

MEMORANDUM

February 26, 2016

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *AMihill*

SUBJECT: **Introduction:** Bill 5-16, Tanning Facilities - Amendments

Bill 5-16, Tanning Facilities - Amendments, sponsored by Lead Sponsor Councilmember Hucker is scheduled to be introduced on March 1, 2016. A public hearing is tentatively scheduled for March 22 at 1:30 p.m.

Bill 5-16 would prohibit minors from using indoor tanning devices; require tanning facilities and customers to adhere to certain duties; and require tanning facilities to provide certain warning statements and post certain signs.

This packet contains:	<u>Circle #</u>
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Bill No. 5-16
Concerning: Tanning Facilities –
Amendments
Revised: 2/22/2016 Draft No. 3
Introduced: March 1, 2016
Expires: September 1, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker

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	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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 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 equipment that emits
 17 electromagnetic radiation having wavelengths in the air between
 18 200 and 400 nanometers and that is used for tanning of human
 19 skin. *Tanning device* includes any accompanying equipment,
 20 including protective eyewear, timers, and handrails.

21 **[51A-2. Scope.]**

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

24 **[51A-4] 51A-2. License required.**

25 (a) [It is unlawful for any person to] A person must not operate a tanning
 26 facility without a valid license issued by the [department] Department
 27 under this [chapter] Chapter.

28 (b) A license authorizes a person to operate a tanning facility only at the
29 location identified in the license.

30 (c) A license issued under this [chapter] Chapter is not transferable.
31 However, a new owner may continue to operate a tanning facility under
32 the terms of the previous license if:

33 (1) [The] the new owner has applied for a license under this [chapter]
34 Chapter; and

35 (2) [The] the license of the previous owner has not expired or been
36 suspended or revoked.

37 **[51A-5] 51A-3. Application for license.**

38 (a) *In general.* A person who wants to operate a tanning facility must:

39 (1) [Submit] submit an application to the [department] Department
40 on the form that the [department] Department requires; and

41 (2) [Pay] pay to the [department] Department a license fee in the
42 amount that the [county executive] County Executive determines
43 by regulation adopted under [method] Method (3).

44 (b) *Contents of form.* The application must include:

45 (1) [The] the name and address of the applicant;

46 (2) [The] the location and telephone number of the tanning facility
47 for which the application is made;

48 (3) [The] the name, description and year of manufacture of each
49 tanning device used by the tanning facility; and

50 (4) [Any] any other information that the [department] Department
51 requires.

52 (c) *New equipment.* A person who operates a tanning facility must notify
53 the [department] Department of the name, description, and year of

54 manufacture of any new equipment it uses within [thirty (30)] 30 days
 55 after installing the new equipment for use.

56 **[51A-6] 51A-4. Issuance of license; inspection.**

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

59 (1) [Submits] submits an application under [section 51A-5] Section
 60 51A-4;

61 (2) [Pays] pays the license fee required under [section 51A-5]
 62 Section 51A-4; and

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

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

67 **[51A-7. License.]**

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

69 (1) [The] the name of the licensee;

70 (2) [The] the location of the tanning facility for which the license is
 71 issued;

72 (3) [The] the date that the license expires; and

73 (4) [Any] any other information that the [department] Department
 74 requires.

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

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

79 **[51A-8. Renewal] 51A-5. License renewal.**

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

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

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

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

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

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

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

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

93 **[51A-11] 51A-6. Standard for tanning devices.**

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

97 **[51A-13] 51A-7. [Use requirements] Duties; prohibition of use by minors.**

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

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

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

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

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

126 (b) *Customer.*

- 127 (1) Either each time a person uses a tanning facility, or each time a
- 128 person executes or renews a contract to use a tanning facility, the
- 129 person must sign a written statement that the person:
- 130 [a.] (A) [Has] has read and understood the warnings before using
- 131 the device; and
- 132 [b.] (B) [Agrees] agrees to use the protective eyewear that the
- 133 tanning facility provides.

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

136 [(3) A person under the age of eighteen (18) must be accompanied by
 137 a parent or legal guardian when using a tanning device.] A
 138 person under the age of 18 must not use a tanning device.

139 **[51A-12] 51A-8. Warnings.**

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

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

144 (2) [Overexposure] overexposure causes burns;

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

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

149 [a. Foods] (A) foods;

150 [b. Cosmetics] (B) cosmetics;

151 [c. Tranquilizers] (C) tranquilizers;

152 [d. Diuretics] (D) diuretics;

153 [e. Antibiotics] (E) antibiotics;

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

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

156 (5) Any person taking a prescription or over-the-counter drug should
 157 consult a physician before using a tanning device[.];

158 (6) it is a violation of County Code §51A-8 for a person under the
 159 age of 18 to use a tanning device.

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

176 **[51A-14] 51A-9. Injury report; records.**

- 177 (a) Injury report.
- 178 (1) Tanning facility. A tanning facility must:
 179 [a.] (A) [Report] report any injury, or any complaint of injury, to
 180 the [department] Department on the form that the
 181 [department] Department requires; and
 182 [b.] (B) [Send] send a copy of the injury report to the person who
 183 is injured or complains of an injury.
- 184 (2) Department. The [department] Department must send to the
 185 [food and drug administration] Food and Drug Administration a
 186 report of all injuries in a tanning facility.

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

191 **[51A-9] 51A-10. Right of entry.**

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

195 **[51A-3] 51A-11. Administration; regulations.**

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

201 **[51A-10] 51A-12. Enforcement.**

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

207 (b) *Denial, suspension, revocation.* The [department] Director may deny,
 208 suspend, or revoke a license under this [chapter] Chapter if the
 209 [director] Director finds, after a hearing for which written notice has
 210 been given, that an applicant or licensee has:

- 211 (1) [Made] made a material false statement on an application for an
 212 initial or renewal license;
- 213 (2) [Obtained] obtained a license by fraud or deceit;

- 214 (3) [Failed] failed to conform to the provisions of this [chapter]
 215 Chapter;
- 216 (4) [Refused] refused lawful entry to any person authorized to
 217 enforce this [chapter] Chapter; or
- 218 (5) [Failed] failed to comply with an order under this [section]
 219 Section.

220 (c) *Summary closing.*

221 (1) The [director] Director may summarily suspend or revoke a
 222 license under this [chapter] Chapter if the [director] Director
 223 finds that the tanning facility presents an immediate threat to the
 224 public health or safety.

225 (2) If the [director] Director summarily suspends or revokes a license
 226 under this [section] Section, the [director] Director must:

227 [a.] (A) [Give] give the licensee written notice as soon as
 228 possible; and

229 [b.] (B) [Hold] hold a hearing within [forty-eight (48)] 48 hours
 230 after receiving a written request for a hearing from the
 231 licensee.

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

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

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

- 241 (2) [Mailed] mailed by certified mail to the applicant or licensee; [or]
- 242 (3) [Posted] posted on the door of the residence of the applicant or
- 243 licensee[,]; or
- 244 (4) posted on the door of the tanning facility.
- 245 (f) *Appeal*. Any person aggrieved by a denial, suspension, or revocation
- 246 under this [section] Section may file an appeal with the Montgomery
- 247 County Board of Appeals within [ten (10)] 10 days after receipt of the
- 248 denial, suspension, or revocation. An order to comply is not appealable
- 249 under this subsection. The filing of an appeal does not stay an action
- 250 under this [section] Section unless the action expressly provides for a
- 251 stay upon appeal.

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

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

Approved:

Nancy Floreen, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 5-16

Tanning Facilities - Amendments

DESCRIPTION:	Bill 5-16 would generally update County law related to tanning facilities and prohibit minors from using tanning facilities.
PROBLEM:	<p>The current laws related to tanning facilities were originally established in 1987 and infrequently amended since then. There have been increased knowledge about the risks of indoor tanning facilities since that time.</p> <p>According to the Centers for Disease Control and Prevention, the use of tanning facilities is particularly dangerous for younger users because people who begin indoor tanning during adolescence or early adulthood have a higher risk of getting melanoma, the deadliest form of skin cancer.</p>
GOALS AND OBJECTIVES:	To protect public health by updating the general laws related to tanning facilities and prohibit minors from using tanning facilities.
COORDINATION:	Department of Health and Human Services
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, 240-777-7815
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Class A violation.