

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE M. REGULATION OF OTHER HEALTH PROFESSIONS

CHAPTER 702. HEALTH SPAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 702.001. SHORT TITLE. This chapter may be cited as the Health Spa Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.002. PURPOSE AND CONSTRUCTION. (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 spa operations and services by prohibiting or restricting injurious practices involving:

- (1) health spa contracts; and
- (2) the marketing of health spa services.

(b) This chapter shall be liberally construed and applied to promote its purpose and to provide efficient and economical procedures to protect the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.003. DEFINITIONS. In this chapter:

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

(A) the facilities of a health spa are no longer available to the health spa's members and equivalent facilities located not more than 10 miles from the health spa have not been made available to the members;

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

- (i) canceled;
- (ii) withdrawn; or
- (iii) otherwise unavailable to the members of the health spa; or

(C) a certificate holder sells a registered location and the buyer does not adopt or honor the contracts of existing members of the health spa.

(2) "Contract" means an agreement between a seller and purchaser by which the purchaser becomes a member of a health spa.

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

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

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

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

(C) an entity operated exclusively to:
(i) teach dance or aerobic exercise; or
(ii) provide physical rehabilitation activity related to an individual's injury or disease;

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

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

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

(5) "Location" means the physical site of the facilities of a health spa.

(6) "Member" means a person who is entitled to the benefits of membership in a health spa.

(7) "Membership" means the status of a person under a

contract that entitles the person to use a health spa's services or facilities.

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

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

(10) "Prepayment" means consideration paid by a purchaser for membership in a health spa before the date the health spa opens.

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

(12) "Registered location" means a health spa location for which a health spa operator's certificate of registration is issued under this chapter.

(13) "Seller" means a person who:

(A) owns or operates a health spa; or

(B) offers for sale, or sells, the right to use a health spa's services or facilities.

(14) "Services" means the programs, plans, guidance, or instruction that a health spa provides for its members. The term includes diet planning, exercise instruction and programs, and instructional classes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 887 (S.B. 335), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. POWERS AND DUTIES OF SECRETARY OF STATE

Sec. 702.051. ADMINISTRATIVE AND RULEMAKING AUTHORITY. (a) The secretary of state shall administer this chapter.

(b) In administering this chapter, the secretary of state shall:

(1) adopt rules;

(2) issue administrative orders; and

(3) take action necessary to ensure compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.052. RULES RELATING TO SECURITY CLAIMS AND PROCEEDS. The secretary of state shall adopt rules necessary to:

(1) determine the disposition of a security claim filed under Section 702.251; and

(2) ensure the prompt and fair distribution of security proceeds.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.053. REGISTRATION AND RENEWAL FEES. The secretary of state may charge each applicant for a certificate of registration, or renewal of a certificate, a reasonable fee not to exceed \$100 to cover the cost of issuance or renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CERTIFICATE OF REGISTRATION

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

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

(2) the applicant's business trade name;

(3) for an applicant whose business is incorporated:

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

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

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

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

(5) the address of the health spa; and

(6) the type of available or proposed facilities and services offered at the health spa location.

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

(1) a sample of each contract used to sell a membership in the applicant's health spa;

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

(3) the required registration fee.

(c) An applicant must comply with the application requirements of this section for each location where the applicant operates a health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.103. CERTIFICATE OF REGISTRATION NONTRANSFERABLE; APPLICATION BY NEW OWNER. (a) A health spa operator's certificate of registration is not transferable.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.104. TERM; RENEWAL. (a) A health spa operator's certificate of registration expires on the first anniversary of the date of issuance.

(b) A certificate of registration may be renewed as provided by the secretary of state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.105. CERTIFICATE POSTING. A certificate holder

shall post a health spa operator's certificate of registration in a conspicuous place at each registered location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.106. CHANGE OF INFORMATION. If the information provided in an application for a certificate of registration changes, the certificate holder shall amend the application not later than the 90th day after the date the change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

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

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 1, eff. September 1, 2005.

SUBCHAPTER D. SECURITY REQUIREMENTS

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 2, eff.

September 1, 2005.

Sec. 702.152. SURETY BOND REQUIREMENTS. If a surety bond is filed under Section 702.151, the bond must:

- (1) remain in effect until canceled by the surety company;
- (2) be issued by a company authorized to do business in this state; and
- (3) conform to the requirements of the Insurance Code. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.153. REQUIREMENTS FOR SECURITY OTHER THAN SURETY BOND. An applicant who posts under Section 702.151 security other than a surety bond is:

- (1) not required to post other security annually if the applicant maintains security in the amount of \$20,000; and
- (2) entitled to receive the interest that accumulates on the other security posted. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

- (1) the state; and
- (2) each member of the certificate holder's health spa who has been administratively adjudicated to have suffered actual financial loss as a result of the closing of the certificate holder's health spa. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.155. DURATION OF SECURITY. A certificate holder shall maintain the security filed or posted under Section 702.151 in effect until the earlier of:

- (1) the second anniversary of the date the certificate holder's health spa closes; or
- (2) the date the secretary of state determines that each claim filed against the security has been satisfied or

foreclosed by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 1, eff. September 1, 2011.

Sec. 702.156. NOTICE OF CANCELLATION OF SECURITY. A surety or obligor of security filed or posted under this subchapter shall provide to the secretary of state, not later than the 60th day before the date the security is canceled, written notice of the cancellation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 2, eff. September 1, 2011.

Sec. 702.157. LIMIT ON LIABILITY OF SURETY OR OBLIGOR. (a) The limit of a surety's or obligor's liability stated in the security filed or posted under this subchapter may not be cumulative from year to year or period to period, regardless of the number of:

- (1) years that the security continues in force; or
- (2) premiums paid or payable.

(b) The liability of a surety or obligor is exclusively conditioned on a final administrative order issued by the secretary of state.

(c) Security filed or posted under this subchapter is subject to a claim only as provided by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.158. REVIEW OF SECURITY AMOUNT. (a) At least once every three years, the secretary of state shall review the amount of security a health spa operator is required to post under Section [702.151](#) to determine whether the amount is sufficient to protect the health spa's total membership. The secretary may increase the amount required if the secretary determines that the increase is necessary to protect that membership but may not increase the

amount above the maximum amount allowed under Section 702.151(b).

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

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

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

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 3, eff. September 1, 2005.

SUBCHAPTER E. EXEMPTION FROM SECURITY REQUIREMENTS

Sec. 702.201. APPLICATION FOR EXEMPTION. A certificate holder may apply for an exemption from the security requirements of Subchapter D by filing with the secretary of state a sworn application for the exemption on a form prescribed by the secretary of state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

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

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

(B) execute a note or retail installment contract;

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

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

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

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

certificate holder:

(A) has assets based on net book value that exceed \$50,000 per registered location;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 4, eff. September 1, 2005.

Sec. 702.205. ISSUANCE OF EXEMPTION. (a) On approval of an application for an exemption under Section 702.201, the secretary of state shall issue a certificate of exemption.

(b) A certificate holder to whom a certificate of exemption is issued is not required to file a surety bond or post other security under Subchapter D.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.206. NONTRANSFERABILITY OF EXEMPTION. (a) A certificate of exemption is not transferable.

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

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.207. DENIAL AND REVOCATION OF EXEMPTION. After notice and opportunity for hearing, the secretary of state may deny

an application for an exemption or permanently revoke a certificate holder's certificate of exemption if the secretary finds that the applicant or certificate holder:

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

(2) is no longer eligible for an exemption.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 3, eff. September 1, 2011.

SUBCHAPTER F. CLAIM ON SECURITY

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

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 4, eff. September 1, 2011.

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

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

(1) rounding the date of the health spa's closing or relocation and the contract's expiration date to the nearest full month;

(2) subtracting the date of closing or relocation determined under Subdivision (1) from the expiration date determined under that subdivision, with the result expressed in whole months and representing the number of months remaining on a contract;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.253. ADJUDICATION ON PRO RATA BASIS. If the total amount of actual financial losses computed under Section 702.252 for all claims filed under Section 702.251 exceeds the amount of available security, the secretary of state shall reduce the amount of each recovery under Section 702.252 on a pro rata basis and shall compute the amount of each recovery by:

(1) dividing the amount of available security by the total amount of actual financial losses computed under Section 702.252 for all claims; and

(2) multiplying the results computed under Subdivision (1) by the amount of the recovery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 1, eff. Sept. 1, 2001.

Sec. 702.254. CLAIM BARRED. The secretary of state may not consider a claim filed under Section 702.251 if the claim is 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).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 5, eff.

September 1, 2011.

SUBCHAPTER G. CONTRACT REQUIREMENTS

Sec. 702.301. GENERAL REQUIREMENTS. (a) A contract:

(1) must be:

(A) in writing; and

(B) signed by the purchaser;

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

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

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

(c) A contract under Subsection (a) constitutes the entire agreement between the seller and purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 5, eff. September 1, 2005.

Sec. 702.302. DISCLOSURE REQUIREMENTS. (a) A health spa shall prepare a comprehensive list that includes each membership plan the health spa offers for sale. The health spa shall disclose the list to a prospective purchaser on request.

(b) A certificate holder who is not exempt under Section 702.202 from the security requirements of Subchapter D must deliver to a purchaser a complete copy of the contract, accompanied by a written receipt for any payment made by the purchaser under the contract before entering into the contract with the purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.303. CONTRACT TERM. (a) Except as provided by

Subsection (b), the term of a contract may not exceed three years.

(b) A contract that is financed through a retail installment contract or note may not require the purchaser to make payments or finance the contract for more than five years after the contract date.

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

(d) If the term of a contract overlaps the term of another contract between the same seller and purchaser, the contracts are considered to be one contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 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 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."

(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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 6, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 6, eff. September 1, 2011.

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

"IF THE HEALTH SPA DOES NOT OPEN BEFORE (insert: the date

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.306. FINANCE CHARGE NOTICE. A contract that contains a finance charge as defined by the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or Regulation Z (12 C.F.R. Part 226) must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

"ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 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 the 30th day after the date notice is received.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.308. CANCELLATION OF CONTRACT FOR PARTIAL REFUND.

(a) A member may cancel a contract and receive a refund of unearned payments made under the contract by sending written notice of cancellation, accompanied by proof of payment made under the contract, by certified mail to the certificate 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.

(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 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) or (b) shall refund the unearned payments made under the contract to the member, or the member's estate, as appropriate, not later than the 30th day after the date notice is received.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.309. PROOF OF PAYMENT. A receipt given to a purchaser by a health spa when the purchaser makes a payment under a contract constitutes proof of the payment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.310. EFFECT OF CONTRACT ON THIRD-PARTY RIGHTS. A

contract may not require the purchaser to execute a note or series of notes if separate negotiation of the notes cuts off as to third parties a right of action or defense that the purchaser may assert against the seller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

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

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

(3) the purchaser enters into the contract in reliance on false, fraudulent, or misleading information wilfully provided by, or a false, fraudulent, or misleading representation, notice, or advertisement wilfully made by, the seller or the health spa owner or operator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. PREPAYMENTS AND ESCROW

Sec. 702.351. MEMBERSHIP PREPAYMENT. A certificate holder may offer for sale, or sell, a membership in a health spa before the date the health spa opens.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.352. ESCROW DEPOSIT REQUIRED. (a) A certificate holder or an assignee or agent of a certificate holder who accepts a prepayment for a membership in the certificate holder's health spa shall deposit the prepayment in an escrow account established with a financial institution insured by the Federal Deposit Insurance Corporation.

(b) A person required to make a deposit under Subsection (a) shall:

(1) not later than the 14th day after the date the person first accepts a prepayment:

(A) deposit the prepayments received; and

(B) submit to the secretary of state:

(i) a notarized statement that identifies the financial institution and the name in which the escrow account is held; and

(ii) a signed statement on a form approved by the secretary of state that authorizes the secretary to direct inquiries to the financial institution regarding the escrow account; and

(2) after the first deposit is made under this section, deposit subsequent prepayments not less frequently than biweekly.

(c) A certificate holder shall maintain an escrow account under this section until the 30th day after the date the certificate holder's health spa opens.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

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

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

(A) litigation has not been initiated against the certificate holder by a member of a health spa owned or operated by the certificate holder relating to the closing of the health spa or the failure of the health spa to open; and

(B) a member of a health spa has not filed a complaint with a governmental authority in this state against the certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, relating to the closing of the health spa or the failure of the health spa to open.

(b) The initiation of litigation or filing of a complaint against a certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, does not preclude the certificate holder from claiming an exemption under Subsection (a) if the basis of the litigation or complaint is that

the certificate holder's health spa closed:

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

(2) to relocate the health spa to a location not more than 10 miles from its location preceding the relocation and the closing did not exceed one month.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.354. DUTY OF FINANCIAL INSTITUTION. A financial institution in which an escrow account is established under Section [702.352](#) shall hold each prepayment in the account as escrow agent for the benefit of the member who made the prepayments.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.355. REFUND OF ESCROWED PREPAYMENT. (a) Except as provided by Subsection (b), a member is entitled to receive a full refund of the prepayment made under a contract if the health spa that is the subject of the contract does not open before the 181st day after the date the health spa first sells a membership in the health spa or does not remain open for at least 30 days unless:

(1) an alternative health spa operated by the seller is located not more than 10 miles from the location of the health spa that is the subject of the contract; and

(2) the member is authorized to use the facilities of the alternative health spa.

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

(c) For purposes of this section, the date a health spa opens does not depend on whether the services of the health spa that

were advertised before the opening, or promised to be made available, are included in the contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.356. WITHDRAWAL OF ESCROW FUNDS. A certificate holder may withdraw prepayments deposited in an escrow account under Section 702.352 if:

(1) the health spa for which the prepayments are made remains open for not less than 30 days;

(2) the certificate holder files with the secretary of state an affidavit certifying that all obligations of the health spa for which a lien may be claimed under Chapter 53, Property Code, have been paid; and

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. PROHIBITED PRACTICES

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.402. PROHIBITED ACTS. (a) A seller or certificate holder may not:

(1) offer a special offer or discount to fewer than all prospective members of the health spa, except that a seller or certificate holder may offer a special group price or discount; or

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

(A) the qualifications of the health spa staff;

(B) the availability, quality, or extent of the facilities or services of the health spa;

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

(D) membership rights; or

(E) the period during which a special offer or discount will be available.

(b) A certificate holder may not:

(1) fail or refuse to:

(A) file or amend an application for registration as required by Subchapter C;

(B) file or post, or maintain, the security required by Subchapter D; or

(C) deposit prepayments in an escrow account as required by Subchapter H;

(2) advertise that the certificate holder is bonded by the state; or

(3) sell a membership plan that is not included in the list required by Section 702.302(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.403. APPLICATION OF DECEPTIVE TRADE PRACTICES ACT.

(a) A person who violates this chapter commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code.

(b) A public or private right or remedy under Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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).

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 7, eff. September 1, 2005.

SUBCHAPTER J. ADMINISTRATIVE ENFORCEMENT AND DISCIPLINARY ACTIONS

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 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 7, eff. September 1, 2011.

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, 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) 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) 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) 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. [135](#)), Sec. 9, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 7, eff. September 1, 2011.

SUBCHAPTER K. CIVIL REMEDY

Sec. 702.501. FILING OF SUIT; VENUE. (a) A member may file suit against a seller if:

(1) the seller violates this chapter; and

(2) the seller's violation causes injury to the member.

(b) Venue for a suit filed under Subsection (a) is in a court located in:

- (1) Travis County; or
- (2) the county in which:
 - (A) the seller resides;
 - (B) the seller's principal place of business is located;
 - (C) the seller is doing business;
 - (D) the member resides; or
 - (E) the transaction that is the subject of the suit occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.502. STATUTE OF LIMITATIONS. A member must file a suit under Section 702.501 not later than the later of:

- (1) the first anniversary of the date the attorney general or district or county attorney concludes a suit filed under Section 702.552; or

- (2) the second anniversary of the date the seller's violation of this chapter is discovered.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.503. RECOVERY. In a suit filed under Section 702.501, a court may award:

- (1) actual damages;
- (2) equitable relief;
- (3) punitive damages; or
- (4) reasonable attorney's fees and court costs to the prevailing party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.504. TEMPORARY CLOSING. For purposes of this subchapter, the closing of a health spa is not a violation of this chapter if the closing does not exceed one month and:

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER L. ENFORCEMENT AND PENALTIES

Sec. 702.551. INVESTIGATIVE AND ENFORCEMENT AUTHORITY. (a)

The attorney general or a district or county attorney may:

- (1) investigate an alleged violation of this chapter;
- and
- (2) enforce any penalty or remedy authorized by this chapter.

(b) The attorney general, a district or county attorney, or the secretary of state may recover reasonable expenses, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses, incurred in obtaining an injunction or recovering a civil penalty under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.552. SUIT FOR ENFORCEMENT. (a) The attorney general or a district or county attorney may file suit against a person who violates, or threatens to violate, this chapter to:

- (1) obtain an injunction to enjoin the person from violating this chapter; or
- (2) recover a civil penalty under Section [702.553](#).

(b) Venue for a suit filed under this section is in a district court located in:

- (1) Travis County; or
- (2) the county in which the defendant resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.553. AMOUNT OF CIVIL PENALTY. (a) Except as provided by Subsection (b) and Section [702.554](#), a person who violates this chapter is subject to a civil penalty in an amount not to exceed \$1,000 for a single violation.

(b) If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed may not exceed \$25,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.554. VIOLATION OF INJUNCTION. (a) The attorney

general or a district or county attorney may file suit to recover a civil penalty against a person who violates an injunction issued under this subchapter in an amount not to exceed \$25,000 for a single violation. If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed under this section may not exceed \$50,000.

(b) Venue for a suit filed under this section is in the district court that issued the injunction that is the subject of the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.555. DEPOSIT IN COUNTY FUND. A civil penalty collected under this subchapter by a district or county attorney shall be deposited to the credit of the general fund of the county.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.556. CRIMINAL OFFENSE: VIOLATION OF CHAPTER. (a) A person commits an offense if the person knowingly operates, or attempts to operate, a health spa in violation of Subchapter C, D, or H.

(b) An offense under this section is a Class A misdemeanor.
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.557. CRIMINAL OFFENSE: INTERFERENCE WITH INVESTIGATION. (a) A person commits an offense if with actual notice that the attorney general, or a district or county attorney, has initiated, or plans to initiate, an investigation under this chapter the person intentionally conceals, alters, destroys, or falsifies a document or record that is relevant or material to the investigation.

(b) An offense under this section is a Class A misdemeanor.
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.558. CRIMINAL OFFENSE: NONCOMPLIANCE WITH SUBPOENA OR INVESTIGATIVE DEMAND. (a) A person commits an offense if, after receiving a subpoena or civil investigative demand issued under Section [17.61](#), Business & Commerce Code, the person

intentionally falsifies or withholds relevant material, including a document or record, that is not privileged.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$2,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.