

## CHAPTER 874

## H.B. No. 2243

## AN ACT

relating to the regulation of health spas; providing penalties; making an appropriation.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 6, Health Spa Act (Article 5221I, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. DEFINITIONS. In this Act:

(a) "Closed," "closes," or "closing" means a condition where:

(1) the facilities of a health spa are no longer available to its members and equivalent facilities within 10 miles of the closed facilities have not been made available to members of the closed facilities; or

(2) the registrant has sold a registered location and the security required by Section 8 has either been cancelled, withdrawn, or otherwise unavailable for the use of members; or

(3) the registrant has sold a registered location and the new owner has neither adopted nor honored the contracts of existing members.

(b) [(1)] "Contract" means an agreement by which a person [one] becomes a member of a health spa.

(c) [(2)] "Facilities" means equipment, physical structures, improvements, improvements to leasehold premises, and other tangible property, real, personal, or mixed, used by a health spa at each location to conduct its business, including but not limited to saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment.

(d) "Fully open" or "fully open for business" means the date on which all services of the health spa that were advertised before the opening or promised to be made available are available for use by its members.

(e) [(3)] "Health spa" means a business [primarily] involved in the sale of memberships that provides the members instruction in a program of physical exercise or provides the members use of the facilities of the health spa for a program of physical exercise. The term does not include an organization that is tax exempt under 26 U.S.C. 501 et seq., a private club owned and operated by its members, an entity *exclusively* [primarily] operated for the purpose of teaching dance or aerobic exercise, an entity *exclusively* [primarily] engaged in physical rehabilitation activity related to an individual's injury or disease, an individual or entity engaged in an activity authorized under a valid license issued by this state, or an activity conducted or sanctioned by a school operating under the Education Code.

(f) "Location" means the physical site or place where health spa facilities are located.

(g) [(4)] "Member" means a person entitled to the benefits of membership in a health spa.

(h) [(5)] "Membership" means the status under a contract between an individual and a health spa that entitles the individual to the use of services or facilities of the health spa.

(i) "Obligor" means a person other than a surety who is obligated to perform in the event of a registrant's default.

(j) [(6)] "Person" means an individual, corporation, association, organization, partnership, business trust, trust, estate, and any other legal entity.

(k) [(7)] "Prepayment" means *consideration paid to a health spa by a purchaser prior to the time that the health spa is fully open for business* [~~a payment for all services or for the use of facilities made by members of a health spa before the first day the services or facilities are made available to the members~~].

(l) [(8)] "Purchaser" means a person who [~~purchases a health spa membership~~] *seeks or acquires by purchase the use of health spa facilities or services.*

(m) "Registrant" means a person who has registered with the secretary and has been issued a health spa operator's certificate of registration.

(n) "Secretary" means the Texas secretary of state.

(o) [(9)] "Seller" means a person who owns or operates a health spa or who offers for sale the right to use the facilities or the services of the health spa.

(p) [(10)] "Services" means programs, plans, guidance, or instruction that a health spa provides for its members, including diet planning, exercise instruction, exercise programs, and instructional classes.

SECTION 2. Section 8, Health Spa Act (Article 5221, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. REGISTRATION. (a) *A person may not operate a health spa or offer for sale or sell memberships in a health spa in this state unless the person possesses a valid health spa operator's certificate of registration.*

(b) *Each applicant for a health spa operator's certificate of registration shall file with the secretary of state for each location an application for registration containing the following information:*

(1) *the legal name, address, and telephone number of the applicant;*

(2) *the trade name by which the applicant does business, and if incorporated, the name registered with the secretary of state, the location of the registered office, and the name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the corporation;*

(3) *the date on which the applicant became the owner and operator of the business;*

(4) *the address of the health spa;*

(5) *the type of available or proposed facilities and services offered at the location;*

(6) *samples of all contracts used by the seller in connection with the sale of memberships.*

(c) *Each application for a health spa operator's certificate of registration shall be accompanied by proof of the security required by this Act and payment of the required fee for issuance of the certificate.*

(d) *All certificates of registration are valid for a period of one year from the date of issuance and are renewable as provided by the secretary.*

(e) *The registrant shall amend the application for registration not later than the 90th day after the day on which a change in the information provided in the statement occurs.*

(f) *A health spa operator's certificate of registration is not transferrable. In the event a registrant sells or otherwise transfers ownership in a registered health spa location, the new owner shall file an application of registration as required by this section no later than the fifth day following the date of sale.*

(g) *The secretary may charge each applicant for a certificate of registration a reasonable fee not to exceed \$100 to cover the cost of application or renewal.*

(h) *The secretary, after notice and hearing, may refuse to issue or may permanently revoke or suspend for a definite period of time a certificate of registration if the secretary finds that the applicant or registrant:*

(1) furnished false information on any application, report, or other document filed with the secretary;

(2) failed to provide the contract disclosure language required by Section 12 of this Act;  
or

(3) failed to file and maintain the bond or post other security for each location as required by Section 10 of this Act.

(i) A registrant shall prominently post the health spa operator's certificate of registration at each registered location ~~[A health spa shall file a registration statement with the secretary of state before offering for sale or selling memberships in this state. The health spa shall file a separate registration statement for each location at which the health spa operates. The registration statement must contain:~~

~~(1) the name and address of the health spa;~~

~~(2) the name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the health spa;~~

~~(3) the type of available or proposed facilities and services offered at that location; and~~

~~(4) the approximate size of the health spa location measured in square feet.~~

~~(b) The registration statement must also contain either:~~

~~(1) a full and complete disclosure of any litigation, or any complaint filed with a governmental authority, relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of a health spa that was completed within the past two years or is currently pending; or~~

~~(2) a notarized statement that states that there has been no litigation, or complaint filed with a governmental authority, relating to the opening or closing of the health spa within the past two years.~~

~~(c) The health spa shall update the statement not later than the 90th day after the day on which a change in the information required in the statement occurs.~~

~~(d) Each health spa registering under this section shall maintain a copy of the registration statement filed for each location in the records of the health spa. The health spa shall allow a current member or a prospective purchaser of a membership to inspect a registration statement on request.~~

~~(e) The secretary of state may charge each health spa that files a registration statement a reasonable fee not to exceed \$100 to cover the cost of filing. The secretary of state may not require a health spa to provide information other than that provided in the registration statement].~~

SECTION 3. Section 9, Health Spa Act (Article 5221i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. ESCROW. (a) Except as provided by Subsection (e) of this section, a registrant [health spa] or its assignee or agent that accepts prepayments for its memberships shall deposit all of the funds received as prepayments in an escrow account established with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, which shall hold the funds as escrow agent for the benefit of the members that prepay. The registrant [health spa] shall deposit prepayments received at least as often as biweekly and shall make the first deposit not later than the 14th day after the day on which the registrant or its agent [spa] accepts the first prepayment. Not later than the 14th day after the day on which the first prepayment is received, the registrant [spa] shall give the secretary of state a notarized statement that identifies the financial institution in which the prepayments are held in escrow and the name in which the account is held, together with a signed statement on a form approved by the secretary of state which authorizes the secretary to make inquiries of the financial institution regarding the funds in escrow. The prepayments shall be held in escrow until the 30th day after the date that the health spa fully opens for business.

(b) Except as provided by Subsection (c) of this section, if a health spa does not fully open for business before the 181st day after the date it first sells a membership in the health spa

or if the spa does not remain open for 30 days, the members whose fees are held in escrow under this section shall receive a full refund of their membership fees from the escrow agent.

(c) If another health spa operated by the same *registrant* [~~seller~~] is located not more than 10 miles from the proposed location of a new health spa and if the person purchasing the membership is authorized to use these other facilities, a member of the new spa whose fees are held in escrow under this section is entitled to receive a full refund of the membership fees from the escrow agent if the new spa does not fully open for business before the 361st day after the date on which the new spa first sells a membership or if the new spa does not remain open for 30 days.

(d) If the health spa remains open for 30 days after the date the health spa initially fully opens for business, the *registrant* [~~health spa~~] may withdraw the escrowed funds at its discretion if the *registrant* [~~health spa~~] files an affidavit with the secretary of state certifying that all obligations of the health spa for which a lien could be claimed under Chapter 53, Property Code, have been paid and if no person is eligible to claim a lien under that chapter during the period the *registrant* or its *agent* [~~health spa~~] accepts prepayments.

(e) Subject to the limitations of this subsection, a *registrant who is the* [~~an~~] owner of one or more health spas in operation in this state is not required to escrow prepayments on the opening of an additional health spa in this state if the health spas in operation have operated for at least two years preceding the date the first membership in the additional spa is sold and if none of the members of the spas in operation have initiated litigation against the *registrant* [~~owner's spas~~] relating to the failure to open or the closing of a health spa or filed a complaint relating to the failure to open or the closing of a health spa with any governmental authority in the state against the *registrant* or any of the owners, officers, or directors of the health spa. A *registrant* [~~An owner of a health spa~~] is not required to escrow prepayments because of litigation or a complaint based on the closing of a health spa if that closing was caused by a fire, flood, or other natural disaster and if the closing is temporary and does not exceed one month. A *registrant* [~~An owner~~] is not required to escrow prepayments because of litigation or a complaint based on the closing of a health spa if that closing is due to the relocation of the spa to a site not more than 10 miles from the original location and if the time elapsed between closing the spa at the old location and reopening at the new location does not exceed one month.

(f) The total number of spas opened by the *registrant* [~~owner~~] during any two-year period to which the exception provided by Subsection (e) of this section applies is limited to twice the number of spas in operation on the first day of the two-year period.

(g) For the purposes of this section, the date on which a health spa fully opens is the date on which all services of the spa that were advertised before the opening or promised to be made available, whether or not contained in the contract, are available for use by its members.

SECTION 4. Section 10, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. SECURITY. (a) *Except as provided by Section 10B of this Act, the secretary may not issue a certificate of registration, unless the applicant first files a surety bond or posts other security in such form as the secretary may prescribe.*

(b) *If a surety bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided in this section. If a bond is cancelled, the certificate of registration is suspended on the effective date of cancellation.*

(c) *The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code.*

(d) *Other security need not be posted annually so long as the applicable amount specified in this section remains posted. If other security is posted, the interest from the security shall go to the person posting the security. The other security shall be in such form as the secretary may deem appropriate.*

(e) *The bond or other security shall be payable in favor of the state and shall be held for the benefit of the state and for the registrant's members who have been administratively adjudicated to have suffered actual financial losses due to the closing of the registrant's health spa.*

(f) Actual financial loss shall mean and be limited to those sums which have been paid under a health spa contract to a registrant or a registrant's assignee and which at the time the health spa is closed are unearned. Actual financial losses shall be calculated by multiplying the gross monthly payment by the total of months remaining on a contract at the time the health spa closes minus any payments not made. For the purposes of this section:

(1) The gross monthly payment shall be calculated by determining the total of payments, including down payments and initiation fees required by the contract, divided by the total number of months in the term of the contract; and

(2) The date of closing and the date of the contract expiration shall be rounded to the nearest full month. The total months remaining on the contract shall be calculated by subtracting the date of closing from the expiration date of the contract. The result shall be expressed in whole months.

(g) The amount of the security required under Subsection (a) of this section is \$20,000.

(h) The registrant shall maintain the bond or other security in the amount provided in Subsection (g) of this section in effect for two years after the date on which the health spa closes or until the secretary of state determines that each claim to which the bond or other security deposit is subject has been satisfied or foreclosed by law.

(i) The following provisions shall be applicable to all bonds and other security required by this section:

(1) Regardless of the number of years the bond or other security shall continue in force or the number of premiums payable or paid, the limit of the surety's or obligor's liability stated in the bond or other security shall not be cumulative from year to year or period to period.

(2) The liability of the surety or obligor is exclusively conditioned upon a final administrative order by the secretary, and the bond or other security posted hereunder is subject to no other type of claim.

(j) ~~The surety or obligor must provide written notification to the secretary at least 60 days prior to the cancellation of any bond or other security required by this section. Any other security on file with the secretary shall remain on file with the secretary for two years after the registrant ceases business or at such later time as the secretary may determine that no claims exist against the security. [(a) Not later than the 30th day before the date a health spa opens a location for the use of its members, the health spa shall file with the secretary of state a surety bond issued by a surety company licensed to do business in this state, or, in lieu of and in equal amount to the bond, a security deposit in the form of a certificate of deposit, letter of credit, or other negotiable instrument issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The bond or other security deposit shall be payable in favor of the state and shall be held for the benefit of any members of the health spa who suffer financial losses due to the insolvency or cessation of operation of the health spa. "Financial losses" shall mean and be limited to any unused or unearned portion of such member's dues or fees. Such a member may bring an action based on the bond and recover against the surety regardless of the number of claimants or claims filed against the bond, but the liability of the surety may not exceed the aggregate amount of the bond. If the claims filed against the bond exceed the amount of the bond, the surety shall pay the amount of the bond to the secretary of state for distribution to the claimants on a pro rata basis. The surety is relieved of liability under the bond on payment of the amount to the secretary of state.~~

~~[(b) The amount of the security required under Subsection (a) of this section is \$20,000. If a claim is paid from the bond or other security deposit, the health spa must post additional security, not later than the 20th day after the date on which the claim is paid, to restore the amount of the security to \$20,000.~~

~~[(c) The health spa shall maintain the bond or other security deposit in the amount provided in Subsection (b) of this section in effect for two years after the date on which the health spa ceases business or until the secretary of state determines that each claim to which the bond or other security deposit is subject has been satisfied or foreclosed by law.~~

~~[(d) The following provisions shall be applicable to all bonds issued hereunder:~~

~~[(1) Regardless of the number of years the bond shall continue in force or the number of premiums payable or paid, the limit of the surety's liability stated in the bond shall not be cumulative from year to year or period to period.~~

~~[(2) The surety shall not be liable through a bond for punitive damages or for civil or criminal penalties assessed against a health spa, its individual owners, or its employees.~~

~~[(3) The bond written by a surety hereunder shall be continuous until cancelled by the surety or terminated by the health spa only upon giving 90 days prior notice to the secretary of state of such cancellation.~~

~~[(4) A surety hereunder shall not be liable for any claim brought or suit filed against a bond if the claim or filing of a suit occurs more than two years from the last effective date of the bond.]~~

SECTION 5. The Health Spa Act (Article 5221I, Vernon's Texas Civil Statutes) is amended by adding Section 10A to read as follows:

*Sec. 10A. ADJUDICATION OF CLAIMS. (a) Within 45 days from the date the secretary first discovers that a health spa has closed, the secretary shall publish a display advertisement in a newspaper of general circulation in the county or nearest county in which the health spa is located notifying the public of the fact that the health spa is closed and that a health spa member has 90 days from the date of the first notice to perfect a claim under the security posted pursuant to Section 10 of this Act. Contemporaneously with the publication of the notice, the secretary shall notify the surety company or obligor of the pending administrative action.*

*(b) The notice shall be published for two consecutive Saturdays and Sundays and shall inform those affected of the procedures for perfecting a claim against the security. The secretary shall have a claim against the security for reasonable expenses incurred in publishing the notice which shall not exceed \$3,000.*

*(c) All claims received by the secretary after 90 days following the date of the first notice are barred and shall not be considered by the secretary. If the total of claims evidencing actual financial loss exceeds the amount of the security, the secretary shall adjudicate the claims on a pro rata basis by dividing the amount of the security, after first deducting the actual costs for publication of the notice, by the total amount of the claims in order to ascertain a percentage to be applied to each claim.*

*(d) The secretary shall adopt and publish such rules and regulations as are necessary to determine claims and to insure the prompt and fair distribution of the proceeds from the bond or other security. Rules adopted by the secretary are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

SECTION 6. The Health Spa Act (Article 5221I, Vernon's Texas Civil Statutes) is amended by adding Section 10B to read as follows:

*Sec. 10B. EXEMPTION FROM SECURITY REQUIREMENTS. (a) As provided in this section, a health spa registrant may apply for an exemption from the security requirements of Section 10 of this Act. To qualify for an exemption, a registrant must first file an application for an exemption on a form approved by the secretary. The application shall be verified by the person authorized by the secretary to make the application. Upon approval of the exemption, the secretary shall issue a certificate of exemption. A registrant who has been granted a certificate of exemption by the secretary shall not be required to post a bond or other security as required by Section 10 of this Act.*

*(b) A health spa registrant may apply for an exemption from the security requirements of Section 10 if it meets the following criteria:*

*(1) the registrant does not require a health spa consumer to:*

*(A) execute a membership contract for a term exceeding 31 days;*

*(B) execute a note or a retail installment contract;*

*(C) authorize a draw or other recurring debit on a financial institution to the favor of the registrant or the registrant's assignee;*

*(D) pay an initiation fee or other fee except monthly dues; or*

(E) prepay for a term exceeding 31 days; and

(2) the registrant does not solicit or offer any plan or program which contains any of the elements identified in Paragraph (1) of this subsection.

(c) Alternatively, a health spa registrant may apply for an exemption from the security requirements of Section 10 if:

(1) the registrant owns and operates at least one health spa located in this state which has operated continuously at one location for at least five years; and

(2) none of the members of a health spa owned by the registrant has initiated or filed a complaint with any governmental authority in this state relating to the closing of a health spa owned by the registrant or the failure of a health spa owned by the registrant to open.

(d) If a health spa registrant, who has claimed an exemption provided by Subsection (c), closes a health spa or fails to open a health spa and a member of the health spa initiates or files a complaint with any governmental authority in this state relating to the closing of the health spa or the failure of the health spa to open, the registrant may still claim an exemption under Subsection (c) for all health spas operating on the date the health spa closed or failed to open; however, the registrant shall provide the security required by Section 10 for all health spas the registrant opens after the date the spa closed or failed to open.

(e) If a health spa registrant, who has claimed an exemption provided by Subsection (c), has closed or failed to open more than one health spa and a member of one of the affected health spas initiates or files a complaint with any governmental authority in this state relating to the closing of a health spa owned by the registrant or the failure of a health spa owned by the registrant to open, the registrant shall no longer qualify for an exemption under Subsection (c) and shall be subject to the provisions of Subsection (i).

(f) If a health spa registrant, who has claimed an exemption provided by Subsection (c), is forced, due to an act of God or an act of a governmental authority beyond the control of the registrant, to move or temporarily close the location of the health spa which provides the basis for the exemption, the registrant may still claim an exemption under Subsection (c) as long as the spa is not moved more than 10 miles from the original facility. This subsection shall apply regardless of whether the move is temporary or permanent.

(g) An exemption provided by this section is not transferrable. If a health spa registrant sells or otherwise transfers ownership in a health spa for which an exemption from the security requirement has been granted, the new owner shall file a new application for an exemption or post the security required by Section 10 of this Act no later than the fifth day following the date of the sale or transfer.

(h) To claim an exemption provided by Subsection (c), a registrant must have continuously owned and operated at least one health spa which is eligible for an exemption under that subsection. A newly acquired health spa, regardless of its previous eligibility for an exemption, may not provide the basis for an exemption.

(i) The secretary, after notice and hearing, may refuse to issue or may permanently revoke a registrant's certificate of exemption if the secretary finds that the registrant:

(1) furnished false information on the application for exemption; or

(2) no longer qualifies for an exemption.

SECTION 7. Section 11, Health Spa Act (Article 5221, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. PREPAYMENTS. (a) A registrant [health spa] may offer for sale or sell memberships before the date on which the health spa opens for business.

(b) Except as provided by Subsection (c) of this section, if the health spa does not open before the 181st day after the day on which a membership is prepaid, the person who made the prepayment is entitled to a full refund of the amount prepaid in the manner provided by Subsection (b) of Section 9 of this Act.

(c) If another health spa operated by the same seller is located not more than 10 miles from the proposed location of a new health spa and if the person purchasing the membership is authorized to use these other facilities, each person who made a prepayment for a

membership in the new spa is entitled to a full refund of the amount prepaid in the manner provided by Subsection (c) of Section 9 of this Act if the new spa does not open before the 361st day after the date on which the first prepayment of a membership in the new spa is received.

SECTION 8. Section 12, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. CONTRACT TERMS. (a) *A registrant, unless exempted from the security requirements by Subsection (b) of Section 10B of this Act, shall [The health spa must] deliver a fully completed copy of a contract to a purchaser before the contract is signed. The contract constitutes the entire agreement between the seller and the purchaser. The contract must be in writing and must be signed by the purchaser. If the health spa is not open at the time the contract is entered, the contract must clearly state the proposed opening date of the health spa. At the time of delivery the health spa must give the purchaser a written receipt for any payment made by the purchaser under the contract.*

*(b) If the contract is financed through a retail installment contract or note, the contract may not require the purchaser to make payments or finance the contract for more than five years after the date on which the contract is made [If a health spa has been in operation in this state for two years or less, the contract may not require the purchaser to make payments or to finance the contract for more than two years after the date on which the contract is made. If the health spa has been in operation in this state for more than two years, the contract may require the purchaser to make payments or to finance the contract for a period not to exceed five years after the date on which the contract is made. The term of a contract may not be measured by the life of the purchaser. If the purchaser is required by the contract to pay a renewal fee of not less than \$50, the contract may contain a renewal option for as long as two additional years after the date on which the contract expires].*

*(c) If the contract is not financed, the terms of the contract may not exceed three years.*

*(d) When the terms of two or more contracts between the same parties overlap for any period, the contracts are considered as one contract for the purpose of this Act.*

*(e) [(d)] A contract may not require or entail the execution of a note or series of notes by the purchaser that when separately negotiated will cut off as to third parties a right of action or defense that the purchaser may have against the seller.*

*(f) [(e)] Each contract shall state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:*

**(1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."**

**(2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:**

**(Address of the health spa home office)."**

**(3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY CANCEL THIS CONTRACT BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:**

**(Address of the health spa home office)."**

**"YOU MAY ALSO BE ENTITLED TO FILE A CLAIM FOR A REFUND OF YOUR UNUSED MEMBERSHIP FEES AGAINST THE BOND OR OTHER SECURITY POSTED BY THE HEALTH SPA WITH THE TEXAS SECRETARY OF STATE. TO MAKE A CLAIM AGAINST THE SECURITY SEND A COPY OF YOUR CONTRACT TOGETHER**



WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE TEXAS SECRETARY OF STATE. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

OFFICE OF THE SECRETARY OF STATE

STATUTORY DOCUMENTS SECTION

P.O. BOX 12887

AUSTIN, TEXAS 78711-2887.”

(4) “IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office).”

(g) *If the registrant offers for sale or sells memberships before the date on which the spa opens for business, each contract shall state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:*

**“IF THE HEALTH SPA DOES NOT OPEN BEFORE (insert: the date on which the 181st day after the date on which the membership is prepaid falls) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR THIRTY DAYS, YOU ARE ENTITLED TO A FULL REFUND OF THE MONEY YOU PREPAID. HOWEVER, IF ANOTHER HEALTH SPA, OPERATED BY (insert: the name of the health spa registrant), IS LOCATED WITHIN 10 MILES OF (insert: the address of the proposed location of the new spa) AND IF YOU ARE AUTHORIZED TO USE THE OTHER FACILITIES, YOU ARE ENTITLED TO RECEIVE A FULL REFUND OF YOUR MEMBERSHIP FEES ONLY IF THIS LOCATION DOES NOT FULLY OPEN FOR BUSINESS BEFORE (insert: the date that is the 361st day after the day the new spa first sells memberships) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR 30 DAYS.”**

(h) *Each contract for which a finance charge within the meaning of the Truth-in-Lending Act or Regulation Z is charged or collected shall state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:*

**“ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.”**

SECTION 9. Section 13, Health Spa Act (Article 52211, Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 13. CANCELLATION OF CONTRACTS. (a) A member may cancel a contract before the fourth business day after the date on which the contract is signed by notifying the health spa registrant of the cancellation in writing. Written notification is considered given if the notification is mailed by certified mail to the home office of the health spa registrant and postmarked not later than midnight of the third business day. The health spa registrant shall refund all money paid to the purchaser exercising the right to cancel.

(b) A member may cancel a contract on written notice by certified mail to the home office of the health spa registrant if the health spa registrant goes out of business and fails to provide facilities within 10 miles or moves its facilities more than 10 miles from the location in which the member is enrolled. A member may cancel a contract in the same manner if the health spa registrant fails to provide advertised services. ~~[If a contract is canceled under this subsection, the member is liable for an amount equal to the value of services received and~~

~~facilities used under the contract up to the date of the cancellation, and if the member has paid money under the contract in excess of that amount the health spa shall promptly refund to the member the excess.]~~

(c) A purchaser of a membership may cancel a contract if the member dies or becomes totally and permanently disabled after the date on which the contract takes effect. ~~[The purchaser remains liable for an amount equal to the value of services received and facilities used by the member under the contract up to the day on which the death occurred or the disability was incurred. The health spa shall make a pro rata refund of funds paid under the contract in an amount based on the time remaining in the contract term up to a maximum of 50 percent of the total contract amount.]~~ The health spa registrant may require a purchaser or the purchaser's estate to provide reasonable proof of total and permanent disability or death.

(d) *If a purchaser or an estate elects to cancel a membership contract pursuant to Subsection (b) or (c) of this section the health spa registrant shall refund to the purchaser or the purchaser's estate any unearned sums paid under the contract. "Unearned sums" shall be calculated by multiplying the gross monthly payment by the total of months remaining on a contract at the time of cancellation minus any payments not made. For the purposes of this section:*

(1) *The gross monthly payment shall be calculated by determining the total of payments, including down payments and initiation fees required by the contract, divided by the total number of months in the term of the contract.*

(2) *The date of cancellation and the date of the contract expiration shall be rounded to the nearest full month. The total months remaining on the contract shall be calculated by subtracting the date of cancellation from the expiration date of the contract. The result shall be expressed in whole months.*

(e) A health spa registrant shall make a refund required under this section before the 31st day after the date the health spa registrant receives the notice of cancellation accompanied by proof of payment. The receipt given to the purchaser by the health spa at the time the purchaser made a payment under the contract constitutes ~~[adequate]~~ proof of payment.

SECTION 10. Section 15, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. UNENFORCEABLE CONTRACTS. (a) A contract or assignment of a contract that does not comply with this Act is void and unenforceable as contrary to public policy.

(b) *If a seller does not possess a valid health spa operator's certificate of registration at the time of entering into any contract with the purchaser, the contract between the purchaser and the seller is void and unenforceable as contrary to public policy.*

(c) A contract entered into in reliance on willful and false, fraudulent, or misleading information, representation, notice, or advertisement of the health spa owner, ~~[or]~~ operator or seller is void and unenforceable.

SECTION 11. Section 17, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. PROHIBITED ACTIVITIES. (a) A seller or registrant ~~[health spa]~~ may not offer a special offer or discount unless the special offer or discount is available to all prospective members. This subsection does not prohibit a health spa from offering special group prices or group discounts.

(b) A seller or registrant ~~[health spa]~~ may not make a material misrepresentation to a current member, prospective member, or purchaser of a membership contract regarding:

- (1) the qualifications of the staff;
- (2) the availability, quality, or extent of the facilities or services;
- (3) the results obtained through exercise, dieting, weight control, or physical fitness conditioning programs;
- (4) membership rights; or
- (5) the period that a special offer or discount will be available.

(c) A health spa registrant may not fail or refuse to:

- (1) file or update the registration statements required by Section 8 of this Act;
- (2) establish the escrow account required by Section 9 of this Act; or
- (3) maintain the security required by Section 10 of this Act in full force and effect.
- (d) A health spa *registrant* may not advertise that it is bonded by the state.
- (e) A health spa *registrant* may not sell a membership plan not included in the list required by Section 16 of this Act.

SECTION 12. Section 18, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. INJUNCTION. (a) *If it appears that a person is in violation of, has violated, or is about to violate this Act, the attorney general or a district or county attorney may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties authorized by Section 20 [A district attorney, county attorney, or the attorney general may sue in a court of competent jurisdiction to enjoin or restrain a person from engaging in conduct described by Section 17 of this Act].*

(b) *A civil action filed under this section shall be filed in a district court in Travis County or in the county in which the defendant resides [Except as prescribed by Subsection (c) of this section, a district attorney, county attorney, or attorney general who intends to sue under this section shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the suit is filed.*

~~[(c) The notice prescribed by Subsection (b) of this section is not required if the district attorney, county attorney, or attorney general intends to request that the court issue a temporary restraining order].~~

SECTION 13. Section 20, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. CIVIL PENALTIES. (a) *A person who violates this Act is subject to a civil penalty of not more than \$1,000 for each violation, not to exceed \$25,000 in total penalties.*

(b) *A person who violates the terms of an injunction issued in an action brought under Section 18 of this Act is liable to the state for a civil penalty of not more than \$25,000 for a single violation and not more than \$50,000 for all violations of the injunction. A district attorney, county attorney, or the attorney general may bring suit to recover the civil penalty in the court that issued the original injunction.*

(c) *The attorney general, a district or county attorney, and the secretary may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.*

(d) *A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county.*

SECTION 14. Section 22(a), Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) *A person who knowingly or intentionally operates or attempts to operate a health spa in violation of Section 8, 9, ~~or~~ 10, or 11 of this Act commits an offense. An offense under this subsection is a Class A misdemeanor.*

SECTION 15. Section 25, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. APPLICABILITY. ~~[(a) This [Except as provided by Subsection (b) of this section, this] Act applies to all health spas [a health spa] in operation on or after September 1, 1985.~~

~~[(b) Section 9 of this Act does not apply to a health spa that began operation before September 1, 1985.]~~

SECTION 16. The Health Spa Act (Article 52211, Vernon's Texas Civil Statutes) is amended by adding Section 26 to read as follows:

*Sec. 26. RULE-MAKING AUTHORITY. The secretary shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Act.*

SECTION 17. Sections 7, 7A, and 14 of the Health Spa Act (Article 52211, Vernon's Texas Civil Statutes) are repealed.

SECTION 18. Sections 6.09(a) and (b), Chapter 1039, Acts of the 71st Legislature, Regular Session, 1989, are repealed.

SECTION 19. (a) There is appropriated to the Office of the Attorney General from the general revenue fund for the fiscal biennium ending August 31, 1995, the amounts awarded to the office under Section 20 of the Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), as amended by this Act, to be used to reimburse the office for the office's expenses related to the litigation for which the expenses were awarded.

(b) There is appropriated to the secretary of state from the general revenue fund for the fiscal biennium ending August 31, 1995, the amounts awarded to the office under Section 20 of the Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), as amended by this Act, to be used to reimburse the secretary for the secretary's expenses related to the litigation for which the expenses were awarded.

SECTION 20. This Act takes effect September 1, 1993.

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 14, 1993, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas; passed by the Senate on May 23, 1993, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

I do hereby certify that the amounts appropriated in the herein H.B. No. 2243, Regular Session of the 73rd Legislature, are within amounts estimated to be available in the affected fund.

Approved June 18, 1993.

Effective Sept. 1, 1993.