

By: González of El Paso

H.B. No. 321

A BILL TO BE ENTITLED

AN ACT

relating to the registration and regulation of health clubs.

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

SECTION 1. The heading to Chapter 702, Occupations Code, is amended to read as follows:

CHAPTER 702. HEALTH CLUBS [~~SPAS~~]

SECTION 2. Section 702.001, Occupations Code, is amended to read as follows:

Sec. 702.001. SHORT TITLE. This chapter may be cited as the Health Club [~~Spa~~] Act.

SECTION 3. Section 702.002(a), Occupations Code, is amended to read as follows:

(a) The purpose of this chapter is to protect the public against fraud, deceit, imposition, and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of health club [~~spa~~] operations and services by prohibiting or restricting injurious practices involving:

(1) health club [~~spa~~] contracts; and

(2) the marketing of health club [~~spa~~] services.

SECTION 4. Sections 702.003, 702.101, 702.102, and 702.103, Occupations Code, are amended to read as follows:

Sec. 702.003. DEFINITIONS. In this chapter:

(1) "Closed" means a condition in which:

(A) the facilities of a health club [~~spa~~] are no

1 longer available to the health club's [~~spa's~~] members and
2 equivalent facilities located not more than 10 miles from the
3 health club [~~spa~~] have not been made available to the members;

4 (B) a certificate holder sells a registered
5 location and the security filed or posted by the certificate holder
6 under Subchapter D is:

7 (i) canceled;

8 (ii) withdrawn; or

9 (iii) otherwise unavailable to the members
10 of the health club [~~spa~~]; or

11 (C) a certificate holder sells a registered
12 location and the buyer does not adopt or honor the contracts of
13 existing members of the health club [~~spa~~].

14 (2) "Contract" means an agreement between a seller and
15 purchaser by which the purchaser becomes a member of a health club
16 or is granted access to the facilities of the health club [~~spa~~].

17 (3) "Facilities" means the equipment, physical
18 structures, improvements, including improvements to leasehold
19 premises, and other tangible property, including saunas, whirlpool
20 baths, gymnasiums, running tracks, swimming pools, shower areas,
21 racquetball courts, martial arts equipment, and exercise
22 equipment, that are located at a health club [~~spa~~] and used to
23 conduct the business of the health club [~~spa~~].

24 (4) "Health club [~~spa~~]" means a business that offers
25 for sale, or sells, memberships that provide the members
26 instruction in or the use of facilities for a physical exercise
27 program. The term does not include:

1 (A) an organization that is tax exempt under
2 Section 501 et seq., Internal Revenue Code (26 U.S.C. Section 501 et
3 seq.);

4 (B) a private club owned and operated by its
5 members;

6 (C) an entity operated exclusively to:

7 (i) teach dance, yoga, or aerobic exercise;

8 or

9 (ii) provide physical rehabilitation
10 activity related to an individual's injury or disease;

11 (D) a person engaged in an activity authorized
12 under a license issued by the state;

13 (E) an activity conducted or sanctioned by a
14 school under the Education Code; ~~or~~

15 (F) a hospital or clinic owned or operated by an
16 agency of the state or federal government or by a political
17 subdivision of this state;

18 (G) prepaid personal training services
19 consisting of a specified number of sessions; or

20 (H) an outdoor physical exercise program held at
21 a public facility.

22 (5) "Location" means the physical site of the
23 facilities of a health club ~~[spa]~~.

24 (6) "Member" means a person who is entitled to the
25 benefits of membership in a health club ~~[spa]~~.

26 (7) "Membership" means the status of a person under a
27 contract that entitles the person to use a health club's ~~[spa's]~~

1 services or facilities.

2 (8) "Obligor" means a person, other than a surety, who
3 is obligated to perform if a certificate holder defaults.

4 (9) "Open" means the date each service of a health club
5 [~~spa~~] that was advertised before the opening, or promised to be made
6 available, are available for use by its members.

7 (10) "Prepayment" means consideration paid by a
8 purchaser for membership in a health club [~~spa~~] before the date the
9 health club [~~spa~~] opens.

10 (11) "Purchaser" means a person who purchases, or
11 applies to purchase, the right to use a health club's [~~spa's~~]
12 services or facilities.

13 (12) "Registered location" means a health club [~~spa~~]
14 location for which a health club [~~spa~~] operator's certificate of
15 registration is issued under this chapter.

16 (13) "Seller" means a person who:

17 (A) owns or operates a health club [~~spa~~]; or

18 (B) offers for sale, or sells, the right to use a
19 health club's [~~spa's~~] services or facilities.

20 (14) "Services" means the programs, plans, guidance,
21 or instruction that a health club [~~spa~~] provides for its members.
22 The term includes [~~diet planning,~~] exercise instruction and
23 programs[~~7~~] and instructional classes.

24 Sec. 702.101. CERTIFICATE OF REGISTRATION REQUIRED. A
25 person may not operate a health club [~~spa~~] or offer for sale, or
26 sell, a membership in a health club [~~spa~~] unless the person holds a
27 health club [~~spa~~] operator's certificate of registration.

1 Sec. 702.102. APPLICATION REQUIREMENTS. (a) An applicant
2 for a health club [~~spa~~] operator's certificate of registration must
3 file with the secretary of state an application stating:

4 (1) the applicant's name, address, and telephone
5 number;

6 (2) the applicant's business trade name;

7 (3) for an applicant whose business is incorporated:

8 (A) the applicant's business name registered
9 with the secretary of state;

10 (B) the location of the applicant's registered
11 business office; and

12 (C) the name and address of each person who
13 directly or indirectly owns or controls 10 percent or more of the
14 outstanding shares of stock in the applicant's business;

15 (4) the date the applicant became the owner and
16 operator of the applicant's business;

17 (5) the address of the health club [~~spa~~]; and

18 (6) the type of available or proposed facilities and
19 services offered at the health club [~~spa~~] location.

20 (b) An application for a certificate of registration must be
21 accompanied by:

22 (1) a sample of each contract used to sell a membership
23 in the applicant's health club [~~spa~~];

24 (2) proof of security filed or posted by the applicant
25 under Subchapter D; and

26 (3) the required registration fee.

27 (c) An applicant must comply with the application

1 requirements of this section for each location where the applicant
2 operates a health club [~~spa~~].

3 Sec. 702.103. CERTIFICATE OF REGISTRATION NONTRANSFERABLE;
4 APPLICATION BY NEW OWNER. (a) A health club [~~spa~~] operator's
5 certificate of registration is not transferable.

6 (b) A person who obtains ownership of a health club [~~spa~~] by
7 purchase or other transfer shall file an application for a
8 certificate of registration under Section 702.102 not later than
9 the fifth day after the date the person obtains ownership.

10 SECTION 5. Section 702.104(a), Occupations Code, is amended
11 to read as follows:

12 (a) A health club [~~spa~~] operator's certificate of
13 registration expires on the first anniversary of the date of
14 issuance.

15 SECTION 6. Sections 702.105, 702.107, 702.151, 702.154,
16 702.155, 702.158, and 702.202, Occupations Code, are amended to
17 read as follows:

18 Sec. 702.105. CERTIFICATE POSTING. A certificate holder
19 shall post a health club [~~spa~~] operator's certificate of
20 registration in a conspicuous place at each registered location.

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

25 (b) The comptroller may not issue a sales tax permit to a
26 health club [~~spa~~] operator who fails to comply with this
27 section. The secretary of state shall assist the comptroller in

1 determining whether a business is a health club [~~spa~~] under this
2 chapter.

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

9 (b) The secretary of state shall prescribe the amount of
10 security required for an applicant in the amount determined
11 sufficient by the secretary to protect the health club's [~~spa's~~]
12 total membership. The amount may not be less than \$20,000 or more
13 than \$75,000 [~~\$50,000~~].

14 Sec. 702.154. BENEFICIARY OF SECURITY. The security filed
15 or posted by a certificate holder under this subchapter must be
16 payable to the state and held for the benefit of:

- 17 (1) the state; and
18 (2) each member of the certificate holder's health
19 club [~~spa~~] who has been administratively adjudicated to have
20 suffered actual financial loss as a result of the closing of the
21 certificate holder's health club [~~spa~~].

22 Sec. 702.155. DURATION OF SECURITY. A certificate holder
23 shall maintain the security filed or posted under Section [702.151](#)
24 in effect until the earlier of:

- 25 (1) the second anniversary of the date the certificate
26 holder's health club [~~spa~~] closes; or
27 (2) the date the secretary of state determines that

1 each claim filed against the security has been satisfied or
2 foreclosed by law.

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

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

14 (1) establishing a schedule to review the amount of
15 security posted by each health club [~~spa~~] operator; and

16 (2) requiring each health club [~~spa~~] operator to
17 submit periodically a written statement of the health club's
18 [~~spa's~~] total membership.

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

21 (1) the certificate holder does not require, or
22 solicit or offer a plan or program that requires, a health club
23 [~~spa~~] consumer to:

24 (A) execute a membership contract for a term that
25 exceeds 31 days;

26 (B) execute a note or retail installment
27 contract;

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

4 (D) pay an initiation fee or other fee, not
5 including monthly dues; or

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

7 (2) the certificate holder submits a sworn statement
8 every three years with the secretary of state stating that the
9 certificate holder:

10 (A) has assets based on net book value that
11 exceed \$75,000 [~~\$50,000~~] per registered location;

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

14 (C) has not been the subject of a complaint
15 relating to the closing of a health club [~~spa~~] owned by the
16 certificate holder or the failure of a health club [~~spa~~] owned by
17 the certificate holder to open that has been initiated or filed by a
18 member of the health club [~~spa~~] with a governmental authority in
19 this state.

20 SECTION 7. Section 702.206(b), Occupations Code, is amended
21 to read as follows:

22 (b) A person who by purchase or other transfer obtains
23 ownership of a health club [~~spa~~] for which a certificate of
24 exemption has been issued shall, not later than the fifth day after
25 the date the person obtains ownership:

26 (1) file a surety bond, or post other security, as
27 required by Section 702.151; or

1 (2) file a new application for an exemption under
2 Section 702.201.

3 SECTION 8. Sections 702.251 and 702.252, Occupations Code,
4 are amended to read as follows:

5 Sec. 702.251. FILING OF SECURITY CLAIM. A member may file
6 a claim against the security filed or posted under this subchapter
7 by providing to the secretary of state a copy of the contract
8 between the member and certificate holder who filed or posted the
9 security, accompanied by proof of payment made under the contract,
10 if the certificate holder's health club ~~[spa]~~:

11 (1) closes and fails to provide alternative facilities
12 not more than 10 miles from the location of the health club ~~[spa]~~;
13 or

14 (2) relocates more than 10 miles from its location
15 preceding the relocation.

16 Sec. 702.252. COMPUTATION OF CLAIM. (a) Recovery on a
17 claim filed under Section 702.251 is limited to the amount of actual
18 financial loss suffered by the member as a result of the closing or
19 relocating of the certificate holder's health club ~~[spa]~~.

20 (b) For purposes of this section, actual financial loss is
21 computed by:

22 (1) rounding the date of the health club's ~~[spa's]~~
23 closing or relocation and the contract's expiration date to the
24 nearest full month;

25 (2) subtracting the date of closing or relocation
26 determined under Subdivision (1) from the expiration date
27 determined under that subdivision, with the result expressed in

1 whole months and representing the number of months remaining on a
2 contract;

3 (3) computing the gross monthly payment by adding all
4 payments made under the contract, including any down payment and
5 initiation fee, and dividing the resulting amount by the total
6 number of months in the term of the contract; and

7 (4) multiplying the number of months remaining on the
8 contract computed under Subdivision (2) by the gross monthly
9 payment computed under Subdivision (3).

10 SECTION 9. Sections 702.301(a) and (b), Occupations Code,
11 are amended to read as follows:

12 (a) A contract:

13 (1) must be:

14 (A) in writing; and

15 (B) signed by the purchaser;

16 (2) must state the proposed opening date of the health
17 club [~~spa~~] that is the subject of the contract, if the health club
18 [~~spa~~] is not open on the contract date; and

19 (3) must include the health club [~~spa~~] operator's
20 certificate of registration number or an identification number as
21 provided by Subsection (b).

22 (b) The secretary of state shall adopt procedures for the
23 issuance of an identification number that may be used in a contract
24 for purposes of Subsection (a) by health clubs [~~spas~~] with more than
25 one location in this state.

26 SECTION 10. Section 702.302(a), Occupations Code, is
27 amended to read as follows:

1 (a) A health club [~~spa~~] shall prepare a comprehensive list
2 that includes each membership plan the health club [~~spa~~] offers for
3 sale. The health club [~~spa~~] shall disclose the list to a
4 prospective purchaser on request.

5 SECTION 11. Section 702.303(c), Occupations Code, is
6 amended to read as follows:

7 (c) If, after a health club [~~spa~~] opens, the health club
8 [~~spa~~] is rendered unusable for 30 consecutive days or longer
9 because of an event beyond the control of the owner or operator of
10 the health club [~~spa~~], including a natural disaster, the health
11 club [~~spa~~] shall extend the term of each affected member's contract
12 for a period equal to the time that the health club [~~spa~~] is
13 rendered unusable.

14 SECTION 12. Sections 702.304 and 702.305, Occupations Code,
15 are amended to read as follows:

16 Sec. 702.304. CANCELLATION AND REFUND NOTICE. (a) Except
17 as provided by Subsection (b), a contract must state the following
18 in at least 10-point type that is boldfaced, capitalized,
19 underlined, or otherwise conspicuously distinguished from
20 surrounding written material:

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

23 (2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER
24 OF THIS HEALTH CLUB [~~SPA~~], YOU MAY CANCEL THIS CONTRACT BY MAILING
25 TO THE HEALTH CLUB [~~SPA~~] BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER
26 THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO
27 CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY

1 CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

2 (Address of the health club [~~spa~~] home office)."

3 (3) "IF THE HEALTH CLUB [~~SPA~~] GOES OUT OF BUSINESS AND
4 DOES NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH
5 YOU ARE ENROLLED OR IF THE HEALTH CLUB [~~SPA~~] MOVES MORE THAN 10
6 MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY:

7 (A) CANCEL THIS CONTRACT BY MAILING BY CERTIFIED
8 MAIL A WRITTEN NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT,
9 ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT TO THE HEALTH CLUB
10 [~~SPA~~] AT THE FOLLOWING ADDRESS:

11 (Address of the health club [~~spa~~] home office); AND

12 (B) FILE A CLAIM FOR A REFUND OF YOUR UNUSED
13 MEMBERSHIP FEES AGAINST THE BOND OR OTHER SECURITY POSTED BY THE
14 HEALTH CLUB [~~SPA~~] WITH THE TEXAS SECRETARY OF STATE. TO MAKE A
15 CLAIM AGAINST THE SECURITY PROVIDE A COPY OF YOUR CONTRACT TOGETHER
16 WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE TEXAS SECRETARY
17 OF STATE. THE REQUIRED CLAIM INFORMATION MUST BE RECEIVED BY THE
18 SECRETARY OF STATE NOT LATER THAN THE 90TH DAY AFTER THE DATE NOTICE
19 OF THE CLOSURE OR RELOCATION IS FIRST POSTED ON THE SECRETARY OF
20 STATE'S INTERNET WEBSITE."

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

1 (Address of the health club [~~spa~~] home office)."

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

6 Sec. 702.305. PREPAYMENT REFUND NOTICE. If a certificate
7 holder offers for sale, or sells, memberships in a health club [~~spa~~]
8 before the date the health club [~~spa~~] opens, the contract for the
9 health club [~~spa~~] must state the following in at least 10-point type
10 that is boldfaced, capitalized, underlined, or otherwise
11 conspicuously distinguished from surrounding written material:

12 "IF THE HEALTH CLUB [~~SPA~~] DOES NOT OPEN BEFORE (insert: the
13 date that is the 181st day after the date the membership is prepaid)
14 OR IF THE NEW CLUB [~~SPA~~] DOES NOT REMAIN OPEN FOR THIRTY DAYS, YOU
15 ARE ENTITLED TO A FULL REFUND OF THE MONEY YOU PREPAID. HOWEVER, IF
16 ANOTHER HEALTH CLUB [~~SPA~~], OPERATED BY (insert: the name of the
17 health club [~~spa~~] registration holder), IS LOCATED WITHIN 10 MILES
18 OF (insert: the address of the proposed location of the new club
19 [~~spa~~]) AND IF YOU ARE AUTHORIZED TO USE THE OTHER FACILITIES, YOU
20 ARE ENTITLED TO RECEIVE A FULL REFUND OF YOUR MEMBERSHIP FEES ONLY
21 IF THIS LOCATION DOES NOT FULLY OPEN FOR BUSINESS BEFORE (insert:
22 the date that is the 361st day after the date the new club [~~spa~~]
23 first sells memberships) OR IF THE NEW CLUB [~~SPA~~] DOES NOT REMAIN
24 OPEN FOR 30 DAYS."

25 SECTION 13. Sections 702.308(a) and (d), Occupations Code,
26 are amended to read as follows:

27 (a) A member may cancel a contract and receive a refund of

1 unearned payments made under the contract by sending written notice
2 of cancellation, accompanied by proof of payment made under the
3 contract, by certified mail to the certificate holder's home office
4 if the certificate holder:

5 (1) closes the health club [~~spa~~] and fails to provide
6 alternative facilities not more than 10 miles from the location of
7 the health club [~~spa~~];

8 (2) relocates the health club [~~spa~~] more than 10 miles
9 from its location preceding the relocation; or

10 (3) fails to provide advertised services.

11 (d) In this section, the unearned payments are computed in
12 the same manner as a member's actual financial loss is computed
13 under Section 702.252, except that the date a contract is canceled
14 is substituted for the date a health club [~~spa~~] closes or relocates.

15 SECTION 14. Sections 702.309, 702.311, and 702.351,
16 Occupations Code, are amended to read as follows:

17 Sec. 702.309. PROOF OF PAYMENT. A receipt given to a
18 purchaser by a health club [~~spa~~] when the purchaser makes a payment
19 under a contract constitutes proof of the payment.

20 Sec. 702.311. VOID CONTRACT. A contract is void if:

21 (1) the contract or an assignment of the contract does
22 not comply with this chapter;

23 (2) the seller does not hold a certificate of
24 registration issued under this chapter at the time of contract; or

25 (3) the purchaser enters into the contract in reliance
26 on false, fraudulent, or misleading information wilfully provided
27 by, or a false, fraudulent, or misleading representation, notice,

1 or advertisement wilfully made by, the seller or the health club
2 [~~spa~~] owner or operator.

3 Sec. 702.351. MEMBERSHIP PREPAYMENT. A certificate holder
4 may offer for sale, or sell, a membership in a health club [~~spa~~]
5 before the date the health club [~~spa~~] opens.

6 SECTION 15. Sections 702.352(a) and (c), Occupations Code,
7 are amended to read as follows:

8 (a) A certificate holder or an assignee or agent of a
9 certificate holder who accepts a prepayment for a membership in the
10 certificate holder's health club [~~spa~~] shall deposit the prepayment
11 in an escrow account established with a financial institution
12 insured by the Federal Deposit Insurance Corporation.

13 (c) A certificate holder shall maintain an escrow account
14 under this section until the 30th day after the date the certificate
15 holder's health club [~~spa~~] opens.

16 SECTION 16. Sections 702.353, 702.355, 702.356, and
17 702.401, Occupations Code, are amended to read as follows:

18 Sec. 702.353. EXEMPTION FROM ESCROW REQUIREMENT. (a) A
19 certificate holder is not required to deposit prepayments in an
20 escrow account under Section 702.352 if:

21 (1) the certificate holder has operated at least one
22 health club [~~spa~~] in the state for not less than two years before
23 the date the certificate holder first sells a membership in the
24 health club [~~spa~~] that is the subject of the exemption; and

25 (2) except as provided by Subsection (b):

26 (A) litigation has not been initiated against the
27 certificate holder by a member of a health club [~~spa~~] owned or

1 operated by the certificate holder relating to the closing of the
2 health club [~~spa~~] or the failure of the health club [~~spa~~] to open;
3 and

4 (B) a member of a health club [~~spa~~] has not filed
5 a complaint with a governmental authority in this state against the
6 certificate holder, or an owner, officer, or director of a health
7 club [~~spa~~] owned or operated by the certificate holder, relating to
8 the closing of the health club [~~spa~~] or the failure of the health
9 club [~~spa~~] to open.

10 (b) The initiation of litigation or filing of a complaint
11 against a certificate holder, or an owner, officer, or director of a
12 health club [~~spa~~] owned or operated by the certificate holder, does
13 not preclude the certificate holder from claiming an exemption
14 under Subsection (a) if the basis of the litigation or complaint is
15 that the certificate holder's health club [~~spa~~] closed:

16 (1) as a result of a natural disaster and the closing
17 did not exceed one month; or

18 (2) to relocate the health club [~~spa~~] to a location not
19 more than 10 miles from its location preceding the relocation and
20 the closing did not exceed one month.

21 (c) The number of exemptions that a certificate holder may
22 claim under Subsection (a) during a two-year period may not exceed
23 twice the number of health clubs [~~spas~~] operated by the certificate
24 holder on the first day of that two-year period.

25 Sec. 702.355. REFUND OF ESCROWED PREPAYMENT. (a) Except as
26 provided by Subsection (b), a member is entitled to receive a full
27 refund of the prepayment made under a contract if the health club

1 ~~[spa]~~ that is the subject of the contract does not open before the
2 181st day after the date the health club ~~[spa]~~ first sells a
3 membership in the health club ~~[spa]~~ or does not remain open for at
4 least 30 days unless:

5 (1) an alternative health club ~~[spa]~~ operated by the
6 seller is located not more than 10 miles from the location of the
7 health club ~~[spa]~~ that is the subject of the contract; and

8 (2) the member is authorized to use the facilities of
9 the alternative health club ~~[spa]~~.

10 (b) A member who is authorized to use the facilities of an
11 alternative health club ~~[spa]~~ under Subsection (a) is entitled to
12 receive a full refund of the prepayment made under the contract if
13 the health club ~~[spa]~~ that is the subject of the contract does not
14 open before the 361st day after the date the health club ~~[spa]~~ first
15 sells a membership in the health club ~~[spa]~~ or does not remain open
16 for at least 30 days.

17 (c) For purposes of this section, the date a health club
18 ~~[spa]~~ opens does not depend on whether the services of the health
19 club ~~[spa]~~ that were advertised before the opening, or promised to
20 be made available, are included in the contract.

21 Sec. 702.356. WITHDRAWAL OF ESCROW FUNDS. A certificate
22 holder may withdraw prepayments deposited in an escrow account
23 under Section [702.352](#) if:

24 (1) the health club ~~[spa]~~ for which the prepayments
25 are made remains open for not less than 30 days;

26 (2) the certificate holder files with the secretary of
27 state an affidavit certifying that all obligations of the health

1 club [~~spa~~] for which a lien may be claimed under Chapter 53,
2 Property Code, have been paid; and

3 (3) no person is eligible to claim a lien under Chapter
4 53, Property Code, during the period the certificate holder or an
5 assignee or agent of the certificate holder accepts prepayments for
6 memberships in the certificate holder's health club [~~spa~~].

7 Sec. 702.401. WAIVER PROHIBITED. A person, including a
8 person who buys a health club [~~spa~~] membership from a former member,
9 may not waive a provision of this chapter by contract or other
10 means. A purported waiver of this chapter is void.

11 SECTION 17. Section 702.402(a), Occupations Code, is
12 amended to read as follows:

13 (a) A seller or certificate holder may not:

14 (1) offer a special offer or discount to fewer than all
15 prospective members of the health club [~~spa~~], except that a seller
16 or certificate holder may offer a special group price or discount;
17 or

18 (2) make a material misrepresentation to a member,
19 prospective member, or purchaser regarding:

20 (A) the qualifications of the health club [~~spa~~]
21 staff;

22 (B) the availability, quality, or extent of the
23 facilities or services of the health club [~~spa~~];

24 (C) the results obtained through exercise, diet,
25 weight control, or physical fitness conditioning programs;

26 (D) membership rights; or

27 (E) the period during which a special offer or

1 discount will be available.

2 SECTION 18. Section 702.404, Occupations Code, is amended
3 to read as follows:

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

9 SECTION 19. Section 702.451(a), Occupations Code, is
10 amended to read as follows:

11 (a) After notice and opportunity for hearing, the secretary
12 of state may deny an application for a certificate of registration,
13 or may permanently revoke a health club [~~spa~~] operator's
14 certificate of registration, on a finding by the secretary that the
15 applicant or certificate holder:

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

18 (2) failed to file or post, or maintain, the security
19 for each health club [~~spa~~] location as required by Subchapter D; or

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

22 SECTION 20. The heading to Section 702.452, Occupations
23 Code, is amended to read as follows:

24 Sec. 702.452. NOTICE REQUIREMENT BEFORE HEALTH CLUB [~~SPA~~]
25 CLOSING.

26 SECTION 21. Sections 702.452(a), (c), (d), and (e),
27 Occupations Code, are amended to read as follows:

1 (a) At least 30 days before the date a health club [~~spa~~] is
2 scheduled to close or relocate, the certificate holder shall
3 contemporaneously:

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

6 (A) the date the health club [~~spa~~] is scheduled
7 to close or relocate;

8 (B) that a member of the health club [~~spa~~] may,
9 not later than the 90th day after the date notice of the closure or
10 relocation is first posted on the secretary of state's Internet
11 website, file with the secretary of state a claim to recover actual
12 financial loss suffered by the member as a result of the health club
13 [~~spa~~] closing; and

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

16 (2) notify the secretary of state in writing of the
17 health club [~~spa~~] closing or relocation and the date that the notice
18 was first posted.

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

25 (d) The secretary of state shall, not later than the 10th
26 day after the date the secretary receives notice or otherwise
27 discovers that a health club [~~spa~~] is closed, notify the

1 appropriate surety company or obligor of the administrative
2 proceedings pending under Subsection (a)(1).

3 (e) The notice required under Subsection (a) is not required
4 in the case of a fire, flood, or act of God that is not within the
5 reasonable control of a health club [~~spa~~].

6 SECTION 22. Section 702.504, Occupations Code, is amended
7 to read as follows:

8 Sec. 702.504. TEMPORARY CLOSING. For purposes of this
9 subchapter, the closing of a health club [~~spa~~] is not a violation of
10 this chapter if the closing does not exceed one month and:

- 11 (1) is a result of a natural disaster; or
12 (2) is to relocate the health club [~~spa~~] not more than
13 10 miles from its location preceding the relocation.

14 SECTION 23. Section 702.556(a), Occupations Code, is
15 amended to read as follows:

16 (a) A person commits an offense if the person knowingly
17 operates, or attempts to operate, a health club [~~spa~~] in violation
18 of Subchapter C, D, or H.

19 SECTION 24. This Act takes effect September 1, 2019.