

Bill No. 5-16
Concerning: Tanning Facilities -
Amendments
Revised: 4/6/2016 Draft No. 4
Introduced: March 1, 2016
Enacted: April 12, 2016
Executive: April 20, 2016
Effective: July 20, 2016
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Ch. 13, Laws of Mont. Co. 2016

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker
Co-Sponsors: Council President Nancy Floreen, Councilmembers Leventhal, Katz, Navarro, and Rice, Council Vice-President Berliner, and Councilmembers Riemer and Elrich

AN ACT to:

- (1) prohibit minors from using indoor tanning devices;
- (2) require tanning facilities and customers to adhere to certain duties;
- (3) require tanning facilities to provide certain warning statements and post certain signs; and
- (4) generally amend the law regarding tanning facilities.

By amending and renumbering

Montgomery County Code
Chapter 51A, Tanning Facilities
Sections 51A-1, 51A-2, 51A-3, 51A-4, 51A-5, 51A-6, 51A-7, 51A-8, 51A-9, 51A-10,
51A-11, 51A-12, 51A-13, 51A-14, and 51A-15

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

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Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 51A is amended by amending and renumbering Sections**
 2 **51A-1, 51A-2, 51A-3, 51A-4, 51A-5, 51A-6, 51A-7, 51A-8, 51A-9, 51A-10,**
 3 **51A-11, 51A-12, 51A-13, 51A-14, and 51A-15:**

4 **51A-1. Definitions.**

5 In this Chapter the following words have the meanings indicated:

6 [(1)] *Department* means the Department of Health and Human Services.

7 [(2)] *Director* means the Director of the Department of Health and Human
 8 Services or the Director's designee.

9 [(3)] *Tanning facility* means any place where a tanning device is used [for a
 10 fee, membership dues, or any other compensation] regardless of whether a fee
 11 is [[charge]] charged for access to the tanning device.

12 [(4)] *Tanning device*[:

- 13 a. Means any equipment that emits radiation used for tanning of the
 14 skin, such as a sunlamp, tanning booth, or tanning bed; and
- 15 b. Includes any accompanying equipment, such as protective
 16 eyewear, timers, and handrails.] means any equipment that emits
 17 [[electromagnetic]] radiation [[having wavelengths in the air
 18 between 200 and 400 nanometers and that is]] used for tanning of
 19 [[human]] the skin, such as a sunlamp, tanning booth, or tanning
 20 bed. Tanning device includes any accompanying equipment,
 21 including protective eyewear, timers, and handrails.

22 **[51A-2. Scope.]**

23 [This chapter does not apply to a licensed health care professional who uses a
 24 tanning device.]

25 **[51A-4] 51A-2. License required.**

- 26 (a) [It is unlawful for any person to] A person must not operate a tanning
 27 facility without a valid license issued by the [department] Department
 28 under this [chapter] Chapter.
- 29 (b) A license authorizes a person to operate a tanning facility only at the
 30 location identified in the license.
- 31 (c) A license issued under this [chapter] Chapter is not transferable.
 32 However, a new owner may continue to operate a tanning facility under
 33 the terms of the previous license if:
- 34 (1) [The] the new owner has applied for a license under this [chapter]
 35 Chapter; and
- 36 (2) [The] the license of the previous owner has not expired or been
 37 suspended or revoked.

38 **[51A-5] 51A-3. Application for license.**

- 39 (a) *In general.* A person who wants to operate a tanning facility must:
- 40 (1) [Submit] submit an application to the [department] Department
 41 on the form that the [department] Department requires; and
- 42 (2) [Pay] pay to the [department] Department a license fee in the
 43 amount that the [county executive] County Executive determines
 44 by regulation adopted under [method] Method (3).
- 45 (b) *Contents of form.* The application must include:
- 46 (1) [The] the name and address of the applicant;
- 47 (2) [The] the location and telephone number of the tanning facility
 48 for which the application is made;
- 49 (3) [The] the name, description and year of manufacture of each
 50 tanning device used by the tanning facility; and
- 51 (4) [Any] any other information that the [department] Department
 52 requires.

53 (c) *New equipment.* A person who operates a tanning facility must notify
 54 the [department] Department of the name, description, and year of
 55 manufacture of any new equipment it uses within [thirty (30)] 30 days
 56 after installing the new equipment for use.

57 **[51A-6] 51A-4. Issuance of license; inspection.**

58 (a) *Issuance.* The [department] Department must issue a license to any
 59 person who:

- 60 (1) [Submits] submits an application under [section 51A-5] Section
 61 [[51A-4]] 51A-3;
 62 (2) [Pays] pays the license fee required under [section 51A-5]
 63 Section [[51A-4]] 51A-3; and
 64 (3) [Meets] meets all other requirements of this [chapter] Chapter.

65 (b) *Inspection.* Before issuing a license [under this chapter], the
 66 [department] Department must inspect a tanning facility to determine
 67 whether it meets the requirements of this [chapter] Chapter.

68 **[51A-7. License.]**

69 [(a)] (c) *Contents of license.* A license must include:

- 70 (1) [The] the name of the licensee;
 71 (2) [The] the location of the tanning facility for which the license is
 72 issued;
 73 (3) [The] the date that the license expires; and
 74 (4) [Any] any other information that the [department] Department
 75 requires.

76 [(b)] (d) *Term of license.* A license is valid for [one (1)] 1 year after its date of
 77 issuance.

78 [(c)] (e) *Display.* A licensee must display the license conspicuously in the
 79 tanning facility.

80 **[51A-8. Renewal] 51A-5. License renewal.**

81 (a) *Application.* A licensee may renew a license if, [thirty (30)] 30 days
 82 before the license expires, the licensee:

83 (1) [Submits] submits to the [department] Department a renewal
 84 application on the form that the [department] Department
 85 requires;

86 (2) [Pays] pays a renewal fee equal to the license fee established
 87 under [section 51A-5] Section [[51A-4]] 51A-3; and

88 (3) [Meets] meets all other requirements of this [chapter] Chapter.

89 (b) *Extension.* An existing license continues in effect until the [department]
 90 Department acts on the renewal application if:

91 (1) [The] the licensee meets the requirements of subsection (a); and

92 (2) [The] the existing license has not been suspended or revoked.

93 (c) *Term.* A license is valid for [one (1)] 1 year after its date of renewal.

94 **[51A-11] 51A-6. Standard for tanning devices.**

95 Any tanning device used by a tanning facility must meet performance
 96 standards based on applicable federal law and regulations for the protection of the
 97 public health as established by the [county executive] County Executive.

98 **[51A-13] 51A-7. [Use requirements] Duties; prohibition of use by minors.**

99 (a) *Tanning facility.* A tanning facility must:

100 (1) [Have] have a trained attendant on duty whenever the facility is
 101 open for business;

102 (2) [a.] (A) [Provide] provide each customer with protective eyewear
 103 that meets the standards for tanning devices established
 104 under this [chapter] Chapter; and

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[b.] (B) [Not allow] prohibit a person [to use] from using a tanning device if that person does not use the protective eyewear.

- (3) [Show] show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer;
- (4) [Limit] limit each customer to the maximum exposure time as recommended by the manufacturer;
- (5) ensure that a timing device that is accurate ~~[[with]]~~ within 10% of any selected timer interval is used and is remotely located so customers cannot set their own exposure time;
- (6) [Control] control the interior temperature of a tanning facility so that it does not exceed [the temperature that the county executive determines by regulation under method (3)] 100 degrees Fahrenheit;
- (7) ensure that each tanning device is equipped with a mechanism that allows a customer to turn the tanning device off;
- (8) prohibit a customer from using a tanning device in the facility more than once every 24 hours;
- (9) sanitize each tanning device after each use;
- (10) provide a written warning as required in Section ~~[[51A-9]]~~ 51A-8; and
- (11) maintain records as required in Section ~~[[51A-10]]~~ 51A-9.

(b) *Customer.*

- (1) Either each time a person uses a tanning facility, or each time a person executes or renews a contract to use a tanning facility, the person must sign a written statement that the person:

132 [a.] (A) [Has] has read and understood the warnings before using
 133 the device; and

134 [b.] (B) [Agrees] agrees to use the protective eyewear that the
 135 tanning facility provides.

136 (2) When using a tanning device, a person must use the protective
 137 eyewear that the tanning facility provides.

138 [(3) A person under the age of eighteen (18) must be accompanied by
 139 a parent or legal guardian when using a tanning device.]

140 (3) A person under the age of 18 must not use a tanning device.

141 **[51A-12] 51A-8. Warnings.**

142 (a) Warning Statement. A tanning facility must give each customer a
 143 written statement warning that:

144 (1) [The] the customer must use the protective eyewear that the
 145 tanning facility provides to avoid damage to the eyes;

146 (2) [Overexposure] overexposure causes burns;

147 (3) [Repeated] repeated exposure may cause premature aging of the
 148 skin and skin cancer;

149 (4) [Abnormal] abnormal skin sensitivity or burning may be caused
 150 by certain:

151 [a. Foods] (A) foods;

152 [b. Cosmetics] (B) cosmetics;

153 [c. Tranquilizers] (C) tranquilizers;

154 [d. Diuretics] (D) diuretics;

155 [e. Antibiotics] (E) antibiotics;

156 [f. High] (F) high blood pressure medicines; and

157 [g. Birth] (G) birth control pills; and

- 158 (5) Any person taking a prescription or over-the-counter drug should
 159 consult a physician before using a tanning device[.];
- 160 (6) it is a violation of County Code §51A-8 for a person under the
 161 age of 18 to use a tanning device.
- 162 (b) In the warning statement required under subsection (a), a tanning
 163 facility must tell its customers:
- 164 (1) [How] how much liability insurance it carries for the kinds of
 165 injuries listed in subsection (a); or
- 166 (2) [That] that it does not carry liability insurance for the kinds of
 167 injuries listed in subsection (a).
- 168 (c) Warning Sign. A tanning facility must post a warning sign in any area
 169 where a tanning device is used. The [county executive] Executive must
 170 determine the content and size of the warning sign by regulation under
 171 [method] Method (3). However, at a minimum, the sign must state that
 172 it is a violation of County Code §51A-13 for a person under the age of
 173 18 to use a tanning device.
- 174 (d) A tanning facility must not claim, or distribute promotional materials
 175 that claim, that using a tanning device is safe or free from risk.
- 176 (e) The liability of a facility operator or a manufacturer of a tanning device
 177 is not changed by giving the warning under this [section] Section.

178 **[51A-14] 51A-9. Injury report; records.**

- 179 (a) *Injury report.*
- 180 (1) *Tanning facility.* A tanning facility must:
- 181 [a.] (A) [Report] report any injury, or any complaint of injury, to
 182 the [department] Department on the form that the
 183 [department] Department requires; and

184 [b.] (B) [Send] send a copy of the injury report to the person who
 185 is injured or complains of an injury.

186 (2) *Department.* The [department] Department must send to the
 187 [food and drug administration] Food and Drug Administration a
 188 report of all injuries in a tanning facility.

189 (b) *Records.* A tanning facility must keep a record of each customer's use of
 190 a tanning device. The [county executive] Executive must determine by
 191 regulation a reasonable length of time and the manner that records must
 192 be kept.

193 **[51A-9] 51A-10. Right of entry.**

194 The [department] Department may inspect any tanning facility whenever it is
 195 open to the public for business to determine whether the tanning facility meets the
 196 requirements of this [chapter] Chapter.

197 **[51A-3] 51A-11. Administration; regulations.**

198 The Department [of Health and Human Services is responsible for
 199 administering and enforcing] must administer and enforce this Chapter. The County
 200 Executive must issue regulations for administering this Chapter under [method]
 201 Method (2). These regulations should include standards for hygiene, injury reports,
 202 training of attendants, and the meaning of health care professional.

203 **[51A-10] 51A-12. Enforcement.**

204 (a) *Order to comply.* The [director] Director may order a licensee to comply
 205 with the provisions of this [chapter] Chapter. The [county attorney]
 206 County Attorney may file an action in any competent court to enforce
 207 an order under this [section] Section or to enjoin any violation of this
 208 [chapter] Chapter.

209 (b) *Denial, suspension, revocation.* The [department] Director may deny,
 210 suspend, or revoke a license under this [chapter] Chapter if the

211 [director] Director finds, after a hearing for which written notice has
 212 been given, that an applicant or licensee has:

- 213 (1) [Made] made a material false statement on an application for an
 214 initial or renewal license;
- 215 (2) [Obtained] obtained a license by fraud or deceit;
- 216 (3) [Failed] failed to conform to the provisions of this [chapter]
 217 Chapter;
- 218 (4) [Refused] refused lawful entry to any person authorized to
 219 enforce this [chapter] Chapter; or
- 220 (5) [Failed] failed to comply with an order under this [section]
 221 Section.

222 (c) *Summary closing.*

- 223 (1) The [director] Director may summarily suspend or revoke a
 224 license under this [chapter] Chapter if the [director] Director
 225 finds that the tanning facility presents an immediate threat to the
 226 public health or safety.
- 227 (2) If the [director] Director summarily suspends or revokes a license
 228 under this [section] Section, the [director] Director must:
 - 229 [a.] (A) [Give] give the licensee written notice as soon as
 230 possible; and
 - 231 [b.] (B) [Hold] hold a hearing within [forty-eight (48)] 48 hours
 232 after receiving a written request for a hearing from the
 233 licensee.

234 (d) *Reinstatement.* Any person whose license has been suspended or
 235 revoked under this [section] Section may apply to the [director] Director
 236 for reinstatement of the license. Upon receipt of an application for
 237 reinstatement, the [director] Director must inspect the tanning facility

238 and must reinstate the license if the tanning facility conforms to the
 239 provisions of this [chapter] Chapter.

240 (e) *Notice.* Notice to an applicant or licensee under this [section] Section is
 241 effective if:

242 (1) [Served] served personally on the applicant or licensee;

243 (2) [Mailed] mailed by certified mail to the applicant or licensee; [or]

244 (3) [Posted] posted on the door of the residence of the applicant or
 245 licensee[,]; or

246 (4) posted on the door of the tanning facility.

247 (f) *Appeal.* Any person aggrieved by a denial, suspension, or revocation
 248 under this [section] Section may file an appeal with the Montgomery
 249 County Board of Appeals within [ten (10)] 10 days after receipt of the
 250 denial, suspension, or revocation. An order to comply is not appealable
 251 under this subsection. The filing of an appeal does not stay an action
 252 under this [section] Section unless the action expressly provides for a
 253 stay upon appeal.

254 **[51A-15. Penalty] 51A-13. Penalties.**

255 [A person who does not comply with the provisions of this chapter or the
 256 regulations adopted under this chapter may be punished for a class A violation under
 257 section 1-19] Any violation of this Chapter or any regulation adopted under it is a
 258 Class A violation. Each day a violation continues is a separate offense.

259

260 *Approved:*

261 *Nancy Floreen*
Nancy Floreen, President, County Council

April 13, 2016
Date

262 *Approved:*

263 *Isiah Leggett*
Isiah Leggett, County Executive

April 20, 2016
Date

264 *This is a correct copy of Council action.*

265 *Linda M. Lauer*
Linda M. Lauer, Clerk of the Council

April 20, 2016
Date