

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act 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.

[H 1249]

Approved

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.
 - "Out of business" means the status of a facility that is permanently closed and for which there is no

57 *comparable alternate facility.*

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

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

63 § 59.1-296.1. Registration; fees.

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

72	Number of unexpired	Registration fee
73	contracts originally written	
74	for more than one month	
75	0 to 250	\$200
76	251 to 500	\$300
77	501 to 2000	\$700
78	2001 or more	\$800

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

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

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

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

96 § 59.1-296.2. Contracts sold on prepayment basis.

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

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

110 § 59.1-296.2:1. Prepayment contracts; prohibited practices; relocation; refund.

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

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

118 facility's members shall be provided with the address of the specific new ~~location~~ *facility* at the time of
119 this notice.

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

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

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

129 1. Refund all moneys due to holders of health spa contracts; or

130 2. Provide comparable alternate facilities ~~at~~ *with* another health spa that agreed in writing to honor
131 all provisions of the health spa contracts *or at another facility operated by the originally contracting*
132 *health spa.*

133 F. No health spa that has failed to provide the Commissioner the appropriate surety pursuant to
134 § 59.1-306 shall sell a health spa contract unless that contract contains a statement that reads as follows:
135 "This spa is not permitted, pursuant to the Virginia Health Spa Act, to accept any initiation fee in excess
136 of \$125 or any payment for more than the prorated monthly fee for the month when the contract is
137 initially executed plus one full month in advance."

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

140 § 59.1-297. Right of cancellation.

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

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

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

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

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

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

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

170 § 59.1-297.1. Payment and calculation of refunds.

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

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

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

176 3. Subtracting the number obtained in subdivision 2 from the total price paid on the health spa
177 contract.

178 B. In the event of the health spa going out of business, the date of cancellation shall be the date the

239		credit
240	0 to 250	\$10,000
241	251 to 500	\$20,000
242	501 to 750	\$30,000
243	751 to 1000	\$40,000
244	1001 to 1250	\$50,000
245	1251 to 1500	\$60,000
246	1501 to 1750	\$70,000
247	1751 to 2000	\$80,000
248	2001 or more	\$100,000

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

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

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

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

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