

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1712 Session of
1985

INTRODUCED BY BURNS AND LAUGHLIN, OCTOBER 2, 1985

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 2, 1985

AN ACT

1 Regulating contracts for health spa services and membership;
2 prescribing contract terms and conditions; requiring
3 operators of health spas to post a bond; and providing
4 penalties.

5 The General Assembly finds that there exist in connection
6 with a substantial number of contracts for health spa services,
7 sales practices and business and financing methods which have
8 worked a fraud, deceit, imposition and financial hardship upon
9 the people of this Commonwealth; that existing legal remedies
10 are inadequate to correct these abuses; that the health spa
11 industry has a significant impact upon the economy and well-
12 being of this Commonwealth and its local communities; and that
13 the provisions of this act relating to such contracts are
14 necessary for the public welfare.

15 The General Assembly declares that the purpose of this act is
16 to safeguard the public against fraud, deceit, imposition and
17 financial hardship, and to foster and encourage competition,
18 fair dealing and prosperity in the field of health spa services

1 by prohibiting or restricting false or misleading advertising,
2 onerous contract terms, harmful financial practices and other
3 unfair, dishonest, deceptive, destructive, unscrupulous,
4 fraudulent and discriminatory practices by which the public has
5 been injured in connection with contracts for health spa
6 services.

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21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Short title.

24 This act shall be known and may be cited as the Health Spa
25 Consumer Protection Act.

26 Section 2. Definitions.

27 The following words and phrases when used in this act shall
28 have the meanings given to them in this section unless the
29 context clearly indicates otherwise:

30 "Contract for health spa services." A contract for

1 instruction, training or assistance in physical culture, body
2 building, exercising, reducing, figure development or any other
3 related physical skill, or for the use by an individual patron
4 of the facilities of a health spa, gymnasium or other facility
5 used for any of the above purposes, or for membership in any
6 group, club, association or organization formed for any of the
7 above purposes. The term shall not include:

8 (i) Contracts for instruction at public schools.

9 (ii) Contracts for instruction, training or assistance
10 relating to diet or control of eating habits not involving
11 physical culture, body building, exercising, figure
12 development or any other physical skill.

13 Section 3. Written contract required; copy to customer; terms
14 and conditions.

15 (a) Written contract.--Every contract for health spa
16 services shall be in writing and shall be subject to the
17 provisions of this act.

18 (b) Customer copy.--A copy of the contract shall be given to
19 the customer at the time the contract is signed.

20 (c) Continuity.--All contracts for health spa services which
21 are in effect between the same seller and the same buyer, the
22 terms of which overlap for any period, shall be considered as
23 one contract for the purposes of this act.

24 (d) Time limits.--No contract for health spa services shall
25 require payments or financing by the buyer for more than two
26 years from the date the contract is entered, nor shall the term
27 of the contract be measured by the life of the buyer. The
28 services to be rendered to the buyer under the contract may
29 extend over a period not to exceed three years from the date the
30 contract is entered.

1 (e) Commencement of services.--Every contract for health spa
2 services shall provide for performance of the agreed upon
3 services to begin within six months from the date the contract
4 is entered.

5 (f) Specific terms.--

6 (1) Every contract for health spa services shall, in
7 addition, contain on its face, and in close proximity to the
8 space reserved for the signature of the buyer, a conspicuous
9 statement in a size of at least ten-point boldface type, as
10 follows: "You, the buyer, may cancel this agreement at any
11 time prior to midnight of the third business day of the
12 health spa after the date of this agreement, excluding
13 Sundays and holidays. To cancel this agreement, mail or
14 deliver a signed and dated notice, or send a telegram which
15 states that you, the buyer, are canceling this agreement. The
16 notice shall be sent to (name of health spa operator) at
17 (address of health spa operator)."

18 (2) The contract for health spa services shall contain
19 on the first page, in a type size smaller than that generally
20 used in the body of the document, the date the buyer signed
21 the contract.

22 (3) Until the health spa operator has complied with this
23 section, the buyer may cancel the contract for health spa
24 services at any time.

25 (4) All moneys paid pursuant to a contract for health
26 spa services shall be refunded within ten days of receipt of
27 a notice of cancellation, prorated for any health spa
28 services received prior to the cancellation.

29 Section 4. Limitation on amount of payment.

30 No contract for health spa services shall require payment for

1 the services or the use of the facilities in a total amount in
2 excess of \$1,000.

3 Section 5. Requirement of a bond.

4 (a) General rule.--A health spa operator shall maintain a
5 bond issued by a surety company admitted to do business in this
6 Commonwealth. The bond shall be obtained before contracts for
7 health spa services may be sold.

8 (b) Amount.--The principal sum of the bond shall be
9 according to the following schedule:

10 (1) One to three locations, \$500,000.

11 (2) Four to six locations, \$100,000.

12 (3) Seven to nine locations, \$150,000.

13 (4) Ten to twelve locations, \$200,000.

14 (5) Thirteen or more locations, \$250,000.

15 (c) Terms.--The bond shall be in favor of the Commonwealth
16 for the benefit of any person injured as a result of a violation
17 of this act. The aggregate liability of the surety to all
18 persons for all breaches of the conditions of the bonds provided
19 in this section shall in no event exceed the amount of the bond.

20 (d) Proof.--

21 (1) After January 1, 1986, proof of such bond shall be
22 furnished to the Office of Attorney General prior to selling
23 any contracts for health spa services. Thereafter, no
24 contract for health spa services shall be sold unless proof
25 of a current bond is on file with the Office of Attorney
26 General or the health spa is currently meeting the
27 requirements of paragraphs (2) and (3). All bonds, letters of
28 credit as described in paragraph (2) or exemptions as
29 described in paragraph (3) shall be effective for a period
30 ending on June 30 of each year. Any health spa which wishes

1 to request an exemption from these requirements shall submit
2 a written request at least 90 days prior to July 1 of the
3 year in which it desires the exemption.

4 (2) In lieu of furnishing the Office of Attorney General
5 with proof of the bond required in paragraph (1), a health
6 spa operator may furnish the Office of Attorney General with
7 a certified copy of an irrevocable letter of credit from a
8 banking institution licensed to do business in this
9 Commonwealth in an amount equal to the amount of the
10 appropriate bond set forth in paragraph (1). Such letter of
11 credit shall be in favor of the Commonwealth for the benefit
12 of any person injured as a result of a violation of this
13 part.

14 (3) In lieu of furnishing the Office of Attorney General
15 with proof of the bond in paragraph (1) or with the
16 irrevocable letter of credit in paragraph (2), a health spa
17 operator may furnish to the Office of Attorney General a
18 request that it be exempt from the provisions of this
19 subsection, including documentation to establish such
20 sufficient financial responsibility as would enable the
21 health spa to satisfy possible claims in an amount equal to
22 the amount that otherwise would have been required in the
23 bond.

24 (e) Arrangements in lieu of bond.--In the event the health
25 spa is controlled by, under common control with, or controls
26 other corporations, and the health spa or such other
27 corporations agree in writing to satisfy the claims in an amount
28 equal to the amount that otherwise would have been required in
29 the bond, the financial responsibility of the health spa and of
30 such other corporations may be considered by the Office of

1 Attorney General in determining whether to grant the request of
2 the health spa. It shall be within the discretion of the Office
3 of Attorney General to determine what criteria, if any, meet the
4 requirement of this subsection. It shall not be an abuse of
5 discretion for the Office of Attorney General to determine that
6 a health spa or spas cannot adequately assure protection for
7 consumers equal to that contained in the bond or in the
8 irrevocable letter of credit.

9 (f) Definitions.--For purposes of this section, the term
10 "location" shall include health spa facilities controlled by,
11 under common control with, or which control other health spa
12 corporations.

13 Section 6. Prohibitions.

14 (a) Third-party rights.--No contract for health spa services
15 shall require or entail the execution of any note or series of
16 notes by the buyer which, when separately negotiated, will cut
17 off as to third parties any right of action or defense which the
18 buyer may have against the seller.

19 (b) Assignments.--No right of action or defense arising out
20 of a contract for health spa services which the buyer has
21 against the seller, and which would be cut off by assignment,
22 shall be cut off by assignment of the contract to any third
23 party whether or not he acquires the contract in good faith and
24 for value unless the assignee gives notice of the assignment to
25 the buyer as provided in this section and within 30 days of the
26 mailing of notice receives no written notice of the facts giving
27 rise to the claim or defense of the buyer. A notice of
28 assignment shall be in writing addressed to the buyer at the
29 address shown on the contract and shall identify the contract
30 and inform the buyer that he must, within 30 days of the date of

1 mailing of the notice, notify the assignee in writing of any
2 facts giving rise to a claim or defense which he may have. The
3 notice of assignment shall state the name of the seller and
4 buyer, a description of the services, the contract balance and
5 the number and amount of the installments.

6 Section 7. Release from contract.

7 (a) Conditions.--

8 (1) Every contract for health spa services shall contain
9 a clause providing that if, by reason of death or disability,
10 the person agreeing to receive services is unable to receive
11 all services for which he has contracted, he and his estate
12 shall be relieved from the obligation of making payment for
13 services other than those received prior to death or the
14 onset of disability, and that if he has prepaid any sum for
15 services, so much of sum as is allocable to services he has
16 not taken shall be promptly refunded to him or his
17 representative.

18 (2) In every case in which a person has prepaid a sum
19 for services under a contract for health spa services, and by
20 reason of death or disability, is unable to receive all such
21 services, the party agreeing to furnish such services shall,
22 on request, immediately refund to such person or his personal
23 representative such amount of the sum prepaid as is
24 proportionate to the amount of services not received.

25 (3) Notwithstanding the provisions of any contract to
26 the contrary, whenever the contract price is payable in
27 installments and the buyer is relieved from making further
28 payments or entitled to a refund under this section, the
29 amount of the contract price allocable to services not
30 received shall represent at least as great a proportion of

1 the total contract price as the sum of the periodic monthly
2 balances not yet due bears to the sum of all the periodic
3 monthly balances under the schedule of installments in the
4 contract.

5 (4) For purposes of this subsection, the term
6 "disability" means a condition which precludes the buyer from
7 physically using the facilities and which is verified by a
8 physician.

9 (b) Transfer; refund.--

10 (1) Except as provided in paragraph (2), every contract
11 for health spa services shall contain a clause providing that
12 if the person agreeing to receive health spa services moves
13 further than 25 miles from the health spa and is unable to
14 transfer the contract to a comparable facility, such person
15 shall be relieved from the obligation of making payment for
16 services other than those received prior to the move, and if
17 such person has prepaid any sum for health spa services, so
18 much of such sum as is allocable to services he or she has
19 not taken shall be promptly refunded.

20 (2) Notwithstanding paragraph (1), a contract for health
21 spa services may contain a clause providing that if the
22 person agreeing to receive health spa services moves further
23 than 25 miles from the health spa and is unable to transfer
24 the contract to a comparable facility, such person may be
25 charged a predetermined fee not exceeding \$100, or, if more
26 than half the life of the contract has expired, such person
27 may be charged a predetermined fee not exceeding \$50.

28 Section 8. Noncomplying and fraudulent contracts.

29 (a) Noncomplying contracts.--Any contract for health spa
30 services which does not comply with the applicable provisions of

1 this act shall be void and unenforceable as contrary to public
2 policy.

3 (b) Fraudulent contracts.--Any contract for health spa
4 services entered into in reliance upon any willful and false,
5 fraudulent, or misleading information, representation, notice or
6 advertisement of the seller shall be void and unenforceable.

7 (c) Reform into compliance.--Notwithstanding the provisions
8 of this act, any failure to comply with any provision of act may
9 be corrected within 30 days after the execution of the contract
10 by the buyer, and, if so corrected, neither the seller nor the
11 holder shall be subject to any penalty under this act, provided
12 that any correction which increases any monthly payment, the
13 number of payments, or the total amount due, must be concurred
14 in, in writing, by the buyer.

15 (d) Definitions.--The term "holder" includes the seller who
16 acquires the contract or, if the contract is purchased by a
17 financing agency or other assignee, the financing agency or
18 other assignee.

19 Section 9. Waiver of provisions.

20 Any waiver of the buyer of the provisions of this act shall
21 be deemed contrary to public policy and shall be void and
22 unenforceable.

23 Section 10. Damages.

24 Any buyer injured by a violation of this act may bring an
25 action for the recovery of damages. Judgment may be entered for
26 three times the amount at which the actual damages are assessed
27 plus reasonable attorney fees.

28 Section 11. Provisions not exclusive.

29 The provisions of this act are not exclusive and do not
30 relieve the parties or the contracts subject thereto from

- 1 compliance with all other applicable provisions of law.
- 2 Section 12. Effective date.
- 3 This act shall take effect in 60 days.