

BILL ANALYSIS

C.S.H.B. 135
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Most health spas (gyms) in this state require members to pay an initial membership fee. To protect members, health spas are required to obtain a \$20,000 bond (security) which must be used to repay membership fees if the health spa goes out of business. Health spas currently are required to show proof of the bond to the secretary of state before they can obtain a certificate of registration and begin operating. However, the law provides no system to ensure that these businesses are obtaining the bond before they begin operating. In addition, in some instances where a health spa had obtained a bond, \$20,000 was insufficient to repay fees to all members.

C.S.H.B. 135 allows the secretary of state to designate an appropriate bond amount for a health spa based on the number of its members, with the minimum bond amount set at \$20,000, and not to exceed \$50,000. It also sets stricter guidelines for health spas to meet in order to be exempted from posting the bond. Health spas would also be required, under C.S.H.B. 135, to include their designated certificate of registration number on any printed advertisements, as well as in their membership contracts. C.S.H.B. 135 requires that a health spa give 30 day notice of closure to the secretary of state and its members if it plans to close or relocate. The intent of C.S.H.B. 135 is to ensure health spa compliance with the current law, as well as to further protect health spa members by making certain that health spas in Texas are financially capable of repaying the members their dues in the event of closure.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 135 requires a health spa to provide proof of its certificate of registration given by the secretary of state in order to receive a sales tax permit from the comptroller.

C.S.H.B. 135 requires a health spa to post a bond in the amount deemed sufficient by the secretary of state, the amount no less than \$20,000 and no greater than \$50,000. The secretary of state may also require health spas to submit periodically a written statement reflecting its current membership.

C.S.H.B. 135 requires the secretary of state, at least once every three years, to review the amount of the security to determine whether the prescribed amount is sufficient to protect the health spa's total membership in the case of insolvency. The secretary of state may increase the amount of the security, if necessary, but may not exceed \$50,000.

C.S.H.B. 135 allows a health spa operator to apply for exemption from the bond if the operator files a sworn statement proving it:

1. has assets with a net book value of greater than or equal to \$50,000;
2. has operated under the same ownership or management for at least 5 years; and
3. has not been the subject of complaint relating to the closure of, or failure to open, a health spa.

C.S.H.B. 135 requires a health spa to include its operator's certificate of registration number on contracts with consumers.

C.S.H.B. 135 79(R)

C.S.H.B. 135 requires a health spa to include its certificate of registration number in its advertising that is in print or electronic medium, and allows the secretary of state to establish procedures for the issuance of an "umbrella" identification number to be used in advertisements for those health spas with multiple locations in Texas.

C.S.H.B. 135 requires a health spa to provide written notice to the secretary of state at least 30 days prior to closing or relocating, and requires a health spa to post a notice of closure both inside and outside of each entrance to the facility.

C.S.H.B. 135 requires a health spa to include a cancellation and refund notice in its contracts only if the health spa is required to post security with the secretary of state.

C.S.H.B. 135 requires the comptroller to provide the secretary of state with the name and address of any health spa operator that holds a sales tax permit issued before September 1, 2005 by no later than January 1, 2006.

C.S.H.B. 135 repeals Section 702.203 and Section 702.204 of the Occupations Code that provided for partial ineligibility and complete ineligibility for exemption from the bond requirement.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute sets a ceiling on the secretary of state's prescribed bond amount of \$50,000.

The substitute requires the secretary of state to review a health spa's bond amount at least once every three years, and the secretary of state may adjust a health spa's bond amount, up to \$50,000, to reflect its current membership numbers.

The substitute allows a health spa operator to apply for exemption from posting the bond under Section 702.202 (2), Occupations Code, and renumbers accordingly if the health spa files a sworn statement proving it:

1. has assets with a net book value of at least \$50,000;
2. has operated under the same ownership or management for at least five years.

The substitute requires a health spa to include its certificate of registration number in its membership contract.

The substitute requires a health spa operator to provide the cancellation and refund notice, as provided in Section 702.304, Occupations Code, only if the health spa operator is required by the secretary of state to post a bond.

The substitute allows the secretary of state to establish procedures for the issuance of an "umbrella" identification number to be used in advertisements for those health spas with multiple locations in Texas.

The substitute requires a health spa that is scheduled to close or relocate to post a notice inside and outside of each entrance of the facility that states:

1. the date of the scheduled closure or relocation; and
2. that a member has 90 days from the date of closure or relocation to file a claim with the secretary of state to recover financial losses incurred due to the closure or relocation of the health spa.

The substitute requires that the notice posted at the health spa be posted continuously for 30 days.

C.S.H.B. 135 79(R)

The substitute requires that the health spa notify the secretary of state, in writing, 30 days before the scheduled date of closure or relocation.

The substitute removes the notice requirement in the case of fire, flood, or act of God that is not within the reasonable control of a health spa.

The substitute repeals Section 702.203 and Section 702.204 of the Occupations Code that provided for partial ineligibility and complete ineligibility for exemption from the bond requirement.