

1-1 By: Solomons, Jackson (Senate Sponsor - Harris) H.B. No. 135  
1-2 (In the Senate - Received from the House April 19, 2005;  
1-3 May 6, 2005, read first time and referred to Committee on Business  
1-4 and Commerce; May 18, 2005, reported favorably by the following  
1-5 vote: Yeas 6, Nays 0; May 18, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to regulation of health spas.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subchapter C, Chapter 702, Occupations Code, is  
1-11 amended by adding Section 702.107 to read as follows:

1-12 Sec. 702.107. SALES TAX PERMIT; PROOF OF REGISTRATION  
1-13 REQUIRED. (a) A health spa operator shall submit to the comptroller  
1-14 a copy of the operator's certificate of registration at the time the  
1-15 operator applies for a sales tax permit.

1-16 (b) The comptroller may not issue a sales tax permit to a  
1-17 health spa operator who fails to comply with this section. The  
1-18 secretary of state shall assist the comptroller in determining  
1-19 whether a business is a health spa under this chapter.

1-20 SECTION 2. Section 702.151, Occupations Code, is amended to  
1-21 read as follows:

1-22 Sec. 702.151. SECURITY REQUIRED. (a) Except as provided by  
1-23 Subchapter E, the secretary of state may not issue a health spa  
1-24 operator's certificate of registration to an applicant unless the  
1-25 applicant files a surety bond, or posts other security as  
1-26 prescribed by the secretary, in the amount prescribed by the  
1-27 secretary under Subsection (b) [~~of \$20,000~~].

1-28 (b) The secretary of state shall prescribe the amount of  
1-29 security required for an applicant in the amount determined  
1-30 sufficient by the secretary to protect the health spa's total  
1-31 membership. The amount may not be less than \$20,000 or more than  
1-32 \$50,000.

1-33 SECTION 3. Subchapter D, Chapter 702, Occupations Code, is  
1-34 amended by adding Section 702.158 to read as follows:

1-35 Sec. 702.158. REVIEW OF SECURITY AMOUNT. (a) At least once  
1-36 every three years, the secretary of state shall review the amount of  
1-37 security a health spa operator is required to post under Section  
1-38 702.151 to determine whether the amount is sufficient to protect  
1-39 the health spa's total membership. The secretary may increase the  
1-40 amount required if the secretary determines that the increase is  
1-41 necessary to protect that membership but may not increase the  
1-42 amount above the maximum amount allowed under Section 702.151(b).

1-43 (b) The secretary of state may adopt procedures necessary to  
1-44 implement this section, including:

1-45 (1) establishing a schedule to review the amount of  
1-46 security posted by each health spa operator; and

1-47 (2) requiring each health spa operator to submit  
1-48 periodically a written statement of the health spa's total  
1-49 membership.

1-50 SECTION 4. Section 702.202, Occupations Code, is amended to  
1-51 read as follows:

1-52 Sec. 702.202. QUALIFICATIONS FOR EXEMPTION. A certificate  
1-53 holder may apply for an exemption under Section 702.201 if:

1-54 (1) the certificate holder does not require, or  
1-55 solicit or offer a plan or program that requires, a health spa  
1-56 consumer to:

1-57 (A) execute a membership contract for a term that  
1-58 exceeds 31 days;

1-59 (B) execute a note or retail installment  
1-60 contract;

1-61 (C) authorize a draw or other recurring debit on  
1-62 a financial institution in favor of the certificate holder or the  
1-63 certificate holder's assignee;

1-64 (D) pay an initiation fee or other fee, not

2-1 including monthly dues; or

2-2 (E) prepay for a term that exceeds 31 days; or  
 2-3 (2) the certificate holder submits a sworn statement  
 2-4 every three years with the secretary of state stating that the  
 2-5 certificate holder:

2-6 (A) has assets based on net book value that  
 2-7 exceed \$50,000 per registered location [~~continuously owned and~~  
 2-8 ~~operated a health spa in this state for not less than five years at~~  
 2-9 ~~the same location~~]; [~~and~~]

2-10 (B) has operated under substantially the same  
 2-11 ownership or management for at least five years; and

2-12 (C) has not been the subject of a complaint  
 2-13 relating to the closing of a health spa owned by the certificate  
 2-14 holder or the failure of a health spa owned by the certificate  
 2-15 holder to open that has been initiated or filed by a member of the  
 2-16 health spa with a governmental authority in this state.

2-17 SECTION 5. Section 702.301, Occupations Code, is amended to  
 2-18 read as follows:

2-19 Sec. 702.301. GENERAL REQUIREMENTS. (a) A contract:

2-20 (1) must be:

2-21 (A) in writing; and

2-22 (B) signed by the purchaser; [~~and~~]

2-23 (2) must state the proposed opening date of the health  
 2-24 spa that is the subject of the contract, if the health spa is not  
 2-25 open on the contract date; and

2-26 (3) must include the health spa operator's certificate  
 2-27 of registration number or an identification number as provided by  
 2-28 Subsection (b).

2-29 (b) The secretary of state shall adopt procedures for the  
 2-30 issuance of an identification number that may be used in a contract  
 2-31 for purposes of Subsection (a) by health spas with more than one  
 2-32 location in this state.

2-33 (c) [~~(b)~~] A contract under Subsection (a) constitutes the  
 2-34 entire agreement between the seller and purchaser.

2-35 SECTION 6. Section 702.304, Occupations Code, is amended to  
 2-36 read as follows:

2-37 Sec. 702.304. CANCELLATION AND REFUND NOTICE. (a) Except  
 2-38 as provided by Subsection (b), a [A] contract must state in at  
 2-39 least 10-point type that is boldfaced, capitalized, underlined, or  
 2-40 otherwise conspicuously distinguished from surrounding written  
 2-41 material:

2-42 (1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT  
 2-43 UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

2-44 (2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER  
 2-45 OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE  
 2-46 HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU  
 2-47 SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS  
 2-48 CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE  
 2-49 FOLLOWING ADDRESS:

2-50 (Address of the health spa home office)."

2-51 (3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES  
 2-52 NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU  
 2-53 ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE  
 2-54 FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY:

2-55 (A) CANCEL THIS CONTRACT BY MAILING BY CERTIFIED  
 2-56 MAIL A WRITTEN NOTICE [~~TO THE HEALTH SPA~~] STATING YOUR DESIRE TO  
 2-57 CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE  
 2-58 CONTRACT [~~THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL~~] TO  
 2-59 THE HEALTH SPA AT THE FOLLOWING ADDRESS:

2-60 (Address of the health spa home office); AND [~~THE~~]

2-61 (B) [~~"YOU MAY ALSO BE ENTITLED TO~~] FILE A CLAIM  
 2-62 FOR A REFUND OF YOUR UNUSED MEMBERSHIP FEES AGAINST THE BOND OR  
 2-63 OTHER SECURITY POSTED BY THE HEALTH SPA WITH THE TEXAS SECRETARY OF  
 2-64 STATE. TO MAKE A CLAIM AGAINST THE SECURITY SEND A COPY OF YOUR  
 2-65 CONTRACT TOGETHER WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE  
 2-66 TEXAS SECRETARY OF STATE. THE WRITTEN NOTICE MUST BE MAILED BY  
 2-67 CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

2-68 OFFICE OF THE SECRETARY OF STATE  
 2-69 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)."

(b) A health spa operator is required to include the statement under Subsection (a)(3)(B) in a contract only if the operator is required to post security with the secretary of state under Subchapter D.

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

Sec. 702.404. INFORMATION REQUIRED IN ADVERTISEMENT. A health spa operator may not advertise in any print or electronic medium unless the advertisement includes the health spa operator's certificate of registration number or an identification number issued as provided by Section 702.301(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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