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HOUSE BILL NO. 1249

Offered January 18, 2010

A BILL to amend and reenact §§ 59.1-296 through 59.1-296.2:1, 59.1-297 through 59.1-298, and 59.1-306 of the Code of Virginia, relating to the Virginia Health Spa Act.

Patron—Knight

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-296 through 59.1-296.2:1, 59.1-297 through 59.1-298, and 59.1-306 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-296. Definitions.

As used in this chapter:

"Business day" means any day except a Sunday or a legal holiday.

"Buyer" means a natural person who enters into a health spa contract.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Comparable alternate facility" means a health spa facility that provides health spa services and facilities that are is reasonably of like kind, in nature and quality, to the services health spa facility originally contracted for at, whether such facility is in the same location through another but owned by a different health spa or is at another location of the same health spa.

"Contract price" means the sum of the initiation fee, if any, and all monthly fees except interest required by the health spa contract.

"Facility" means a location where health spa services are offered as designated in a health spa contract.

"Health spa" means and includes any person, firm, corporation, organization, club or association engaged whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise, which includes the use of one or more of a sauna, whirlpool, weight-lifting room, massage, steam room, or exercising machine or device, with exercise machines or devices, or engaged whose primary purpose is to engage in the sale of the right or privilege to use exercise equipment or facilities, such as a sauna, whirlpool, weight-lifting room, massage, steam room or exercising machine machines or device devices. The term "health spa" shall not include the following: (i) bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health spas are only incidental to their overall functions and purposes; (ii) any private club owned and operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school, college or university; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 80 percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Health spa contract" means an agreement whereby the buyer of health spa services purchases, or becomes obligated to purchase, health spa services.

"Health spa services" means and includes services, privileges, or rights offered for sale or provided by a health spa.

"Initiation fee" means a nonrecurring fee charged at or near the beginning of a health spa membership, and includes all fees or charges not part of the monthly fee.

"Monthly fee" means the total consideration, including but not limited to, equipment or locker rental, credit check, finance, medical and dietary evaluation, class and training fees, and all other similar fees or charges and interest, but excluding any initiation fee, to be paid by a buyer, divided by the total number of months of health spa service use allowed by the buyer's contract, including months or time periods called "free" or "bonus" months or time periods and such months or time periods which are described in any other terms suggesting that they are provided free of charge, which months or time periods are given or contemplated when the contract is initially executed.

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59 "Out of business" means the status of a facility that is permanently closed and for which there is no
60 comparable alternate facility.

61 "Prepayment" means payment of any consideration for services or the use of facilities made prior to
62 the day on which the services or facilities of the health spa are fully open and available for regular use
63 by the members.

64 "Relocation" means the provision of health spa services by the health spa that entered into the
65 membership contract at a location other than that designated in the member's contract.

66 § 59.1-296.1. Registration; fees.

67 A. It shall be unlawful for any health spa to offer, advertise, or execute or cause to be executed by
68 the buyer any health spa contract in this Commonwealth unless *each facility of the health spa has been*
69 *properly registered with the Commissioner* at the time of the offer, advertisement, sale or execution of a
70 health spa contract ~~has been properly registered with the Commissioner~~. The registration shall (i)
71 disclose the address, ownership, date of first sales and date of first opening of the ~~health spa facility~~ and
72 such other information as the Commissioner may require consistent with the purposes of this chapter,
73 (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee per each
74 annual registration in the amount indicated below:

Number of unexpired	Registration fee
contracts originally written	
for more than one month	
0 to 250	\$200
251 to 500	\$300
501 to 2000	\$700
2001 or more	\$800

82 Further, it shall be accompanied by a late fee of ~~fifty dollars~~ \$50 if the registration renewal is neither
83 postmarked nor received on or before July 1. In the event that a spa ~~has operates~~ multiple ~~locations~~
84 ~~facilities~~, a ~~fifty dollar~~ \$50 late fee for the first ~~location facility~~ and ~~twenty-five dollars~~ \$25 for each
85 additional ~~location facility~~ shall accompany the registrations. For each successive ~~thirty~~ 30 days after
86 August 1, an additional ~~twenty-five dollars~~ \$25 shall be added for each ~~location facility~~. Each separate
87 ~~location facility~~ where health spa services are offered shall be considered a separate ~~health spa facility~~
88 and shall file a separate registration, even though the separate ~~locations facilities~~ are owned or operated
89 by the same ~~owner~~ health spa.

90 B. Any health spa which sells a health spa contract prior to registering pursuant to this section and,
91 if required, submits the appropriate surety required by § 59.1-306 shall pay a late filing fee of \$100 for
92 each ~~thirty-day~~ 30-day period the registration or surety is late. This fee shall be in addition to all other
93 penalties allowed by law.

94 C. A registration shall be amended within ~~twenty-one~~ 21 days if there is a change in the information
95 included in the registration.

96 D. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund
97 of the Virginia Department of Agriculture and Consumer Services to be used in the administration of
98 this chapter.

99 § 59.1-296.2. Contracts sold on prepayment basis.

100 A. Each health spa selling contracts or health spa services on a prepayment basis shall notify the
101 Commissioner of the proposed ~~location of the spa facility~~ for which prepayments will be solicited and
102 shall deposit all funds received from such prepayment contracts in an account established in a financial
103 institution authorized to transact business in the Commonwealth until the health spa has commenced
104 operations *in the facility* and *the facility* has remained open for a period of ~~thirty~~ 30 days. The account
105 shall be established and maintained only in a financial institution which agrees in writing with the
106 Commissioner to hold all funds deposited and not to release such funds until receipt of written
107 authorization from the Commissioner. The prepayment funds deposited will be eligible for withdrawal
108 by the health spa after the ~~health spa facility~~ has been open and providing services pursuant to its health
109 spa contracts for ~~thirty~~ 30 days and the Commissioner gives written authorization for withdrawal.

110 ~~However, the~~ B. The provisions of this section shall not apply to any ~~health spa facility~~ duly
111 registered pursuant to the provisions of § 59.1-296.1 *for which has posted* a bond or letter of credit in
112 the amount of \$100,000 *has been posted*.

113 § 59.1-296.2:1. Prepayment contracts; prohibited practices; relocation; refund.

114 A. No health spa shall sell a health spa contract on a prepayment basis without disclosing in the
115 contract the date on which the ~~health spa facility~~ shall open. The opening date shall not be later than 12
116 months from the signing of the contract.

117 B. No health spa shall close or relocate *any facility* without first giving notice to the Commissioner
118 and conspicuously posting a notice both within and outside each entrance to the ~~health spa facility~~ being
119 closed or relocated of the closing or relocation date. Such notice shall be provided at least 30 days prior

to the closing or relocation date. If a relocation is to occur, the Commissioner and the health spa facility's members shall be provided with the address of the specific new location facility at the time of this notice.

C. No health spa shall knowingly and willfully make any false statement in any registration application, statement, report or other disclosure required by this chapter.

D. No health spa shall refuse or fail, after notice from the Commissioner, to produce for the Commissioner's review any of the health spa's books or records required to be maintained by this chapter.

E. Unless it so discloses fully in ~~ten-point~~ 10-point bold-faced type or larger on the face of each health spa contract, no health spa shall sell any health spa contract if any owner of the health spa, regardless of the extent of his ownership, previously owned in whole or in part a health spa that closed for business any facility and failed to:

1. Refund all moneys due to holders of health spa contracts; or
2. Provide comparable alternate facilities at with another health spa that agreed in writing to honor all provisions of the health spa contracts or at another facility operated by the originally contracting health spa.

F. No health spa that has failed to provide the Commissioner the appropriate surety pursuant to § 59.1-306 shall sell a health spa contract unless that contract contains a statement that reads as follows: "This spa is not permitted, pursuant to the Virginia Health Spa Act, to accept any initiation fee in excess of \$125 or any payment for more than the prorated monthly fee for the month when the contract is initially executed plus one full month in advance."

Such disclosure shall be printed in ~~ten-point~~ 10-point bold-faced type or larger on the face of each contract.

§ 59.1-297. Right of cancellation.

A. Every health spa contract for the sale of health spa services may be cancelled under the following circumstances:

1. A buyer may cancel the contract without penalty within three business days of its making and, upon notice to the health spa of the buyer's intent to cancel, shall be entitled to receive a refund of all moneys paid under the contract.

2. A buyer may cancel the contract if the health spa facility relocates or goes out of business and the health spa fails to provide comparable alternate facilities within five driving miles of the location designated in the health spa contract. Upon receipt of notice of the buyer's intent to cancel, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.

3. The contract may be cancelled if the buyer dies or becomes physically unable to use a substantial portion of the services for 30 or more consecutive days. If the buyer becomes physically unable to use a substantial portion of the services for 30 or more consecutive days and wishes to cancel his contract, he must provide the health spa with a signed statement from his doctor, physician assistant, or nurse practitioner verifying that he is physically unable to use a substantial portion of the health spa services for 30 or more consecutive days. Upon receipt of notice of the buyer's intent to cancel, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1. In the case of disability, the health spa may require the buyer to submit to a physical examination by a doctor, physician assistant, or nurse practitioner agreeable to the buyer and the health spa within 30 days of receipt of notice of the buyer's intent to cancel. The cost of the examination shall be borne by the health spa.

B. The buyer shall notify the health spa of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address of the health spa as specified in the health spa contract.

C. If the customer has executed any credit or lien agreement with the health spa or its representatives or agents to pay for all or part of health spa services, any such negotiable instrument executed by the buyer shall be returned to the buyer within 30 days after such cancellation.

D. If the spa agrees to allow a consumer to cancel for any other reason not outlined in this section, upon receipt of notice of cancellation by the buyer, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.

§ 59.1-297.1. Payment and calculation of refunds.

A. All refunds for cancellation of membership shall be paid within 30 days of the health spa's receipt of written notice of cancellation by the buyer and calculated by:

1. Dividing the contract price by the term of the contract in days;
2. Multiplying the number obtained in subdivision 1 by the number of days between the effective date of the contract and the date of cancellation; and
3. Subtracting the number obtained in subdivision 2 from the total price paid on the health spa contract.

B. In the event of the health spa going out of business, the date of cancellation shall be the date the health spa ceased providing health spa services *at the facility*.

C. A health spa issuing a refund to a buyer under this chapter shall do so within 30 days of the health spa receiving a notice of cancellation pursuant to § 59.1-297, or within 30 days of the permanent closing of the facility designated in the buyer's contract.

§ 59.1-297.2. Automatic termination of a health spa contract.

A health spa contract shall be considered terminated automatically if the health spa designated facility goes out of business; provided that both the health spa and the buyer shall continue to have all rights under the contract they had at the time of termination. For purposes of this section, a health spa facility "goes out of business" if the facility has permanently closed and the health spa does not provide a comparable alternate facility for the buyer to use. A health spa facility does not "go out of business" if (a) the facility closes and the health spa provides a comparable alternate facility for the buyer to use; (b) the facility is relocated to a comparable alternate facility; or (c) the facility closes temporarily and the health spa does not provide a comparable alternate facility. A facility closes temporarily if it closes for a reasonable period of time (i) for renovations to all or a portion of the facility, (ii) because the lease for the facility has been canceled, or (iii) because of a fire, or a flood or other act of God, or other cause not within the reasonable control of the health spa. ~~Within~~ If a facility closes temporarily, it shall within 14 days from the time a health spa facility temporarily closes pursuant to subdivision (c) of this section, the health spa shall of the temporary closing provide notice of the date it expects to reopen, which date shall be within a reasonable period of time from the time the facility temporarily closes, to the Commissioner and shall conspicuously post such notice both within and outside each entrance to the facility.

§ 59.1-298. Notice to buyer.

A copy of the executed health spa contract shall be delivered to the buyer at the time the contract is executed. All health spa contracts shall (i) be in writing, (ii) be signed by the buyer, (iii) designate the date on which the buyer actually signed the contract, (iv) state the starting and expiration dates of the initial membership period, (v) separately identify any initiation fee, (vi) either in the contract itself or in a separate notice provided to the buyer at the time the contract is executed, notify each buyer that the buyer should attempt to resolve with the health spa any complaint the buyer has with the health spa, and that the Virginia Department of Agriculture and Consumer Services, Office of Consumer Affairs regulates health spas in the Commonwealth pursuant to the provisions of the Virginia Health Spa Act, and (vii) contain the provisions set forth in § 59.1-297 under a conspicuous caption: "BUYER'S RIGHT TO CANCEL" that shall read substantially as follows:

If you wish to cancel this contract, you may cancel by making or delivering written notice to this health spa. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to:
(Health spa shall insert its name and mailing address.)

If canceled within three business days, you will be entitled to a refund of all moneys paid. You may also cancel this contract if this spa goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the location facility designated in this contract. You may also cancel if you become physically unable to use a substantial portion of the health spa services for 30 or more consecutive days, and your estate may cancel in the event of your death. You must prove you are unable to use a substantial portion of the health spa services by a doctor's, physician assistant's, or nurse practitioner's certificate, and the health spa may also require that you submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, physician assistant, or nurse practitioner agreeable to you and the health spa. If you cancel after the three business days, the health spa may retain or collect a portion of the contract price equal to the proportionate value of the services or use of facilities you have already received. Any refund due to you shall be paid within 30 days of the effective date of cancellation.

§ 59.1-306. Bond or letter of credit required; exception.

A. Every health spa, before it enters into a health spa contract and accepts any moneys in excess of the prorated monthly fee for the month when the contract is initially executed plus one month's fees or accepts any initiation fee in excess of \$125, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

Number of	Amount of bond
applicable contracts	or letter of
	credit

242	0 to 250	\$10,000
243	251 to 500	\$20,000
244	501 to 750	\$30,000
245	751 to 1000	\$40,000
246	1001 to 1250	\$50,000
247	1251 to 1500	\$60,000
248	1501 to 1750	\$70,000
249	1751 to 2000	\$80,000
250	2001 or more	\$100,000

For purposes of calculating the number of applicable unexpired health spa contracts when determining the required amount of bond or letter of credit, health spa contracts entered into on or after January 1, 2005, with a term that exceeds 13 months shall be counted as multiple health spa contracts, such that the number of applicable contracts counted with respect thereto shall equal the total of the number of full years and any partial year in its term. However, this paragraph shall not apply (i) to health spa contracts that are payable only on a monthly basis and for which the initiation fee is no more than \$250, or (ii) if the number of the health spa's contracts in effect with a term that exceeds 13 months is less than 10 percent of the total of its health spa contracts.

The number of applicable unexpired contracts shall be separately calculated for each location where health spa services are offered facility.

Each separate location where A health spa services are offered shall be considered a separate health spa and shall file a separate bond or letter of credit with respect thereto to each separate facility, even though the separate locations facilities are owned or operated by the same owner health spa.

However, no owner health spa shall be required to file with the Commissioner bonds or letters of credit in excess of \$300,000. If the \$300,000 limit is applicable, then the bonds or letters of credit filed by such owner the health spa shall apply to all health spas facilities owned or operated by the same owner health spa.

B. A health spa which has not filed a bond or letter of credit may nevertheless sell health spa contracts of up to 36 months' duration for a facility for which a health spa has not filed a bond or letter of credit so long as the amount of payment actually charged, due or received under the health spa contracts each month by the health spa or any holder of its health spa contracts thereunder does not exceed the monthly fee calculated pursuant to the definition thereof in § 59.1-296, with the exception that the payment actually charged may include a maximum initiation fee of \$125 for health spa contracts of 13 months or more in duration.