the Department.

(2) The registration of each artificial tanning facility as required in subsection (1) of this section shall be accompanied by an annual registration fee for each artificial tanning facility in the amount of one hundred twenty dollars for each calendar year. The annual registration fee shall be prorated on a monthly basis for any initial registration received after January 1 of any year.

(3) All fees shall be collected by the Department and transmitted to the State Treasurer, who shall credit the same to the Artificial Tanning Device Education Fund, which Fund is hereby created. The Fund shall be comprised of the annual registration fees. In accordance with Sections 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the Fund shall be credited to the General Fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the Fund shall remain therein and shall not be credited or transferred to the General Fund or any other Fund. The moneys in the Fund shall be annually appropriated by the General Assembly to the Department for the direct and indirect costs of the administration and implementation of the provisions of this Part 10.

#### **25-5-1005. Exemptions.**

(1) The following devices are exempt from the requirements of this Part 10:

- (a) Artificial tanning devices which are used exclusively for personal, noncommercial purposes, by the owner, members of the owner's family, or persons authorized by the owner to use the device;
- (b) Phototherapy devices used by or under the supervision of a licensed physician or other licensed health care professional within the scope of such person's practice for the purposes of treating diseases; and
- (c) Artificial tanning devices which are in transit or storage and are not made available for use during such transit or storage.

(2) Nothing in this Section shall be construed to mean that the Department endorses any type of artificial tanning device, any location of such devices, any business which provides artificial tanning devices for use by the public, or the use of any such devices.

#### **25-5-1006. Rule-making Authority - Board.**

(1) The standards established by the United States Food and Drug Administration shall be the minimum standards for exposure to radiation through an artificial tanning device in this state; except that, the Board may establish rules adopting standards for exposure to radiation through artificial tanning devices which are no less stringent than the federal standards.

(2) (a) The Board may, by rule, adopt any further standards or regulations necessary to protect the public from unsafe artificial tanning devices or other unsafe equipment and from unsafe operational methods, and any such other rules and regulations as are necessary for the implementation of this Part 10.

(b) The Board shall formulate, adopt, and promulgate rules and regulations concerning on-site inspections of tanning facilities and the Department shall conduct such on-site inspections in accordance with the rules and regulations promulgated under this paragraph (b).

#### **25-5-1007. Owner Responsibilities.**

(1) The owner of each registered artificial tanning device shall provide to the Department, such information concerning the safe and proper operation of the owner's artificial tanning device as is required by this Part 10.

(2) The owner shall post a sign on the premises where the artificial tanning device is located which notifies operators and potential users of the safety and health risks associated with the use of such devices. The Board shall establish standards concerning the information to be contained in said notice, and the size and location of posting the notice on the premises. Said notice shall be of a size and in a location on the premises which allows it to be easily read by users before being exposed to the artificial tanning device.

(3) (a) The owner shall provide each user with a written handout as specified by the Board containing, at a minimum, the following information:

- (i) The risks of potential negative health effects as a result of improperly supervised exposure to ultraviolet radiation and the general health and sanitation risks associated with the use of such devices;
- (ii) The risks of potential negative health effects as a result of exposure to ultraviolet radiation while in poor health or on certain medications; and
- (iii) Specific safety and operation information on the artificial tanning device which is to be used.

(4) The owner shall provide to users the safety equipment required by the Board.

(5) The owner shall provide and maintain such general sanitation and cleaning of equipment as required by the Board.

(6) The owner shall inform the Department of any accident or adverse reaction to the use of an artificial tanning device and provide such detailed information as required by the Department. A written report in the format required by the Department shall be submitted within fifteen days after discovery of the event. Any records, reports, or information obtained from a person pursuant to the provisions of this subsection (6) shall be closed and confidential.

(7) No owner, employee, or operator of any artificial tanning device or tanning facility shall advertise or promote that the use of any artificial tanning device is safe or without risk to the user, or that registration with the Department constitutes approval or endorsement of either the use of the device or the use of artificial tanning in general.

**25-5-1008. Complaints - Investigation.**

The Department shall have the authority to investigate complaints regarding any injury, accident, or the unsafe operation of an artificial tanning device.

**25-5-1009. Penalties.**

(1) Upon a finding by the Board that an owner or lessee of a tanning facility is in violation of any of the provisions of this Part 10, or the standards, rules, or regulations adopted by the Board pursuant to this Part 10, the Board may assess a penalty of up to two hundred dollars for each day of violation, and each day of violation shall be considered a separate offense. Actions may be brought by the Attorney General in the District Court of the district within which the tanning device is located, in determining the amount of the penalty, the Board shall consider the degree of danger to the public caused by the violation, the duration of the violation, and whether the owner or lessee has committed any similar violations. Any penalty fees collected by the Board shall be remitted to the State Treasurer, who shall credit the same to the Tanning Device Education Fund, created in Section 25-5-1004.

(2) An owner or lessee subject to a penalty assessment pursuant to this Section, may appeal the penalty to the Board by requesting a hearing before the Board. Such a request shall be filed within thirty days after the penalty assessment is issued. A hearing before the Board shall be conducted in accordance with Article 4 of Title 24, C.R.S.

**25-5-1010. Enforcement.**

(1) (a) Whenever the Department has reasonable cause to believe a violation of this Part 10 or any rule made pursuant to this Part 10 has occurred and immediate enforcement is deemed necessary, the Department may issue a cease and desist order, which may require any person to cease violating any provision of this Part 10 or any rule made pursuant to this Part 10. Such cease and desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) In the event that any person fails to comply with a cease and desist order within twenty-four hours, the Department may apply to the District Court of the district within which the tanning device is located, for a temporary or permanent injunction restraining any person from violating any provision of this Part 10 regardless of whether there is an adequate remedy at law.

(c) No stay of a cease and desist order shall be issued before a hearing thereon involving both parties.

(2) Whenever it appears to the Department, upon evidence satisfactory to the Department, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this Part 10 or of any rule or of any order promulgated under this Part 10, the Department may apply to the District Court of the district within which the tanning device is located to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this Part 10 or any rule or order promulgated under this Part 10. In any such action, the Department shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the Department to post a bond.

(3) It is a violation of this Part 10 for:

(a) Any person to knowingly operate a tanning facility without having registered said facility with the Department in accordance with the provisions of this Part 10;

(b) Any person to offer for use to the public any artificial tanning device which is not registered with the Department as required by the provisions of this Part 10;

(c) Any person to violate any provision of this Part 10 or any provision of any standards, rules, or regulations adopted by the Board;

(d) Any person to refuse to permit entry for the purpose of inspection of a tanning facility during normal business hours.

**25-5-1011. Assumption of Risk Inapplicable.**

In any civil action for damages for an injury sustained as the result of the use of an artificial tanning device, it shall be presumed that the defense of assumption of risk as set forth in Section 13-21-111.7, C.R.S., shall not apply if the

owner has failed to provide the injured party with the written handout or the safety equipment as required by Section 25-5-1007, or if the owner has failed to provide a safe artificial tanning device.