

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1009

By: Representative Fuller

For An Act To Be Entitled

"AN ACT TO REGULATE CONTRACTS FOR HEALTH SPA SERVICES; TO LIMIT CONTRACTS FOR HEALTH SPA SERVICES TO LESS THAN TWENTY-FIVE (25) MONTHS; TO MAKE NON-COMPLYING CONTRACTS VOIDABLE; TO REQUIRE REGISTRATION OF ALL HEALTH SPAS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This act shall be known and cited as the "Health Spa Consumer Protection Act".

SECTION 2. As used in this act unless the context otherwise requires:

(1) "Buyer" means a person who contracts for and purchases services under a health spa services contract;

(2) "Contract for health spa services" means a written agreement whereby a buyer purchases or is obligated to purchase the health spa services or a right to use its facilities.

(3) "Health spa" means an establishment that provides for profit as one of its primary purposes, services or facilities which purport to improve the user's physical condition or appearance through weight control, exercise, dieting or a combination of these. The term includes, but is not limited to, establishments referred to by such terms as reducing salon, spa, exercise club, exercise gym, health studio, health club, weight control center, or other similar terms.

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 the overall functions and purposes;

(B) Any organization primarily operated for the purpose of teaching a particular form of martial arts such as judo or karate;

(C) Any nonprofit public or private school, college or university;
or

(D) Any private club or country club.

(4) "Seller" means the person, corporation, partnership, association, or group who is engaged in the operation of the health spa, as defined here, and who offers for sale the right to use health spa facilities or services, now or in the future.

SECTION 3. Every contract for health spa services shall be in writing and shall be subject to the provisions of this act. A copy of the written contract shall be given to the buyer at the time the contract is executed.

SECTION 4. (a) All contracts for health spa membership which may be in effect between the same seller and the same buyer, the terms of which overlap for any period shall be considered as one contract for the purpose of this act.

(b) No contract for health spa services shall require payments or financing by the buyer over a period of excess of twenty-five (25) months from the date the contract is entered into, nor shall the term of any contract be measured by or be for the life of the buyer; however, the availability of the health spa facilities to the buyer and under the contract may extend over a period not to exceed two (2) years from the date the contract is entered into with the right to renew for additional periods of equal length.

SECTION 5. (a) Every contract for health spa services to be rendered at an existing health spa facility shall provide that the performance of the agreed upon services will begin within forty-five (45) days from the date the contract is entered into.

(b) Every contract for health spa services at a planned spa facility or spa facility under construction shall, at the option of the buyer, be voidable in the event that the health spa facilities and the agreed upon services are not available within twelve (12) months from the date the contract is entered into.

(c) Every contract for health spa services shall further provide that the

contract may be cancelled within three (3) business days after the date of receipt by the buyer of a copy of the contract by written notice delivered by certified or registered United States mail to the seller at the address specified in the contract. The notice must be accompanied by the contract forms, membership cards and any and all other documents and evidence of membership previously delivered to the buyer. All monies paid pursuant to the contract shall be refunded within thirty (30) days of receipt of the notice of cancellation.

(d) Every contract for health spa services shall provide that after the three (3) day period of cancellation as provided in Section 5(c), the buyer's estate may cancel a contract for services if the buyer dies. The buyer may also cancel after three (3) days if the buyer becomes totally and permanently physically disabled or moves his residence to a location more than twenty-five (25) miles from a health club operated by the seller or a substantially similar health club facility which would accept the seller's obligation under the contract or after the services are no longer available as provided in the contract because of the seller's permanent discontinuance of operation. Nothing contained herein shall restrict or prohibit the seller from offering or providing in the contract additional or broader reasons for cancellation.

(e) The health spa shall have the right to require and verify reasonable evidence of permanent physical relocation, permanent physical disability, or death. In the case of permanent disability, the health spa may also require in the contract that the buyer submit to a physical examination by a doctor agreeable to the buyer and the health club, the cost of which examination shall be borne by the health club.

(f) All monies paid pursuant to any contract cancelled for the reasons contained in this section shall be refunded within thirty (30) days of receipt of the notice of cancellation; provided, however, that the seller may retain the expenses incurred and the portion of the total price representing the services used or completed, and further provided that the seller may receive the reasonable cost of goods and services which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller receive more than the full contract price from the buyer except for goods and services consumed by the buyer separate from the contract. If the buyer has executed any credit or loan agreement to pay for all or part of health spa services, then the credit or loan agreement executed by the buyer

shall also be returned within thirty (30) days.

SECTION 6. The provisions of this act are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law.

SECTION 7. Any contract for health spa services which does not comply with the applicable provisions of this act shall be voidable at the option of the buyer. The seller may cure the noncompliance and no class action may be brought for relief under this provision unless following receipt of written notice of noncompliance the seller fails within thirty (30) days of receipt of the notice of noncompliance to notify all buyers of the noncompliance and fails to make the changes in subsequent contracts for health spa services as may be required to comply with the act.

SECTION 8. Any contract for health spa services entered into in reliance upon any willful and false, fraudulent, or misleading information, representation, notice, or advertisement of the seller shall be void and unenforceable.

SECTION 9. Any waiver of the buyer of the provisions of this act shall be deemed contrary to public policy and shall be void and unenforceable.

SECTION 10. (a) Any person, corporation, partnership, association or group intending to open or operate a health spa shall file a registration statement with the Attorney General's Division of Consumer Protection prior to the sale of any contracts for health spa services. The registration statement shall contain the name and address of the health spa; the names and addresses of the officers, directors and stockholders of the health spa and its parent corporation, if such an entity exists; the types of available facilities; approximate size of the health spa measured in square feet; and the type of contracts for health spa services to be offered and their cost.

(b) Each health spa doing business shall prepare a comprehensive list of all contracts for health spa services offered for sale by the health spa and the respective price of each plan. The list shall be shown to each prospective buyer of a contract for health spa services.

(c) A health spa is prohibited from selling a contract for health spa services not included in this list and in the registration statement filed with the Attorney General's office; provided, however, that a reduction in the price of a contract shall not constitute a change requiring re-registration of the contract.

SECTION 11. All laws and parts of laws in conflict with this act are hereby repealed.