**Section 795.220 Enforcement and Penalties**

a) Any tanning facility operating without a valid permit or operating on a revoked permit shall be guilty of committing a public nuisance.

b) A person convicted of knowingly maintaining a public nuisance commits a Class A misdemeanor. Each subsequent offense under the Act is a Class 4 felony.

c) Penalties or fines shall not exceed $1,000 per day for each day the permit holder remains in violation.

d) In addition to any other action authorized by the Act or this Part, the Department may assess fines against a tanning facility for violation of any provision of the Act or this Part. The Department shall review each inspection report according to criteria in subsections (e) through (h).

e) The Department shall consider the following criteria independently and aggregately to determine whether a fine shall be assessed.

1) Whether a violation has been noted on an inspection report, and whether the facility corrected the violation.

2) Whether the facility or owner has previously been cited for a violation of the Act or this Part, except that any previously cited violation shall not be considered if the violation was held to be unfounded or unapproved by a final order of the Department or by a court of competent jurisdiction, or if any previous citations for violations occurred more than three years prior to the current violation.

3) Whether the violation creates the possibility of injury or other harm to the environment, to the owner's employees, to the building owner, to users or occupants, or to the general public.

4) Whether the violation appears to be the result of any degree of negligence by the owner, the operator, or the owner's other employees.

5) Whether the owner demonstrated good faith efforts (e.g., taking steps to correct or agreeing to correct the cited violations within a specified period of time) to correct the violations upon receipt of oral or written notice of the violation and whether the actions corrected the violation.

f) The following criteria shall be used to determine the amount of a fine, and all amounts determined pursuant to the criteria shall be added together to determine the total fine against the tanning facility:

1) For each violation related to the operation of a tanning facility without having submitted an application for a permit to operate a tanning facility, pursuant to Section 795.60: $250.

2) For each violation related to the failure to notify the Department of changes to the information specified in the permit application, pursuant to Section 795.100: $50.

3) For each violation related to the failure to maintain an equipment maintenance log, as required by Section 795.100: $100.

4) For each violation related to the failure to post warnings as required by the Act and Section 795.150(a): $100.

5) For each violation related to tanning equipment timers that fail to operate in accordance with the manufacturer's recommended exposure limit as required by Section 795.150(b)(2): $250.

6) For each violation related to the presence of tanning equipment that fails to incorporate a manual control that allows the user to terminate radiation, as required by Section 795.150(b)(3): $250.

7) For each violation related to the presence of tanning equipment lacking physical barriers to protect consumers from injury induced by touching or breaking the lamps, as required by Section 795.150(b)(6): $250.

8) For each violation related to the use of lamps and bulbs that are not certified for use in the equipment in which they are found to be installed, as required by Section 795.150(b)(8): $250.

9) For each violation related to the absence of an adequate supply of eyewear meeting the specifications of 21 CFR 1040.20, as required by Section 795.170(a): $250.

10) For each violation related to the failure to properly sanitize eyewear in accordance with Section 795.170(c): $100.

11) For each violation related to allowing consumers to use tanning equipment without use of protective eyewear as required by Section 795.170(f): $250.

12) For each violation in which the tanning facility was operated in the absence of a trained operator, as required by Section 795.180(c): $250.

13) For each violation related to the failure to maintain consumer use records, as required by the Act and Section 795.190: $250.

14) For each violation related to the failure to maintain prescription and non-prescription drug information required by Section 795.190(b) in a confidential manner: $500.

15) For each violation allowing the use of tanning equipment by persons under the age of 18, as prohibited by Section 795.190(d): $250.

16) For each violation in which an injury resulting from the use of the tanning equipment was not reported to the Department, as required by Section 795.200: $500.

17) For each violation related to the failure to provide proper sanitation of tanning equipment or the tanning facility, as required by Section 795.210: $100.

g) Violations of any provision of the Tanning Facility Permit Act or any provision of this Part shall be issued as the following:

1) First violation – the permittee shall be issued a warning letter.

2) Second violation – the permittee shall be issued a fine according to this Section. The repeat violation fine will be a minimum of $250 plus a fine according to this Section.

3) Third violation – the permittee shall be issued a fine according to this Section. The repeat violation fine will be a minimum of $500 plus a fine according to this Section. The permittee shall be notified of the Department's intent to revoke the permit and shall be offered a hearing in accordance with Section 795.140.

h) Each day that a violation exists shall constitute a separate violation.

i) The Department shall serve any notice of assessment of fine on the permittee in the same manner as any notice of permit revocation provided pursuant to the Act and this Part, and the permittee shall have the same rights and opportunity for hearing as elsewhere provided pursuant to the Act and this Part. If the permittee does not request a hearing within the time allowed by the Act and this Part, the fine assessed shall be due in full at the expiration of time allowed to request a hearing.

j) All fine assessments that are upheld in whole or in part by final order of the Department shall be due in full at the conclusion of the time period for filing for administrative review pursuant to the Administrative Review Law [735 ILCS 5/Art. III], unless the permittee has within that time filed proceedings in administrative review specifically appealing the fine assessment and unless the court has stayed the enforcement of the fine assessment.

k) Following the issuance of the notice of violation, the Department or its agent will reinspect a facility to determine compliance with the Act and this Part.

(Source: Amended at 38 Ill. Reg. 11802, effective May 21, 2014)