

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 465

BY: EASLEY

AS INTRODUCED

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;

AMENDING SECTIONS 3, 4 AND 5, CHAPTER 217, O.S.L. 1987, AS AMENDED BY SECTIONS 3, 4 AND 5, CHAPTER 215, O.S.L. 1988, AND AS RENUMBERED BY SECTION 12, CHAPTER 215, O.S.L. 1988, SECTIONS 6, 7 AND 8, CHAPTER 217, O.S.L. 1988, AS RENUMBERED BY SECTION 12, CHAPTER 215, O.S.L. 1988 AND SECTIONS 9 AND 11, CHAPTER 217, O.S.L. 1987, AS AMENDED BY SECTIONS 6 AND 8, CHAPTER 215, O.S.L. 1988, AND AS RENUMBERED BY SECTION 12, CHAPTER 215, O.S.L. 1988 (59 O.S. SUPP. 1990, SECTIONS 2001, 2002, 2003, 2004, 2005, 2006, 2007 AND 2009), WHICH RELATE TO THE OKLAHOMA HEALTH SPA ACT; MODIFYING AND ADDING DEFINITIONS; CONFORMING LANGUAGE; REDUCING CERTAIN FEE; REDUCING TIME PERIOD BEFORE REFUND MAY BE REQUESTED; DELETING PROHIBITION AGAINST CHARGING INITIATION FEE; MODIFYING INFORMATION REQUIRED IN CERTAIN AGREEMENT; REQUIRING BOND BEFORE ACCEPTING INITIATION OR PREPAYMENT FEE OF CERTAIN AMOUNT; DELETING CERTAIN AUTHORIZATION TO SELL CONTRACTS WITHOUT FILING BOND; ADDING PENALTIES; REPEALING SECTION 11, CHAPTER 215, O.S.L. 1988 (59 O.S. SUPP. 1990, SECTION 2012), WHICH RELATES TO TRANSFER OF CERTAIN DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 217, O.S.L. 1987, as amended by Section 3, Chapter 215, O.S.L. 1988, and as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2001), is amended to read as follows:

Section 2001. As used in the Oklahoma Health Spa Act:

1. "Administrator" means the Administrator of Consumer Credit as defined in Section 6-501 of Title 14A of the Oklahoma Statutes;

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

3. "~~Buyer~~ Buyer/Member" means a natural person who enters into a health spa ~~contract~~ membership;

4. "~~Contract price~~" means ~~the sum of the initiation fee, if any, and all monthly fees except interest required by the health spa contract~~ "Membership agreement" means any agreement between a member and a health spa for use of health spa services;

5. "Health spa" means and includes any person, firm, corporation, organization, club or association engaged ~~in the sale of memberships~~ in a program 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, or exercise rooms, or engaged 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 or device or exercise rooms. The term "health spa" shall not include the following:

- a. 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,
- b. any private club owned and operated by its members,
 - c. any organization ~~primarily~~ solely operated for the purpose of teaching a particular form of self-defense such as judo or karate,
 - d. any facility owned or operated by the United States,
 - e. any facility owned or operated by this state or any of its political subdivisions, ~~and~~
 - f. any nonprofit public or private school, college or university~~;~~, and
 - g. any facility operated solely for aerobics or toning;

~~6. "Health spa contract" means a contract pursuant to which the buyer of health spa services pays an initiation fee to the seller of health spa services on the installment basis over a period in excess of six (6) months, regardless of the term over which health club services are required to be rendered under the contract. The term of a health spa contract begins on the date of execution on the contract and ends on the last date on which an installment payment is made;~~

~~7. "Health spa services" means and includes services, privileges, or rights offered for sale or provided by a health spa;~~

~~8. 7. "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;~~

~~9. 8. "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 membership, 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~~ membership is initially executed; and

~~10.~~ 9. "Prepayment" means ~~payment of any consideration for services or the use of facilities made prior to the day on which the services or facilities of the health spa are fully open and available for regular use by the members.~~ any amount paid in advance of the maturity of the health spa membership, to include payment in part or in full, accelerated monthly fees or any required down payment or initiation fee;

10. "Program" means any use of a health spa facility for the purpose of physical exercise in a structured or nonstructured environment; and

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

SECTION 2. AMENDATORY Section 4, Chapter 217, O.S.L. 1987, as amended by Section 4, Chapter 215, O.S.L. 1988, and as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2002), is amended to read as follows:

Section 2002. A. No health spa shall offer, or ~~advertise, or~~ ~~execute or cause to be executed by the buyer any health spa contract in this state unless the health spa at the time of the offer,~~ ~~advertisement, sale or execution of a health spa contract has been~~ properly health spa services unless first being registered with the Administrator. The registration shall:

1. disclose the address, ownership, date of first sales and date of first opening of the health spa;

2. state the name and address of the registered agent of the registrant, if the registrant is a corporation;

3. be renewed each succeeding calendar year; and

4. be accompanied by a fee of ~~Two Hundred Dollars (\$200.00)~~
One Hundred Dollars (\$100.00) per registration and annual renewal.

B. Each separate location where health spa services are offered shall be considered a separate health spa and shall file a separate registration, even though the separate locations are owned or operated by the same owner.

SECTION 3. AMENDATORY Section 5, Chapter 217, O.S.L. 1987, as amended by Section 5, Chapter 215, O.S.L. 1988, and as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2003), is amended to read as follows:

Section 2003. A. 1. Except as otherwise provided in this section, each health spa ~~selling contracts~~ which offers or sells membership agreements or health spa services on a ~~prepayment~~ presale basis shall notify the Administrator of the proposed location of the spa for which ~~prepayments~~ presale monies will be solicited and shall deposit all funds received from such ~~prepayment contracts~~ presale membership agreements in an account established in a financial institution authorized to transact business in this state until the health spa has commenced operations and has remained open for a period of sixty (60) days. The account shall be established and maintained only in a financial institution which agrees in writing with the Administrator to hold all funds deposited and not to release such funds until receipt of written authorization from the Administrator. The ~~prepayment~~ presale funds deposited will be eligible for withdrawal by the health spa after the health spa has been open and providing services pursuant to its health spa ~~contracts~~ membership agreements for sixty (60) days and the Administrator gives written authorization for withdrawal.

2. Any buyer who has paid money which is on deposit in a ~~prepayment~~ presale account may, upon written authorization from the Administrator, obtain a refund from the financial institution

holding such account if the health spa has not been substantially completed and opened within ~~one year~~ six (6) months of the date of the buyer's health spa ~~contract~~ membership agreement.

B. The provisions of subsection A of this section shall not apply to:

1. a. any health spa duly registered under the provisions of Section 2002 of ~~Title 59 of the Oklahoma Statutes~~ this title which has filed with the Administrator a current financial statement, certified by an accounting firm or individual holding a permit to practice public accounting in this state indicating:

- (1) a net worth in excess of One Million Dollars (\$1,000,000.00), or
- (2) total assets in excess of Five Million Dollars (\$5,000,000.00).

b. For purposes of this paragraph:

- (1) "current" means that the ending period of the financial statement is not over eighteen (18) months prior to the date of the filing of such statement, and
- (2) the financial statement filed by the health spa may include the financial results of any corporation controlled by, or that is under common control with, the health spa; or

2. any health spa duly registered under the provisions of Section 2002 of Title 59 of the Oklahoma Statutes which has posted a bond or letter of credit in the amount of Seventy Thousand Dollars (\$70,000.00) as provided for in Section 2007 of ~~Title 59 of the Oklahoma Statutes~~ this title and has been in continuous operation in Oklahoma for at least eighteen (18) months prior to the sale of prepayment ~~contracts~~ membership agreements.

~~C. No health spa shall charge any initiation fee in connection with a health spa contract of less than twelve (12) months' duration. For all health spa contracts of six (6) months or less duration, all rights of renewal which would or may extend the membership beyond the first six (6) months shall be offered and sold at a contract price per month for each renewal period equal to the contract price per month for the initial membership period.~~

SECTION 4. AMENDATORY Section 6, Chapter 217, O.S.L. 1987, as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2004), is amended to read as follows:

Section 2004. Every health spa ~~contract~~ membership agreement for the sale of future health spa services which are paid for in advance or which the buyer agrees to pay for in future installments shall be in writing and shall contain the following ~~contractual~~ provisions:

1. A provision for the penalty-free cancellation of the ~~contract~~ membership agreement within three (3) business days of its making and refund upon such notice, of all ~~moneys~~ monies paid under the ~~contract~~ membership agreement;

2. A provision for the cancellation of the ~~contract~~ membership agreement if the health spa relocates or goes out of business and fails to provide alternative facilities within eight (8) miles of the location designated in the health spa ~~contract~~ membership agreement. Upon receipt of such notice, the health spa shall refund to the buyer funds paid or accepted in payment of the ~~contract~~ membership agreement in an amount computed by dividing the contract price by the number of weeks in the ~~contract~~ membership agreement term and multiplying the result by the number of weeks remaining in the ~~contract~~ membership agreement term;

3. A provision for the cancellation of the ~~contract~~ membership agreement if the buyer dies or becomes physically unable to use a substantial portion of the services for thirty (30) or more

consecutive days. Upon receipt of such notice, the health spa shall refund to the buyer funds paid or accepted in payment of the ~~contract~~ membership agreement in an amount computed by dividing the contract price by the number of weeks in the ~~contract~~ membership agreement term and multiplying the result by the number of weeks remaining in the ~~contract~~ membership agreement term. In the case of disability, the health spa may require the buyer to submit to a physical examination by a doctor agreeable to the buyer and the health spa. The cost of the examination shall be borne by the health spa.

4. A provision that:

- a. to cancel a ~~contract~~ membership agreement, the buyer shall notify the health spa of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address specified in the health spa ~~contract~~ membership agreement;
- b. all moneys to be refunded upon cancellation of the health spa ~~contract~~ membership agreement shall be paid within thirty (30) days of receipt of the notice of cancellation; and
- c. if the customer has executed any credit or lien agreement with the health spa to pay for all or part of health spa services, any such agreement executed by the buyer shall also be returned within sixty (60) days after such cancellation.

SECTION 5. AMENDATORY Section 7, Chapter 217, O.S.L. 1987, as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2005), is amended to read as follows:

Section 2005. A. A copy of every health spa ~~contract~~ membership agreement shall be delivered to the buyer at the time the ~~contract~~ membership agreement is executed. All health spa ~~contracts~~ membership agreements shall:

1. be in writing, signed by the buyer;

2. designate the date on which the buyer actually signed the ~~contract~~ membership agreement and length of membership;

3. identify services and facilities to be provided;

~~3.~~ 4. contain the provisions set forth in Section 6 of this act under a conspicuous caption: "BUYER'S RIGHT TO CANCEL"; and

~~4.~~ 5. read substantially as follows:

If you wish to cancel this ~~contract~~ membership agreement, 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~~ membership agreement and must be delivered or mailed before midnight of the third business day after you sign this ~~contract~~ membership agreement. The notice must be delivered or mailed to:

.....

(Health spa shall insert its name and mailing address)

You may also cancel this ~~contract~~ membership agreement if this spa moves or goes out of business and fails to provide alternative facilities within eight (8) miles of the location designated in this ~~contract~~ membership agreement. You may also cancel if you become disabled; and your estate may cancel in the event of your death. You must prove such disability by a doctor's certificate, and the health spa may also require that you submit to a physical examination by a doctor agreeable to you and the health spa. If you cancel, the health spa may retain or collect a portion of the ~~contract~~ membership agreement price equal to the proportionate value of the services or use of facilities you have already received.

B. No health spa ~~contract~~ membership agreement shall have a duration for a period longer than thirty-six (36) months, however, the ~~contract~~ membership agreement may give the buyer a right of renewal.

C. The provisions of the Oklahoma Health Spa Act are not exclusive and do not relieve the parties or the ~~contracts~~ membership

agreements subject thereto from compliance with all other applicable provisions of law.

D. Any health spa ~~contract~~ membership agreement which does not comply with the applicable provisions of the Oklahoma Health Spa Act shall be voidable at the option of the buyer.

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

F. Any waiver by the buyer of the provisions of the Oklahoma Health Spa Act shall be deemed contrary to public policy and shall be void and unenforceable.

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

NOTICE

ANY HOLDER OF THIS ~~CONTRACT OR NOTE~~ MEMBERSHIP AGREEMENT 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.

SECTION 6. AMENDATORY Section 8, Chapter 217, O.S.L. 1987, as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2006), is amended to read as follows:

Section 2006. A. A ~~contract~~ membership agreement for health spa services shall not require the execution of any note or series of notes by the buyer which, if separately negotiated, will require the buyer to make payments to third parties on a note or notes if the ~~contract~~ membership agreement for the health spa services is breached by the health spa.

B. Whether or not the health spa has complied with the notice requirements of Section 7 of this act, any right of action or defense arising out of a health spa ~~contract~~ membership agreement which the buyer has against the health spa, and which would be cut off by assignment, shall not be cut off by assignment of the ~~contract~~ membership agreement to any third party holder, whether or not the holder acquires the contract in good faith and for value.

SECTION 7. AMENDATORY Section 9, Chapter 217, O.S.L. 1987, as amended by Section 6, Chapter 215, O.S.L. 1988, and as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2007), is amended to read as follows:

Section 2007. A. 1. Every health spa, before it enters into a health spa ~~contract~~ membership agreement or accepts an initiation or prepayment fee in excess of Fifty Dollars (\$50.00), shall file and maintain with the Administrator, in form and substance satisfactory to him, a bond with a corporate surety, from a company authorized to transact business in this state or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

Number of unexpired contracts <u>membership agreements</u> exceeding six (6) months	Amount of bond or letter of credit
500 or less	\$30,000.00
501 to 1000	\$40,000.00
1001 to 1500	\$50,000.00
1501 to 2000	\$60,000.00
2001 or more	\$70,000.00

2. The number of unexpired ~~contracts~~ membership agreements exceeding six (6) months shall be separately calculated for each location where health spa services are offered.

3. Each separate location where 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, even though the separate locations are owned or operated by the same owner.

4. No owner shall be required to file with the Administrator bonds or letters of credit in excess of Seventy Thousand Dollars (\$70,000.00). If the seventy-thousand-dollar limit is applicable, then the bonds or letters of credit filed by such owner shall apply to all health spas owned or operated by the same owner.

~~B. A health spa which has not filed a bond or letter of credit may nevertheless sell health spa contracts of up to thirty-six (36) months' duration so long as the amount of payment actually charged, due or received each month by the health spa or any holder of its health spa contracts does not exceed the monthly fee calculated pursuant to the definition thereof in Section 2001 of Title 59 of the Oklahoma Statutes with the exception that the payment actually charged may include a maximum initiation fee of Fifty Dollars (\$50.00) for health spa contracts of twelve (12) months or more in duration.~~

~~C.~~ The bond or letter of credit required by this section shall be in favor of the state for the benefit of:

1. any buyer injured by having paid money to the health spa posting the bond or letter of credit for health spa services in a facility which fails to open within sixty (60) days after the date upon which the buyer and the health spa entered into a ~~contract~~ membership agreement or goes out of business prior to the expiration of the buyer's health spa ~~contract~~ membership agreement; or

2. any buyer injured as a result of a violation of the Oklahoma Health Spa Act by the health spa posting the bond or letter of credit.

~~D.~~ C. 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 canceled or terminated except with the consent of the Administrator.

SECTION 8. AMENDATORY Section 11, Chapter 217, O.S.L. 1987, as amended by Section 8, Chapter 215, O.S.L. 1988, and as renumbered by Section 12, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2009), is amended to read as follows:

Section 2009. A. Any person who engages in business as a health spa without first being properly registered with the Administrator as prescribed in the Oklahoma Health Spa Act or who otherwise violates any provision of the Oklahoma Health Spa Act, upon conviction, shall be guilty of a misdemeanor and shall be punished by the imposition of a fine not to exceed Five Thousand Dollars (\$5,000.00) or imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

B. The provisions of Title 14A of the Oklahoma Statutes shall also apply to those health spas registered pursuant to the Oklahoma Health Spa Act.

C. The Oklahoma Health Spa Act shall only govern those health spa ~~contracts~~ membership agreements executed after November 1, 1987.

SECTION 9. REPEALER Section 11, Chapter 215, O.S.L. 1988 (59 O.S. Supp. 1990, Section 2012), is hereby repealed.

SECTION 10. This act shall become effective September 1, 1991.

43-1-726

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