

By: Solomons, Jackson

H.B. No. 135

Substitute the following for H.B. No. 135:

By: Laubenberg

C.S.H.B. No. 135

A BILL TO BE ENTITLED

AN ACT

relating to regulation of health spas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 702, Occupations Code, is amended by adding Section 702.107 to read as follows:

Sec. 702.107. SALES TAX PERMIT; PROOF OF REGISTRATION REQUIRED. (a) A health spa operator shall submit to the comptroller a copy of the operator's certificate of registration at the time the operator applies for a sales tax permit.

(b) The comptroller may not issue a sales tax permit to a health spa operator who fails to comply with this section. The secretary of state shall assist the comptroller in determining whether a business is a health spa under this chapter.

SECTION 2. Section 702.151, Occupations Code, is amended to read as follows:

Sec. 702.151. SECURITY REQUIRED. (a) Except as provided by Subchapter E, the secretary of state may not issue a health spa operator's certificate of registration to an applicant unless the applicant files a surety bond, or posts other security as prescribed by the secretary, in the amount prescribed by the secretary under Subsection (b) [~~of \$20,000~~].

(b) The secretary of state shall prescribe the amount of security required for an applicant in the amount determined sufficient by the secretary to protect the health spa's total

1 membership. The amount may not be less than \$20,000 or more than
2 \$50,000.

3 SECTION 3. Subchapter D, Chapter 702, Occupations Code, is
4 amended by adding Section 702.158 to read as follows:

5 Sec. 702.158. REVIEW OF SECURITY AMOUNT. (a) At least once
6 every three years, the secretary of state shall review the amount of
7 security a health spa operator is required to post under Section
8 702.151 to determine whether the amount is sufficient to protect
9 the health spa's total membership. The secretary may increase the
10 amount required if the secretary determines that the increase is
11 necessary to protect that membership but may not increase the
12 amount above the maximum amount allowed under Section 702.151(b).

13 (b) The secretary of state may adopt procedures necessary to
14 implement this section, including:

15 (1) establishing a schedule to review the amount of
16 security posted by each health spa operator; and

17 (2) requiring each health spa operator to submit
18 periodically a written statement of the health spa's total
19 membership.

20 SECTION 4. Section 702.202, Occupations Code, is amended to
21 read as follows:

22 Sec. 702.202. QUALIFICATIONS FOR EXEMPTION. A certificate
23 holder may apply for an exemption under Section 702.201 if:

24 (1) the certificate holder does not require, or
25 solicit or offer a plan or program that requires, a health spa
26 consumer to:

27 (A) execute a membership contract for a term that

1 exceeds 31 days;

2 (B) execute a note or retail installment
3 contract;

4 (C) authorize a draw or other recurring debit on
5 a financial institution in favor of the certificate holder or the
6 certificate holder's assignee;

7 (D) pay an initiation fee or other fee, not
8 including monthly dues; or

9 (E) prepay for a term that exceeds 31 days; or

10 (2) the certificate holder submits a sworn statement
11 every three years with the secretary of state stating that the
12 certificate holder:

13 (A) has assets based on net book value that
14 exceed \$50,000 per registered location [~~continuously owned and~~
15 ~~operated a health spa in this state for not less than five years at~~
16 ~~the same location~~]; [and]

17 (B) has operated under substantially the same
18 ownership or management for at least five years; and

19 (C) has not been the subject of a complaint
20 relating to the closing of a health spa owned by the certificate
21 holder or the failure of a health spa owned by the certificate
22 holder to open that has been initiated or filed by a member of the
23 health spa with a governmental authority in this state.

24 SECTION 5. Section 702.301(a), Occupations Code, is amended
25 to read as follows:

26 (a) A contract:

27 (1) must be:

- 1 (A) in writing; and
2 (B) signed by the purchaser; ~~and~~
3 (2) must state the proposed opening date of the health
4 spa that is the subject of the contract, if the health spa is not
5 open on the contract date; and
6 (3) must include the health spa operator's certificate
7 of registration number.

8 SECTION 6. Section 702.304, Occupations Code, is amended to
9 read as follows:

10 Sec. 702.304. CANCELLATION AND REFUND NOTICE. (a) Except
11 as provided by Subsection (b), a [A] contract must state in at
12 least 10-point type that is boldfaced, capitalized, underlined, or
13 otherwise conspicuously distinguished from surrounding written
14 material:

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

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

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

24 (3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES
25 NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU
26 ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE
27 FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY:

1 (A) CANCEL THIS CONTRACT BY MAILING BY CERTIFIED
2 MAIL A WRITTEN NOTICE [~~TO THE HEALTH SPA~~] STATING YOUR DESIRE TO
3 CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE
4 CONTRACT [~~THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL~~] TO
5 THE HEALTH SPA AT THE FOLLOWING ADDRESS:

6 (Address of the health spa home office); AND [~~—~~"]

7 (B) [~~"YOU MAY ALSO BE ENTITLED TO~~] FILE A CLAIM
8 FOR A REFUND OF YOUR UNUSED MEMBERSHIP FEES AGAINST THE BOND OR
9 OTHER SECURITY POSTED BY THE HEALTH SPA WITH THE TEXAS SECRETARY OF
10 STATE. TO MAKE A CLAIM AGAINST THE SECURITY SEND A COPY OF YOUR
11 CONTRACT TOGETHER WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE
12 TEXAS SECRETARY OF STATE. THE WRITTEN NOTICE MUST BE MAILED BY
13 CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

14 OFFICE OF THE SECRETARY OF STATE

15 STATUTORY DOCUMENTS SECTION

16 P.O. BOX 12887

17 AUSTIN, TEXAS 78711-2887."

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

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

26 (b) A health spa operator is required to include the
27 statement under Subsection (a)(3)(B) in a contract only if the

1 operator is required to post security with the secretary of state
2 under Subchapter D.

3 SECTION 7. Subchapter I, Chapter 702, Occupations Code, is
4 amended by adding Section 702.404 to read as follows:

5 Sec. 702.404. INFORMATION REQUIRED IN ADVERTISEMENT. (a)
6 A health spa operator may not advertise in any print or electronic
7 medium unless the advertisement includes the health spa operator's
8 certificate of registration number or an identification number
9 issued as provided by Subsection (b).

10 (b) The secretary of state shall adopt procedures for the
11 issuance of an identification number which may be used in
12 advertisements for purposes of Subsection (a) by health spas with
13 more than one location in this state.

14 SECTION 8. The heading to Section 702.452, Occupations
15 Code, is amended to read as follows:

16 Sec. 702.452. NOTICE REQUIREMENT BEFORE [OF CLOSED] HEALTH
17 SPA CLOSING.

18 SECTION 9. Section 702.452, Occupations Code, is amended by
19 amending Subsections (a) and (b) and adding Subsection (f) to read
20 as follows:

21 (a) At least 30 days before [~~Not later than the third day~~
22 ~~after~~] the date a health spa is scheduled to close or relocate
23 [~~closed~~], the certificate holder shall contemporaneously:

24 (1) post, inside and outside each entrance to [~~at~~] the
25 health spa [~~location~~], a notice stating:

26 (A) the date [~~that~~] the health spa is scheduled
27 to close or relocate [~~closed~~];

1 (B) that a member of the health spa may, not later
2 than the 90th day after the date the health spa closes or relocates
3 ~~[notice is first posted]~~, file with the secretary of state a claim
4 to recover actual financial loss suffered by the member as a result
5 of the health spa closing; and

6 (C) the procedures for perfecting a security
7 claim; and

8 (2) notify the secretary of state in writing of the
9 health spa closing or relocation and the date that the notice was
10 first posted.

11 (b) The notice posted under Subsection (a)(1) must be:

12 (1) at least 8-1/2 by 11 inches in size; and

13 (2) ~~[posted in a place that is readily accessible to~~
14 ~~the general public during the former operating hours of the health~~
15 ~~spa; and~~

16 ~~[(3)]~~ posted continuously for at least 30 ~~[14]~~ days.

17 (f) The notice required under Subsection (a) is not required
18 in the case of a fire, flood, or act of God that is not within the
19 reasonable control of a health spa.

20 SECTION 10. Sections 702.203 and 702.204, Occupations Code,
21 are repealed.

22 SECTION 11. Not later than January 1, 2006, the comptroller
23 of public accounts shall provide the secretary of state with the
24 name and address of each person that holds a sales tax permit issued
25 before September 1, 2005, and provides services that may require
26 the person to hold a health spa operator's certificate of
27 registration under Chapter 702, Occupations Code.

1 SECTION 12. This Act takes effect September 1, 2005.