

**FIRST ENGROSSMENT  
with Conference Committee Amendments****ENGROSSED HOUSE BILL NO. 1154**

Introduced by

Representative Keiser

Senator Kilzer

1 A BILL for an Act to create and enact chapter 23-39 of the North Dakota Century Code, relating  
2 to regulation of tanning facilities; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 23-39 of the North Dakota Century Code is created and enacted  
5 as follows:

6 **23-39-01. Definitions.** As used in this chapter, unless the context otherwise requires:

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

18 **23-39-02. Permit - Fee.**

- 19 1. A person may not operate a tanning facility without a permit issued by the  
20 department under this chapter. The holder of a permit shall display the permit in a  
21 conspicuous place at the tanning facility for which the permit is issued. Permits  
22 issued under this chapter expire annually. An applicant for a permit shall submit  
23 an application for a permit to the department, on a form provided by the  
24 department, with a permit fee established by the department. The application must

1           include the name and complete mailing address and street address of the tanning  
2           facility and any other information reasonably required by the department for the  
3           administration of this section.

4           2. The permit fee established by the department must be based on the cost of  
5           conducting routine and complaint inspections and enforcement actions and the  
6           cost of preparing and sending license renewals. Any fee collected under this  
7           section must be deposited in the department's operating fund in the state treasury  
8           and any expenditure from the fund is subject to appropriation by the legislative  
9           assembly. The department shall waive all or a portion of the permit fee for any  
10          tanning facility that is subject to local jurisdiction.

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

14          **23-39-03. Advertising - Notice - Warning sign - Tubes - Prohibited claims.**

15          1. A tanning facility may not state in any advertising that the tanning facility holds a  
16          license or permit issued by the department to operate a tanning facility.

17          2. A tanning facility shall give to each of the tanning facility's customers written notice  
18          of the following:

19           a. Failure to wear the eye protection provided by the tanning facility may result  
20           in damage to the customer's eyes and may cause cataracts;

21           b. Overexposure to a tanning device causes burns;

22           c. Repeated exposure to a tanning device may cause premature aging of the  
23           skin and may cause skin cancer;

24           d. Abnormal skin sensitivity or burning of the skin while using a tanning device  
25           may be caused by:

26                 (1) Certain foods;

27                 (2) Certain cosmetics; and

28                 (3) Certain medications, including tranquilizers, diuretics, antibiotics, high  
29                 blood pressure medicines, and birth control pills; and

30           e. An individual who takes a drug should consult a physician before using a  
31           tanning device.

- 1           3. A tanning facility shall display prominently a warning sign in each area where a  
2           tanning device is used. The warning sign must convey the following directions and  
3           information:
- 4           a. Follow instructions.
- 5           b. Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of  
6           a tanning device can cause eye and skin injury and allergic reactions.  
7           Repeated exposure can cause chronic sun damage, which is characterized  
8           by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.
- 9           c. Wear food and drug administration-approved protective eyewear.
- 10          d. Ultraviolet radiation from tanning devices will aggravate the effects of the sun,  
11          so do not sunbathe during the twenty-four hours immediately preceding or  
12          immediately following the use of a tanning device.
- 13          e. Medications and cosmetics may increase your sensitivity to ultraviolet  
14          radiation. Consult a physician before using a tanning device if you are using  
15          medications, have a history of skin problems, or believe that you are  
16          especially sensitive to sunlight. Women who are pregnant or using birth  
17          control pills and who use a tanning device may develop discolored skin.
- 18          f. If your skin does not tan when exposed to the sun, it is unlikely that your skin  
19          will tan when exposed to this tanning device.
- 20          4. The tanning facility shall maintain a record of the date on which each fluorescent  
21          tube is replaced.
- 22          5. An owner or employee of a tanning facility may not claim, or distribute materials  
23          that claim, that using a tanning device is free of risk.

24           **23-39-04. Liability.** A tanning facility's compliance with this chapter does not relieve  
25 the owner or any employee of the tanning facility from liability for injury sustained by a user of a  
26 tanning device.

27           **23-39-05. Duties.**

- 28          1. The owner of a tanning facility shall ensure that all of the following are fulfilled:
- 29           a. A customer under eighteen years of age may not be permitted to use the  
30           tanning facility until the customer provides the facility with written consent, in  
31           a form prescribed by the department, of a parent or legal guardian to use the

- 1                   tanning facility. The consent must indicate that the parent or legal guardian  
2                   has read the warnings required by this chapter and that the customer agrees  
3                   to wear food and drug administration-approved protective eyewear. The  
4                   parent or legal guardian shall provide a notarized statement of consent or  
5                   sign the consent form in the presence of the owner of the tanning facility or an  
6                   employee responsible for the operation of the ultraviolet radiation device of  
7                   the facility. The written consent form expires twelve months from the date  
8                   signed. A customer under the age of fourteen years may not be allowed to  
9                   utilize a tanning device at a tanning facility without a written order from a  
10                   physician licensed in this state and without being accompanied by a parent or  
11                   legal guardian for every use of the tanning facility.
- 12                   b. During operating hours there is present at the tanning facility a trained  
13                   operator who is able to inform customers about, and assist customers in, the  
14                   proper use of tanning devices.
- 15                   c. Each tanning bed is properly sanitized after each use.
- 16                   d. Properly sanitized and securely fitting food and drug administration-approved  
17                   protective eyewear that protects the wearer's eyes from ultraviolet radiation  
18                   and allows enough vision to maintain balance is made available to the  
19                   customer.
- 20                   e. A customer is not allowed to use a tanning device unless the customer  
21                   agrees to use food and drug administration-approved protective eyewear.
- 22                   f. A customer is shown how to use such physical aids as handrails and  
23                   markings on the floor to determine the proper distance from the tanning  
24                   device.
- 25                   g. A timing device that is accurate within ten percent is used.
- 26                   h. Each tanning device is equipped with a mechanism that allows the customer  
27                   to turn off the tanning device.
- 28                   i. A customer is limited to the maximum exposure time recommended by the  
29                   manufacturer.
- 30                   j. A customer is not allowed to use a tanning device more than once every  
31                   twenty-four hours.

- 1           k. The interior temperature of the tanning facility does not exceed one hundred  
2           degrees Fahrenheit.
- 3           l. The statements under subdivision a of subsection 2 are retained by the  
4           tanning facility for the lesser of three years or until the customer signs a new  
5           statement.
- 6           2. A user of a tanning facility shall do all of the following:
- 7           a. Immediately before the customer's first use of a tanning facility in a year, sign  
8           a statement acknowledging that the customer has read and understands the  
9           notice under subsection 2 of section 23-39-03 and the warning sign under  
10           subsection 3 of section 23-39-03 and specifying that the customer agrees to  
11           use food and drug administration-approved protective eyewear.
- 12           b. Use food and drug administration-approved protective eyewear at all times  
13           while using a tanning device.

14           **23-39-06. Injury reports.** If a customer of a tanning facility reports a sunburn injury to  
15 that facility resulting from the use of its tanning device, the owner shall provide the customer  
16 with written information on how to report the alleged injury to the state department of health. If  
17 a health care provider treats a patient for a sunburn injury and determines, in the exercise of  
18 professional judgment, that the injury occurred as a result of using a tanning device at a tanning  
19 facility, the health care provider shall report the circumstances of the injury to the state  
20 department of health. A health care provider making or not making a report in good faith  
21 pursuant to this section is immune from liability for making or not making a report.

22           **23-39-07. Enforcement - Rules - Penalty.** The department shall enforce this chapter.  
23 The state health council shall adopt rules necessary to implement this chapter. The  
24 department may deny issuance of a permit to an applicant or suspend or revoke any permit  
25 issued under this chapter if the applicant or permitholder, or an employee of the applicant or  
26 permitholder, violates this chapter or any rule adopted to implement this chapter. Violation of  
27 this chapter or any rule adopted to implement this chapter is a class B misdemeanor.