

1-1 By: Fraser S.B. No. 1702
1-2 (In the Senate - Filed March 10, 2009; March 20, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 14, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 14, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1702 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of health spas.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 702.155, Occupations Code, is amended to
1-13 read as follows:

1-14 Sec. 702.155. DURATION OF SECURITY. A certificate holder
1-15 shall maintain the security filed or posted under Section 702.151
1-16 in effect until the earlier ~~[later]~~ of:

1-17 (1) the ~~second~~ anniversary of the date the certificate
1-18 holder's health spa closes; or

1-19 (2) the date the secretary of state determines that
1-20 each claim filed against the security has been satisfied or
1-21 foreclosed by law.

1-22 SECTION 2. Subsection (b), Section 702.156, Occupations
1-23 Code, is amended to read as follows:

1-24 (b) If the security filed or posted under this subchapter by
1-25 a certificate holder is canceled, the secretary of state shall:

1-26 (1) suspend the certificate holder's certificate of
1-27 registration on the date of cancellation; and

1-28 (2) maintain other security on file with the secretary
1-29 until the earlier ~~[later]~~ of:

1-30 (A) the second anniversary of the date the
1-31 certificate holder's health spa closes; or

1-32 (B) the date the secretary determines that each
1-33 claim filed against the security has been satisfied or foreclosed
1-34 by law.

1-35 SECTION 3. Section 702.251, Occupations Code, is amended to
1-36 read as follows:

1-37 Sec. 702.251. FILING OF SECURITY CLAIM. A member may file a
1-38 claim against the security filed or posted under this subchapter by
1-39 providing ~~[sending]~~ to the secretary of state ~~[by certified mail]~~ a
1-40 copy of the contract between the member and certificate holder who
1-41 filed or posted the security, accompanied by proof of payment made
1-42 under the contract, if the certificate holder's health spa:

1-43 (1) closes and fails to provide alternative facilities
1-44 not more than 10 miles from the location of the health spa; or

1-45 (2) relocates more than 10 miles from its location
1-46 preceding the relocation.

1-47 SECTION 4. Subsection (a), Section 702.304, Occupations
1-48 Code, is amended to read as follows:

1-49 (a) Except as provided by Subsection (b), a contract must
1-50 state in at least 10-point type that is boldfaced, capitalized,
1-51 underlined, or otherwise conspicuously distinguished from
1-52 surrounding written material:

1-53 (1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT
1-54 UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

1-55 (2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER
1-56 OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE
1-57 HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU
1-58 SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS
1-59 CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO
1-60 THE FOLLOWING ADDRESS:

1-61 (Address of the health spa home office)."

1-62 (3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES
1-63 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:

(A) CANCEL THIS CONTRACT BY MAILING BY CERTIFIED MAIL A WRITTEN NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT TO THE HEALTH SPA AT THE FOLLOWING ADDRESS:

(Address of the health spa home office); AND

(B) FILE A WRITTEN NOTICE OF 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)."

SECTION 5. Subsection (a), Section 702.452, Occupations Code, is amended to read as follows:

(a) At least 30 days before the date a health spa is scheduled to close or relocate, the certificate holder shall contemporaneously:

(1) post, inside and outside each entrance to the health spa, a notice stating:

(A) the date the health spa is scheduled to close or relocate;

(B) that a member of the health spa may, not later than the 90th day after the date the notice is first posted ~~[health spa closes or relocates]~~, 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.

SECTION 6. The changes in law made by this Act to Section 702.251, Occupations Code, and Subsection (a), Section 702.304, and Subsection (a), Section 702.452, Occupations Code, apply only to a contract that is entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2009.

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