

1-1 By: Estes S.B. No. 1231
1-2 (In the Senate - Filed March 7, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 26, 2011, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 26, 2011, sent to printer.)

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

1-8 relating to the regulation of health spas by the secretary of state.
1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 702.155, Occupations Code, is amended to
1-11 read as follows:

1-12 Sec. 702.155. DURATION OF SECURITY. A certificate holder
1-13 shall maintain the security filed or posted under Section 702.151
1-14 in effect until the earlier ~~later~~ of:

1-15 (1) the ~~second~~ anniversary of the date the certificate
1-16 holder's health spa closes; or

1-17 (2) the date the secretary of state determines that
1-18 each claim filed against the security has been satisfied or
1-19 foreclosed by law.

1-20 SECTION 2. Section 702.156, Occupations Code, is amended to
1-21 read as follows:

1-22 Sec. 702.156. NOTICE OF CANCELLATION OF SECURITY. ~~[(a)]~~ A
1-23 surety or obligor of security filed or posted under this subchapter
1-24 shall provide to the secretary of state, not later than the 60th day
1-25 before the date the security is canceled, written notice of the
1-26 cancellation.

1-27 ~~[(b)] If the security filed or posted under this subchapter~~
1-28 ~~by a certificate holder is canceled, the secretary of state shall:~~

1-29 ~~[(1)] suspend the certificate holder's certificate of~~
1-30 ~~registration on the date of cancellation; and~~

1-31 ~~[(2)] maintain other security on file with the~~
1-32 ~~secretary until the later of:~~

1-33 ~~[(A)] the second anniversary of the date the~~
1-34 ~~certificate holder's health spa closes; or~~

1-35 ~~[(B)] the date the secretary determines that each~~
1-36 ~~claim filed against the security has been satisfied or foreclosed~~
1-37 ~~by law.]~~

1-38 SECTION 3. Section 702.207, Occupations Code, is amended to
1-39 read as follows:

1-40 Sec. 702.207. DENIAL AND REVOCATION OF EXEMPTION. After
1-41 notice and opportunity for hearing, the secretary of state may deny
1-42 an application for an exemption or permanently revoke a certificate
1-43 holder's certificate of exemption if the secretary finds that the
1-44 applicant or certificate holder:

1-45 (1) provided false information on the application for
1-46 an exemption; or

1-47 (2) is no longer eligible for an exemption.

1-48 SECTION 4. Section 702.251, Occupations Code, is amended to
1-49 read as follows:

1-50 Sec. 702.251. FILING OF SECURITY CLAIM. A member may file a
1-51 claim against the security filed or posted under this subchapter by
1-52 providing ~~sending~~ to the secretary of state ~~by certified mail~~ a
1-53 copy of the contract between the member and certificate holder who
1-54 filed or posted the security, accompanied by proof of payment made
1-55 under the contract, if the certificate holder's health spa:

1-56 (1) closes and fails to provide alternative facilities
1-57 not more than 10 miles from the location of the health spa; or

1-58 (2) relocates more than 10 miles from its location
1-59 preceding the relocation.

1-60 SECTION 5. Section 702.254, Occupations Code, is amended to
1-61 read as follows:

1-62 Sec. 702.254. CLAIM BARRED. The secretary of state may not
1-63 consider a claim filed under Section 702.251 if the claim is
1-64 received later than the 90th day after the date notice of the

closure or relocation is first posted on the secretary of state's Internet website under Section 702.452(c) [702.452].

SECTION 6. Subsection (a), Section 702.304, Occupations Code, is amended to read as follows:

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

(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:

(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 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 PROVIDE [SEND] A COPY OF YOUR CONTRACT TOGETHER WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE TEXAS SECRETARY OF STATE. THE REQUIRED CLAIM INFORMATION [WRITTEN NOTICE] MUST BE RECEIVED BY [MAILED BY CERTIFIED MAIL TO] THE SECRETARY OF STATE NOT LATER THAN THE 90TH DAY AFTER THE DATE NOTICE OF THE CLOSURE OR RELOCATION IS FIRST POSTED ON THE SECRETARY OF STATE'S INTERNET WEBSITE [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 7. Sections 702.451 and 702.452, Occupations Code, are amended to read as follows:

Sec. 702.451. DISCIPLINARY ACTIONS. (a) After notice and opportunity for hearing, the secretary of state may deny an application for a certificate of registration, or may permanently revoke [or suspend for a definite period] a health spa operator's certificate of registration, on a finding by the secretary that the applicant or certificate holder:

(1) provided false information on an application or other document filed with the secretary;

(2) failed to file or post, or maintain, the security for each health spa location as required by Subchapter D; or

(3) failed to provide the contract disclosure language required by Subchapter G.

(b) The secretary of state may permanently revoke a certificate of registration under Subsection (a) based on the certificate holder's failure to maintain the required security only after a finding by the secretary that, within the 30-day period following the cancellation or lapse of the security, the certificate holder failed to file or post replacement security in the required amount.

Sec. 702.452. NOTICE REQUIREMENT BEFORE HEALTH SPA CLOSING.

(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 notice of the closure or relocation is first posted on the secretary of state's Internet website ~~[the 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.

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

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

(2) posted continuously for at least 30 days.

~~(c) [If the certificate holder fails to post the notice required by Subsection (a)(1) within the time specified, the secretary of state, not later than the 30th day after the date the secretary discovers that a health spa is closed, shall post the notice required under Subsection (a)(1).]~~

~~[(d)]~~ After receiving a notice under Subsection (a)(2) or otherwise discovering that a health spa is closed, the secretary of state shall post on the secretary of state's Internet website a notice containing the information specified in Subsection (a)(1). The notice must be posted continuously for at least 30 days.

~~(d) [(e)]~~ The secretary of state shall, not later than the 10th day after the date the secretary receives notice or otherwise discovers that a health spa is closed, notify the appropriate surety company or obligor of the administrative proceedings pending under Subsection (a)(1).

~~(e) [(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 8. (a) The changes in law made by this Act to Sections 702.155 and 702.156, Occupations Code, apply to security that is filed or posted before, on, or after the effective date of this Act.

(b) The change in law made by this Act to Section 702.207, Occupations Code, applies only to an application for exemption that is filed or to the revocation of a certificate of exemption that occurs on or after the effective date of this Act. An application for exemption filed or the revocation of a certificate that occurs 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.

(c) The changes in law made by this Act to Sections 702.251 and 702.254, Occupations Code, apply only to a claim against security that is received by the secretary of state on or after the effective date of this Act. A claim against security received by the secretary of state 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.

(d) The change in law made by this Act to Section 702.304, Occupations Code, applies 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.

(e) The change in law made by this Act to Section 702.451, Occupations Code, applies to a disciplinary action taken on or after the effective date of this Act. A disciplinary action taken before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is

4-1 continued in effect for that purpose.

4-2 (f) The change in law made by this Act to Section 702.452,
4-3 Occupations Code, applies to the closing or relocation of a health
4-4 spa that occurs on or after the effective date of this Act. A
4-5 closing or relocation of a health spa that occurs before the
4-6 effective date of this Act is governed by the law in effect
4-7 immediately before that date, and the former law is continued in
4-8 effect for that purpose.

4-9 SECTION 9. This Act takes effect September 1, 2011.

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