By:  Hinojosa S.B. No. 1835

(In the Senate - Filed March 8, 2023; March 20, 2023, read first time and referred to Committee on Business & Commerce; April 5, 2023, reported favorably by the following vote: Yeas 11, Nays 0; April 5, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Schwertner           X

King                 X

Birdwell             X

Campbell             X

Creighton            X

Johnson              X

Kolkhorst            X

Menéndez             X

Middleton            X

Nichols              X

Zaffirini            X

A BILL TO BE ENTITLED

AN ACT

relating to certain contract and notice requirements for the cancellation of a health spa membership.

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

SECTION 1.  Section 702.304, Occupations Code, is amended to read as follows:

Sec. 702.304.  CANCELLATION AND REFUND NOTICE. (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 PROVIDING NOTICE [~~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 AFTER MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY PROVIDING 30 DAYS' NOTICE TO THE HEALTH SPA."

(4) [~~(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 PROVIDING [~~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 A COPY OF YOUR CONTRACT TOGETHER WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE TEXAS SECRETARY OF STATE.  THE REQUIRED CLAIM INFORMATION MUST BE RECEIVED BY 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."

(5)  "IF YOU MOVE YOUR RESIDENCE MORE THAN 25 MILES FROM A HEALTH SPA OPERATED BY (insert: the name of the health spa registration holder), YOU MAY CANCEL THIS CONTRACT BY PROVIDING NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT."

(6)  "IF ON A DOCTOR'S ORDER, YOU CANNOT PHYSICALLY RECEIVE THE SERVICES PROVIDED BY THE HEALTH SPA FOR A PERIOD OF MORE THAN THREE MONTHS BECAUSE OF A SIGNIFICANT PHYSICAL DISABILITY, YOU MAY CANCEL THIS CONTRACT BY PROVIDING NOTICE TO THE HEALTH SPA."

(7) [~~(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 PROVIDING [~~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)(4)(B) [~~(a)(3)(B)~~] in a contract only if the operator is required to post security with the secretary of state under Subchapter D.

(c)  A health spa operator shall include a statement in a contract that any notice provided by a member to cancel a contract may be given to a health spa:

(1)  in person, by e-mail, by certified mail, or by telephone; and

(2)  for a contract entered into through an Internet website, through an Internet website.

SECTION 2.  Section 702.307, Occupations Code, is amended to read as follows:

Sec. 702.307.  CANCELLATION OF CONTRACT FOR FULL REFUND. (a) A member may cancel a contract and receive a full refund of the payments made under the contract by providing to the certificate holder for the health spa [~~sending~~], not later than midnight of the third business day after the contract date, [~~written~~] notice of cancellation, accompanied by proof of payment made under the contract[~~, by certified mail to the certificate holder's home office~~].

(b)  A certificate holder who receives notice under Subsection (a) shall refund the payments made under the contract not later than 48 hours [~~the 30th day~~] after the date notice is received.

SECTION 3.  Section 702.308, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (a-2) to read as follows:

(a)  A member may cancel a contract and receive a refund of unearned payments made under the contract by providing to the certificate holder for the health spa 30 days' notice accompanied by proof of payment made under the contract.

(a-1)  A member may cancel a contract and receive a refund of unearned payments made under the contract by providing [~~sending written~~] notice of cancellation, accompanied by proof of payment made under the contract, [~~by certified mail~~] to the certificate holder for the health spa [~~holder's home office~~] if the certificate holder:

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

(2)  relocates the health spa more than 10 miles from its location preceding the relocation; or

(3)  fails to provide advertised services.

(a-2)  A member may cancel a contract and receive a refund of unearned payments made under the contract by providing notice of cancellation, accompanied by proof of payment made under the contract to the certificate holder for the health spa, if the member:

(1)  moves the member's residence more than 25 miles from any health spa operated by the seller; or

(2)  on a doctor's order, cannot physically receive the services provided by the health spa for more than three months because of a significant physical disability.

(b)  A member who dies or becomes totally and permanently disabled after the date a contract is entered into, or the member's estate, may cancel the contract and receive a refund of the unearned payments made under the contract by providing to the certificate holder for the health spa [~~sending written~~] notice of cancellation [~~by certified mail to the certificate holder's home office~~]. The certificate holder may require the member, or the member's estate, to provide reasonable proof of the member's death or disability.

(c)  A certificate holder who receives notice under Subsection (a), (a-1), (a-2), or (b) shall refund the unearned payments made under the contract to the member, or the member's estate, as appropriate, not later than 48 hours [~~that the 30th day~~] after the date notice is received.

SECTION 4.  This Act takes effect September 1, 2023.

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