

## **ARTICLE 35-A ULTRAVIOLET RADIATION DEVICES**

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§ 3550. Definitions. When used in this article, the following words and phrases shall have the meanings ascribed to them in this section:

1. "Tanning facility" shall mean any establishment where one or more ultraviolet radiation device is used, offered, or made available for use by any human being, for which a fee is charged, directly or indirectly, but shall not include any facility where any such device is used by a qualified health care professional for treatment of medical conditions.
2. "Ultraviolet radiation device" shall mean any equipment which is designed to emit electromagnetic radiation in the wavelength interval of two hundred to four hundred nanometers in air, and which is intended to induce tanning of the human skin through irradiation, including, but not limited to, a sunlamp, tanning booth, or tanning bed.
3. "Person" shall mean an individual, corporation, partnership, joint venture, or any business entity.

§ 3551. License required.

1. On and after the effective date of this article, no person shall operate a tanning facility unless such facility is licensed as provided in this article.
2. The department shall license each applicant who submits an application on a form prescribed by the commissioner and meets the requirements of this article and any rules or regulations promulgated pursuant to this article, upon payment of a registration fee of thirty dollars.
3. The commissioner shall promulgate such rules and regulations as are necessary to effectuate the provisions of this article, including, but not limited to, establishing staggered biennial registration periods and the beginning dates thereof; assigning licensees to specific biennial registration periods through appropriate classification or grouping; setting deadline dates for making application for registration; prescribing the form and content of the license; and establishing other reasonable requirements, including appropriate proration of registration fees in connection with the initiation of a staggered biennial registration system.
4. No license issued hereunder shall be effective for more than two years from the date of issuance.

§ 3552. Suspension or revocation.

1. The license of a tanning facility may be suspended for a fixed period, revoked or annulled, upon a finding that a licensee:
  - (a) is guilty of fraud or bribery in securing a license;
  - (b) has made any false statement as to a material matter in any application or any other statement required by this article;
  - (c) failed to display the license or warning signs as provided in this article; or
  - (d) violated any provision of this article or any rule or regulation adopted pursuant to this article.
2. In lieu of revoking, suspending or annulling a license, the department may assess a civil penalty, not exceeding two hundred fifty dollars, for a violation of any provision of this article or any rule or regulation adopted pursuant to this article.
3. Before revoking, suspending or annulling a license, or imposing any civil penalty upon a licensee, the department shall notify the licensee in writing of the proposed action and shall afford the licensee an opportunity to be heard in person or by counsel. Such notice may be served by personal delivery to the licensee or by mailing it by certified mail to the last known address on file with the department or by any method authorized by the civil practice law and rules. The hearing on such charges shall be at such time and place as the department shall prescribe.
4. The department shall have the power to suspend a license pending a hearing and to subpoena and bring before the officer or person conducting the hearing any person in the state, and administer an oath to take testimony of any person or cause his or her deposition to be taken. A subpoena issued under this section shall be subject to the provisions of the civil practice law and rules.

§ 3553. Fees.

All monies collected by the department pursuant to sections thirty-five hundred fifty-one and thirty-five hundred fifty-four of this article shall be deposited into the ultraviolet radiation devices program account within the special revenue fund--other, which is hereby established. Monies in such account may be used to offset costs to the state of registering, inspecting and regulating tanning facilities.

§ 3554. Powers and duties of the commissioner.

1. The commissioner shall inspect each tanning facility licensed under this article and each ultraviolet radiation device used, offered, or made available for use in such facility, not less than biennially. The commissioner may establish a fee for such inspection, which shall not exceed fifty dollars per ultraviolet radiation device; provided, however, that no facility shall be required to pay any such fee on more than one occasion in any biennial registration period. The commissioner may appoint and designate, from time to time, persons to make the inspections authorized by this article.
2. The commissioner shall promulgate rules and regulations to carry out the provisions of this article, including, but not limited to, regulations:

- (a) requiring each tanning facility to conspicuously post the license required by this article, and appropriate warning signs as prescribed by the commissioner;
  - (b) requiring each tanning facility to provide informational pamphlets to customers advising of conditions, such as the use of photosensitizing drugs, under which the use of ultraviolet radiation is contraindicated;
  - (c) establishing standards for cleanliness, hygiene and safety; and (d) requiring each tanning facility to provide safety goggles and any other safety-related devices to customers without additional charge therefor.
3. The commissioner may by regulation authorize any county department of health to administer this section within its jurisdiction.

\* § 3555. Restrictions on the use of ultraviolet radiation devices.

1. No owner, operator, or employee of a tanning facility shall permit the use of the tanning facility by a person eighteen years of age or older until such person provides a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least eighteen years of age and the facility has on file a signed written statement, in a form prescribed by the commissioner, acknowledging that such person has read the warnings required under subdivision two of section thirty-five hundred fifty-four of this article and agrees to wear safety goggles before using an ultraviolet radiation device. Such signed statement of acknowledgment may be retained by the tanning facility off premises provided that an electronic image or facsimile of the original signed statement of acknowledgment is readily available by the owner or employee responsible for the operation of the ultraviolet radiation device of such facility.
2. No owner, operator, or employee of a tanning facility shall permit the use of an ultraviolet radiation device by a person fourteen to eighteen years of age until such person provides the tanning facility with the written consent, in a form prescribed by the commissioner, of a parent or legal guardian to use such tanning facility. The parent or legal guardian shall sign such 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 such facility indicating that such parent or guardian has read the warnings required under subdivision two of section thirty-five hundred fifty-four of this article and that the person fourteen to eighteen years of age agrees to wear safety goggles before using an ultraviolet radiation device. Such original written consent shall be retained by the tanning facility for a period of twelve months and may be retained off premises provided that an electronic image or facsimile of the original signed consent form is readily available by the owner or employee responsible for the operation of the ultraviolet radiation device of such facility.
3. A written consent form signed by a parent or legal guardian pursuant to subdivision two of this section shall expire twelve months from the date it is signed by the parent or legal guardian. Upon the expiration of a written consent form, a new written consent shall be provided in the manner prescribed in subdivision two of this section prior to the use of an ultraviolet radiation device by any person fourteen to eighteen years of age.

4. No owner, operator, or employee of a tanning facility shall permit the use of an ultraviolet radiation device by persons under fourteen years of age.
5. This section shall be exclusive and shall preempt any contrary local law or ordinance, except that this section shall not preempt or supersede local laws or ordinances imposing additional stricter restrictions on the use and operation of ultraviolet radiation devices at tanning facilities which are in effect prior to the effective date of this section.

\* NB Effective November 14, 2006