

CHAPTER 24

S.B. No. 464

AN ACT

relating to the regulation of health spas.

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

SECTION 1. 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) [(d)] of this section, a 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 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 spa accepts the first prepayment. Not later than the 14th day after the day on which the first prepayment is received, the spa shall give the department 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. 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 [If the] 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 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 health spa may withdraw the escrowed funds at its discretion if the health spa files an affidavit with the department 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 health spa accepts prepayments.

(e) [(d)] Subject to the limitations of this subsection, 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 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 owners, officers, or directors of the health spa. *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. 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 owner during any two-year period to which the exception provided by *Subsection (e) of this section* [~~this subsection~~] applies is limited to twice the number of spas in operation on the first day of the two-year period.

(g) [(e)] 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 2. Subsection (d), Section 10, Health Spa Act (Article 5221i, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A health spa is exempt from the security requirements of this section if the owner of the health spa owns at least one other spa in this state which has operated at one location for at least the two years preceding the effective date of this Act and against which none of its members have initiated litigation or filed a complaint with any governmental authority in this state relating to the failure to open or the closing of the health spa. *An owner of a health spa is not subject to the security requirements of this section 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. An owner is not subject to the security requirements of this section 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.*

SECTION 3. Section 11, Health Spa Act (Article 5221i, Vernon's Texas Civil Statutes), is amended to read as follows:

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

(b) *Except as provided by Subsection (c) of this section, if* [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 4. Subsections (a) and (e), Section 12, Health Spa Act (Article 5221i, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) 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.*

(e) Each contract shall state in at least 10-point boldfaced type:

(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)."

(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)."

SECTION 5. Subsection (d), Section 13, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A health spa shall make a refund required under this section before the 31st day after the date the health spa 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 6. Subsection (b), Section 14, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A person who purchases a health spa *or assumes the operation of a health spa under a lease agreement or other contractual agreement* is responsible for fulfilling the terms of any contract in effect on the date the person purchases the health spa *or assumes the operation of the health spa. The person is responsible for a period equal to the lesser of the remaining term of the contract or two years.*

SECTION 7. Subsection (a), Section 17, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A 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.*

SECTION 8. Section 19, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) *The closing of a health spa caused by fire, flood, or other natural disaster does not constitute grounds for an action under this section if the closing is temporary and does not exceed one month. A closing based on the relocation of a health spa to a site not more than 10 miles from the original location does not constitute grounds for an action under this section if the time elapsed between closing the spa at the old location and reopening at a new location does not exceed one month.*

SECTION 9. Subsection (b), Section 12, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) *If a health spa has been in operation in this state for two years or less, the [A] 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.

SECTION 10. This Act takes effect September 1, 1987, and applies only to a health spa contract entered on or after that date.

SECTION 11. 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 the Senate on February 25, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on April 2, 1987, by a viva-voce vote. Passed the House, with amendments, on April 1, 1987, by a non-record vote.

Approved April 14, 1987.

Effective September 1, 1987