



Division of Food and Lodging
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CHAPTER 23-39 TANNING FACILITIES

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

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

23-39-02. Permit - Fee.

1. A person may not operate a tanning facility without a permit issued by the department under this chapter. The holder of a permit shall display the permit in a conspicuous place at the tanning facility for which the permit is issued. Permits issued under this chapter expire annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee establishment by the department. The application must include the name and complete mailing address and street address of the tanning facility and any other information reasonably required by the department for the administration of this section.
2. The permit fee established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and the cost of preparing and sending license renewals. Any fee collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the permit fee for any tanning facility that is subject to local jurisdiction.
3. The department shall accept city or county enforcement of this chapter if the department determines the city or county requirements meet or exceed the requirements of this chapter and any rules adopted under this chapter.

23-39-02. Advertising - Notice - Warning sign - Tubes - Prohibited claims.

1. A tanning facility may not state in any advertising that the tanning facility holds a license or permit issued by the department to operate a tanning facility.
2. A tanning facility shall give to each of the tanning facility's customers written notice of the following:
 - a. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;
 - b. Overexposure to a tanning device causes burns;
 - c. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer'
 - d. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:
 - i. Certain foods;
 - ii. Certain cosmetics; and
 - iii. Certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medications, and birth control pills; and
 - e. An individual who takes a drug should consult a physician before using a tanning device.
3. A tanning facility shall display prominently a warning sign in each area where a tanning device is used. The warning sign must convey the following directions and information:
 - a. Follow instructions.
 - b. Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun

- damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.
 - c. Wear food and drug administration-approved protective eyewear.
 - d. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.
 - e. Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.
 - f. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to this tanning device.
4. The tanning facility shall maintain a record of the date on which each fluorescent tube is replaced.
 5. An owner or employee of a tanning facility may not claim, or distribute materials that claim, that using a tanning device is free of risk.

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

23-39-05. Duties.

1. The owner of a tanning facility shall ensure that all of the following are fulfilled:
 - a. A customer under eighteen years of age may not be permitted to use the tanning facility until the customer provides the facility with written consent, in a form prescribed by the department, of a parent or legal guardian to use the tanning facility. The consent must indicate that the parent or legal guardian has read the warnings required by this chapter and that the customer agrees to wear food and drug administration-approved protective eyewear. The parent or legal guardian shall provide a notarized statement of consent or sign the consent form in the presence of the owner of the tanning facility or an employee responsible for the operation of the ultraviolet radiation device of the facility. The written consent form expires twelve months from the date signed. A customer under the age of fourteen years may not be allowed to utilize a tanning device at a tanning facility without a written order from a physician licensed in this state and without being accompanied by a parent or legal guardian for every use of the tanning facility.
 - b. During operating hours there is present at the tanning facility a trained operator who is able to inform customers about, and assist customers in, the proper use of tanning devices.
 - c. Each tanning bed is properly sanitized after each use.
 - d. Properly sanitized and securely fitting food and drug administration-approved protective eyewear that protects the wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance is made available to the customer.
 - e. A customer is not allowed to use a tanning device unless the customer agrees to use food and drug administration-approved protective eyewear.
 - f. A customer is shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the tanning device.
 - g. A timing device that is accurate within ten percent is used.
 - h. Each tanning device is equipped with a mechanism that allows the customer to turn off the tanning device.
 - i. A customer is limited to the maximum exposure time recommended by the manufacturer.
 - j. A customer is not allowed to use a tanning device more than once every twenty-four hours.
 - k. The interior temperature of the tanning facility does not exceed one hundred degrees Fahrenheit.
 - l. The statements under subdivision a of subsection 2 are retained by the tanning facility for the lesser of three years or until the customer signs a new statement.
2. A use of a tanning facility shall do all of the following:
 - a. Immediately before the customer's first use of a tanning facility in a year, sign a statement acknowledging that the customer has read and understands the notice under subsection 2 of section 23-39-03 and the warning sign under subsection 3 of section 23-39-03 and specifying that the customer agrees to use food and drug administration-approved protective eyewear.
 - b. Use food and drug administration-approved eyewear at all times while using a tanning device.

23-39-06. Injury reports. If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the state department of health. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning

device at a tanning facility, the health care provide shall report the circumstances of the injury to the state department of health. A health care provider making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

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

Article 33-42 Tanning Facilities

33-42-01-01. Applicability. This chapter applies to all persons who possess or operate tanning devices available to the public for the purpose of artificial light skin tanning, including those offered for use as part of a membership or premium offer in a health club, condominium, apartment complex activity center, hotel or motel rental.

33-42-01-02. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23-39 except:

1. "Applicant" means any person who applies to the department for a license to operate a tanning facility.
2. "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental or other offer.
3. "Department" means the state department of health.
4. "Operator" means an individual designated by the license holder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.
5. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.
6. "Protective eyewear" means any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B and visible light up to 500 nanometers but permits sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.
7. "Radiation" means ultraviolet radiation.
8. "Ultraviolet radiation" means electromagnetic radiation with a wavelength in air of 200 to 400 nanometers.
9. "UV-A" means ultraviolet radiation having a wavelength in air of 320 to 400 nanometers.
10. "UV-B" means ultraviolet radiation having a wavelength in air of 290 to 320 nanometers.

33-42-01-03. Advertising.

1. No tanning facility may state in any advertising, written or verbal, that tanning is free of hazards from ultraviolet radiation or has any health benefits other than those recognized by a credible scientific or medical source.
2. No person may state or imply that any activity under a license has been approved by the department.

33-42-01-04. Warning sign.

1. Location and content. Tanning facilities shall prominently display a warning sign in each area where a tanning device is used. A sign shall be located within one meter of each device. The sign shall be readily legible, clearly visible and not obstructed by any barrier, equipment or other item present so that the customer can easily view the warning sign before turning on the tanning device.
2. Lettering. The lettering on each warning sign shall be at least five millimeters high for the word "WARNING". All capital letters shall be at least five millimeters high and all lower case letters shall be at least three millimeters high. The warning sign must contain the following warnings:

WARNING

DANGER - ULTRAVIOLET RADIATION

Follow Instructions.

Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.

WEAR FOOD AND DRUG ADMINISTRATION-APPROVED PROTECTIVE EYEWEAR. FAILURE TO WEAR PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.

Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.

If your skin does not tan when exposed to sun, it is unlikely that your skin will tan when exposed to this tanning device.

33-42-01-05. Lamp replacement.

1. The tanning facility shall maintain a record of the dates on which the tubes, bulbs or lamps were replaced.
2. The tubes, bulbs or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs or lamps become damaged or defective. A replacement lamp for a tanning unit shall be compatible with the original lamp as specified by the manufacturer of the unit or shall be substantially equivalent to the manufacturer's original lamp type. In this subsection, "substantially equivalent" means within 10% of the UV-B emission of the original lamp and meeting the performance requirements of the U.S. food and drug administration in 21 CFR 1040.20(c)(1).
3. The facility shall maintain the device manufacturer's literature indicating the rating, output or intensity of the tube, lamp or bulb required for replacement.
4. No tube, bulb or lamp designated for medical use only may be used.

33-42-01-06. Duties of the operator.

1. Use only tanning equipment manufactured and certified to comply with 21 CFR Part 1040, Section 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products", in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR Part 1010 Section 1010.3.
2. Use only tanning equipment that has a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20(c)(2). The timer shall be incorporated in the tanning device. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.
3. Ensure that protective acrylic sheets are in place when a tanning device is in use, except that the protect acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

33-42-01-07. Cleanliness and Sanitation.

1. Walls, floors and fixtures shall be kept clean at all times in the entire facility.
2. No article or equipment shall be used or offered for use by a patron unless that article has first been cleaned with an EPA-approved sanitizer. A test kit or other device that accurately measures the concentration of the sanitizing solution in parts per million (ppm) shall be used to measure the strength of the sanitizing solution when the concentrate and water dilution is initially prepared and at least daily thereafter to ensure sufficient strength of the sanitizing solution.
3. Paper towels or a clean cloth towel shall be provided. If reusable cloth towels are provided, they shall be mechanically washed with detergent and mechanically dried after each use. The cloth towels must be stored in a dry, clean environment until used.

33-42-01-08. Reports of injury. If a customer of a tanning facility reports a sunburn injury to that facility

resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the department on a form prescribed by the department. The report shall be sent to the department as soon as possible and shall include:

1. The name of the affected individual and date of the actual or alleged injury.
2. The name and location of the tanning facility.
3. The nature of the alleged injury and duration of the tanning exposure.
4. Information on the device involved, such as manufacturer and model number and any other information considered relevant to the situation.
5. The name and address of the health care provider and treatment, if any.

33-42-01-09. Recordkeeping.

1. The operator of a tanning facility shall maintain the following records:
 - a. Each customer's total number of tanning visits, dates and duration of tanning exposure.
 - b. Each customer's signature and acknowledgement that the customer has read and understands the written notice as required in subsection 2 of section 23-39-03 of the North Dakota Century Code and the warning sign as prescribed in section 33-42-01-04 of this chapter.
 - c. Each parental or legal guardian's written consent for customers under eighteen years of age as required in subsection 1(a) of North Dakota Century Code section 23-39-05.All customer records shall be maintained for three years after the last tanning visit.
2. The operator shall maintain the following information for each tanning device:
 - a. Manufacturers equipment/operators manual and any service-related material.
 - b. Inspections, maintenance, and notifications performed on the tanning device, including the date of service and dates of bulb replacement. Device records shall be maintained for three years.

33-42-01-10. Permits - Licenses. A person may not operate a tanning facility without a license issued by the department. The department will conduct a preoperational inspection prior to initial licensure or changes in ownership to insure operator compliance and understanding of all laws and regulations. License renewals must be submitted to the department during December every year. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new facility that begins operation after July first of each year. Licenses are not transferable. The annual license fee for a tanning facility is ninety dollars for facilities with up to ten tanning beds and one hundred ten dollars for facilities with more than ten beds.

33-42-01-11. Denial, suspension or revocation of license.

1. The department may deny issuance of a license or suspend or revoke a license issued under this chapter if the applicant or license holder does not comply with or violates Chapter 23-39 of the North Dakota Century Code or any provision of this chapter or if the applicant or license holder does any of the following:
 - a. Submits false or misleading information in the application or in reports.
 - b. Fails to construct, operate or maintain the tanning facility in accordance with the application.
 - c. Operates the tanning facility in a way that causes or creates a nuisance or hazard to the public health or safety.
 - d. Violates any condition upon which the license was issued.
 - e. Fails to allow the department or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.
 - f. Fails to pay the license fee.
2. Whenever the proprietor of any tanning facility fails to comply with this chapter, the operator must be given notice of the time within which the proprietor must meet the requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.