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**SENATE BILL NO. 404**

Offered January 8, 2014

Prefiled January 7, 2014

*A BILL to amend and reenact §§ 59.1-200, 59.1-294 through 59.1-299, 59.1-301, 59.1-302, 59.1-304 through 59.1-308.1, and 59.1-310 of the Code of Virginia, relating to the Virginia Health Spa Act.*

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 Patron—Alexander
 

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 Referred to Committee on Commerce and Labor
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 59.1-200, 59.1-294 through 59.1-299, 59.1-301, 59.1-302, 59.1-304 through 59.1-308.1, and 59.1-310 of the Code of Virginia are amended and reenacted as follows:**

**§ 59.1-200. Prohibited practices.**

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be

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59 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
60 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
61 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
62 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
63 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
64 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
65 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
66 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
67 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
68 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
69 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
70 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §  
71 46.2-100;

72 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time  
73 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the  
74 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill  
75 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches  
76 the agreement;

77 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess  
78 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment  
79 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of  
80 receiving overpayments. If the credit balance information is incorporated into statements of account  
81 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

82 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in  
83 connection with a consumer transaction, failing to adhere to the terms and conditions of such an  
84 agreement;

85 18. Violating any provision of the Virginia Health ~~Spa Club~~ Act, Chapter 24 (§ 59.1-294 et seq.) of  
86 this title;

87 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et  
88 seq.) of this title;

89 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et  
90 seq.) of this title;

91 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
92 (§ 59.1-207.17 et seq.) of this title;

93 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

94 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
95 (§ 59.1-424 et seq.) of this title;

96 24. Violating any provision of § 54.1-1505;

97 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
98 17.6 (§ 59.1-207.34 et seq.) of this title;

99 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

100 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this  
101 title;

102 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of  
103 this title;

104 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et  
105 seq.) of this title;

106 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et  
107 seq.) of this title;

108 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this  
109 title;

110 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

111 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

112 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

113 35. Using the consumer's social security number as the consumer's account number with the supplier,  
114 if the consumer has requested in writing that the supplier use an alternate number not associated with  
115 the consumer's social security number;

116 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

117 37. Violating any provision of § 8.01-40.2;

118 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

119 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

120 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;

51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

52. Violating any provision of § 8.2-317.1; and

53. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed.

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

#### CHAPTER 24.

#### VIRGINIA HEALTH SPA CLUB ACT.

##### § 59.1-294. Short title.

This chapter shall be known and may be cited as the "Virginia Health Spa Club Act."

##### § 59.1-295. Statement of purpose.

The purpose of this chapter is to safeguard the public interest against fraud, deceit, and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health spa club services by prohibiting false and misleading advertising, and dishonest, deceptive, and unscrupulous practices by which the public has been injured in connection with contracts for health spa club services.

##### § 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 club 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 club facility that is reasonably of like kind, in nature and quality, to the health spa club facility originally contracted, whether such facility is in the same location but owned or operated by a different health spa club or is at another location of the same health spa club.

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

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

"Health spa club" means any person, firm, corporation, organization, club or association whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise with exercise machines or devices, or whose primary purpose is to engage in the sale of the right or privilege to use exercise machines or devices. The term "health spa club" 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 clubs 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

182 tennis or swimming facilities located in a residential planned community or subdivision, developed in  
 183 conjunction with the development of such community or subdivision, and deriving at least 80 percent of  
 184 its membership from residents of such community or subdivision; and (viii) any facility owned and  
 185 operated by a private employer exclusively for the benefit of its employees, retirees, and family  
 186 members and which facility is only incidental to the overall functions and purposes of the employer's  
 187 business and is operated on a nonprofit basis.

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

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

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

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

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

203 "Prepayment" means payment of any consideration for services or the use of facilities made prior to  
 204 the day on which the services or facilities of the health *spa club* are fully open and available for regular  
 205 use by the members.

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

208 **§ 59.1-296.1. Registration; fees.**

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

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

224 Further, it shall be accompanied by a late fee of \$50 if the registration renewal is neither postmarked  
 225 nor received on or before July 1. In the event that a *spa club* operates multiple facilities, a \$50 late fee  
 226 for the first facility and \$25 for each additional facility shall accompany the registrations. For each  
 227 successive 30 days after August 1, an additional \$25 shall be added for each facility. Each separate  
 228 facility where health *spa club* services are offered shall be considered a separate facility and shall file a  
 229 separate registration, even though the separate facilities are owned or operated by the same health *spa*  
 230 *club*.

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

235 C. A registration shall be amended within 21 days if there is a change in the information included in  
 236 the registration.

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

240 **§ 59.1-296.2. Contracts sold on prepayment basis.**

241 A. Each health *spa club* selling contracts or health *spa club* services on a prepayment basis shall  
 242 notify the Commissioner of the proposed facility for which prepayments will be solicited and shall

deposit all funds received from such prepayment contracts in an account established in a financial institution authorized to transact business in the Commonwealth until the health *spa club* has commenced operations in the facility and the facility has remained open for a period of 30 days. The account shall be established and maintained only in a financial institution ~~which~~ *that* agrees in writing with the Commissioner to hold all funds deposited and not to release such funds until receipt of written authorization from the Commissioner. The prepayment funds deposited will be eligible for withdrawal by the health *spa club* after the facility has been open and providing services pursuant to its health *spa club* contracts for 30 days and the Commissioner gives written authorization for withdrawal.

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

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

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

B. No health *spa club* shall close or relocate any facility without first giving notice to the Commissioner and conspicuously posting a notice both within and outside each entrance to the facility being 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 facility's members shall be provided with the address of the specific new facility at the time of this notice.

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

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

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

F. No health *spa club* that has failed to provide the Commissioner the appropriate surety pursuant to § 59.1-306 shall sell a health *spa club* contract unless that contract contains a statement that reads as follows: "This *spa club* is not permitted, pursuant to the Virginia Health *Spa Club* 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 10-point bold-faced type or larger on the face of each contract.

**§ 59.1-296.3. Initiation fees.**

Whenever a refund is due a buyer, any initiation fee charged by a health *spa club* shall be prorated over the life of the contract or ~~twelve~~ 12 months, whichever is greater.

**§ 59.1-297. Right of cancellation.**

A. Every health *spa club* contract for the sale of health *spa club* 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 club* 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 facility relocates or goes out of business and the health *spa club* fails to provide comparable alternate facilities within five driving miles of the location designated in the health *spa club* contract. Upon receipt of notice of the buyer's intent to cancel, the health *spa club* 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 club* 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 club* services for 30 or more consecutive days. Upon receipt of notice of the buyer's intent to cancel, the health *spa club* 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 club* may require the

304 buyer to submit to a physical examination by a doctor, physician assistant, or nurse practitioner  
305 agreeable to the buyer and the health *spa club* within 30 days of receipt of notice of the buyer's intent to  
306 cancel. The cost of the examination shall be borne by the health *spa club*.

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

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

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

316 **§ 59.1-297.1. Payment and calculation of refunds.**

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

319 1. Dividing the contract price by the term of the contract in days;

320 2. Multiplying the number obtained in subdivision 1 by the number of days between the effective  
321 date of the contract and the date of cancellation; and

322 3. Subtracting the number obtained in subdivision 2 from the total price paid on the health *spa club*  
323 contract.

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

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

329 **§ 59.1-297.2. Automatic termination of a health club contract.**

330 A health *spa club* contract shall be considered terminated automatically if the designated facility  
331 closes permanently and the health *spa club* does not provide a comparable alternate facility. A facility  
332 closes temporarily if it closes for a reasonable period of time (i) for renovations to all or a portion of  
333 the facility, (ii) because the lease for the facility has been canceled, or (iii) because of a fire, or a flood  
334 or other act of God, or other cause not within the reasonable control of the health *spa club*. If a facility  
335 closes temporarily, it shall within 14 days from the time of the temporary closing provide notice of the  
336 date it expects to reopen, which date shall be within a reasonable period of time from the time the  
337 facility temporarily closes, to the Commissioner and shall conspicuously post such notice both within  
338 and outside each entrance to the facility.

339 **§ 59.1-298. Notice to buyer.**

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

351 If you wish to cancel this contract, you may cancel by making or delivering written notice to this  
352 health *spa club*. The notice must say that you do not wish to be bound by the contract and must be  
353 delivered or mailed before midnight of the third business day after you sign this contract. The notice  
354 must be delivered or mailed to . . . . .

355 (Health *spa club* shall insert its name and mailing address.)

356 If canceled within three business days, you will be entitled to a refund of all moneys paid. You may  
357 also cancel this contract if this *spa club* goes out of business or relocates and fails to provide  
358 comparable alternate facilities within five driving miles of the facility designated in this contract. You  
359 may also cancel if you become physically unable to use a substantial portion of the health *spa club*  
360 services for 30 or more consecutive days, and your estate may cancel in the event of your death. You  
361 must prove you are unable to use a substantial portion of the health *spa club* services by a doctor's,  
362 physician assistant's, or nurse practitioner's certificate, and the health *spa club* may also require that you  
363 submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, physician  
364 assistant, or nurse practitioner agreeable to you and the health *spa club*. If you cancel after the three  
365 business days, the health *spa club* 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.

**§ 59.1-299. Duration of contract.**

No health *spa club* contract shall have a duration for a period longer than thirty-six months, including any renewal period; however, a health *spa club* contract may exceed ~~thirty-six~~ 36 months provided that:

1. Any initiation fee does not exceed ~~ten~~ 10 times the initial monthly fee;
2. All payments for health *spa club* services, other than the initiation fee, are collected as monthly fees on a monthly basis;
3. After an initial term of not more than ~~twelve~~ 12 months, either party may cancel the health *spa club* contract upon not more than ~~thirty~~ 30 days' notice; and
4. The monthly fee is never reduced below ~~eighty~~ 80 percent of the monthly fee at the time the contract is initially executed.

**§ 59.1-301. Noncomplying contract voidable.**

Any health *spa club* contract ~~which~~ that does not comply with the applicable provisions of this chapter shall be voidable at the option of the buyer.

**§ 59.1-302. Fraud rendering contract void.**

Any health *spa club* contract entered into by the buyer upon any false or misleading information, representation, notice, or advertisement of the health *spa club* or the health *spa's club's* agents shall be void and unenforceable.

**§ 59.1-304. Notice of preservation of buyers' rights.**

All health *spa club* contracts and any promissory note executed by the buyer in connection therewith shall contain the following provision on the face thereof in at least ~~ten~~ 10-point, boldface type: NOTICE

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

**§ 59.1-305. Prohibition against assignment of health club contract cutting off buyer's right of action or defense against seller; conditions.**

Whether or not the health *spa club* has complied with the notice requirements of § 59.1-304, any right of action or defense arising out of a health *spa club* contract which the buyer has against the health *spa club*, and which would be cut off by assignment, shall not be cut off by assignment of the contract to any third party holder, whether or not the holder acquires the contract in good faith and for value.

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

A. Every health *spa club*, before it enters into a health *spa club* 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 applicable contracts	Amount of bond or letter of credit
0 to 250	\$10,000
251 to 500	\$20,000
501 to 750	\$30,000
751 to 1000	\$40,000
1001 to 1250	\$50,000
1251 to 1500	\$60,000
1501 to 1750	\$70,000
1751 to 2000	\$80,000
2001 or more	\$100,000

For purposes of calculating the number of applicable unexpired health *spa club* contracts when determining the required amount of bond or letter of credit, health *spa club* contracts entered into on or after January 1, 2005, with a term that exceeds 13 months shall be counted as multiple health *spa club* 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 club* 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 club's* contracts in effect with a term that exceeds 13 months is less than 10 percent of the total of its health *spa club* contracts.

The number of applicable unexpired contracts shall be separately calculated for each facility.

A health *spa club* shall file a separate bond or letter of credit with respect to each separate facility, even though the separate facilities are owned or operated by the same health *spa club*.

However, no health *spa club* 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 the health *spa club* shall apply to all facilities owned or operated by the same health *spa club*.

B. A health *spa club* may sell health *spa club* contracts of up to 36 months' duration for a facility for which a health *spa club* 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 club* contracts each month by the health *spa club* or any holder 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 club* contracts of 13 months or more in duration.

**§ 59.1-307. Bond or letter of credit; persons protected.**

A. The bond or letter of credit required by § 59.1-306 shall be in favor of the Commonwealth for the benefit of (i) any buyer injured by having paid money for health *spa club* services in a facility ~~which~~ *that* fails to open by the date provided by the contract, which date shall not be in excess of ~~twelve~~ 12 months from the signing of the contract; (ii) any buyer injured by having paid money for health *spa club* services in a facility which goes out of business prior to the expiration of the buyer's health *spa club* contract; or (iii) any buyer injured as a result of a violation of this chapter.

B. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the Commissioner.

**§ 59.1-308. Change in ownership of health club.**

For purposes of this chapter, a health *spa club* shall be considered a new health *spa club* and subject to the requirements of a bond or letter of credit at the time the health *spa club* changes ownership. Any health *spa* ~~which club~~ *that* has more than ~~fifty~~ 50 percent ownership by the same ~~stockholder(s) and/or partner(s)~~ *stockholder or stockholders, or partner or partners, or both*, shall be considered as owned by the same owner. A change in ownership shall not release, cancel, or terminate liability under any bond or letter of credit previously filed unless the Commissioner agrees in writing to such release, cancellation, or termination because the new owner has filed a new bond or letter of credit for the benefit of the previous owner's members or because the former owner has refunded all unearned payments to its members. Every change in ownership shall be reported in writing to the Commissioner at least ~~ten~~ 10 days prior to the effective date of the change in ownership.

**§ 59.1-308.1. Production of records.**

Every health *spa club*, upon the written request of the Commissioner, shall make available to the Commissioner its prepayment bank account records and all membership contracts for inspection and copying, to enable the Commissioner reasonably to determine compliance with this chapter. Every health *spa club* shall maintain a true copy of each health *spa club* contract executed between the health *spa club* and a buyer. Each contract shall be maintained for its term, including any renewal. Every health *spa club* shall maintain the executed health *spa club* contracts at a designated location where the contracts may be inspected by the Commissioner. If the location designated by the health *spa club* is outside Virginia, the health *spa club* shall pay the reasonable travel costs of an inspection by the Commissioner.

**§ 59.1-310. Applicability.**

Sections 59.1-297, 59.1-298, 59.1-299, 59.1-304 and 59.1-305 shall not apply to health *spa club* contracts entered into before ~~the effective date of this chapter~~ *September 15, 2004*.