

- SUBJECT:** Revising security bonds for health spas and gyms
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Delisi, Laubenberg, Coleman, Dawson, Jackson, McReynolds, Truitt, Zedler
- 0 nays
- 1 absent — Solis
- WITNESSES:** For — Jill Warren, City of Carrollton; (*On committee substitute:* Fermin Ortiz)
- Against — Deborah Polan, 24 Hour Fitness; Jay Propes, International Health, Racquet, and Sports Club Association
- On — Guy Joyner, Office of the Secretary of State; Bryant Lomax, Office of the Comptroller of Public Accounts; Paul Singer, Office of the Attorney General
- BACKGROUND:** Occupations Code, ch. 702 regulates health spas, which also include gyms. Operators are required to obtain a certificate of registration from the Secretary of State's Office before opening or offering membership to a health spa. The application for registration includes ownership information, a sample of contracts used to sell membership, and proof of the required \$20,000 security or surety bond.
- A health spa may be exempt from the required security bond if it does not require members to pay much up front or to authorize recurring payment or if the spa has been continuously owned and operated for five years at the same location and has not been the subject of a financial complaint. An operator may not be eligible for an exemption if past operations closed or were the subject of complaints.
- If a health spa closes, the operator is required to post notice, including the procedures for making a claim against the security bond, at least three days after closing.

DIGEST:

CSHB 135 would change the health spa security requirement to a range between \$20,000 and \$50,000. The secretary of state would set an amount sufficient to protect the total health spa's membership. That amount would be reviewed every three years and adjusted, if needed. A health spa also would be required to submit a copy of the certificate of registration when applying for a sales tax permit from the comptroller.

In addition to the current exemption qualifications, a health spa that had assets of \$50,000 per registered location and had operated under substantially the same management for five years also could be exempt from the security bond if it submitted a sworn statement of compliance every three years. The bill would repeal the conditions under which a spa operator might not be eligible for an exemption based on past business operations.

Contracts for membership to a health spa would be required to include the health spa operator's certificate of registration number, as would advertisements. Health spa operators would be required to include in contracts information about making a claim against the security bond only if they were not exempt.

A health spa that planned to close would be required to post notice 30 days before closing except in cases of fire, flood, or acts of God not within reasonable control of the operator.

This bill would take effect September 1, 2005.

SUPPORTERS
SAY:

The security bond for health spas and gyms should be greater for facilities that have large memberships or very high up front fees to better protect consumers if the facility closed, and the bond should be tied to the facility's sales tax license. In recent years some gyms that ignored the security bond requirement have closed their doors, leaving members without financial recourse. Others have posted the bond, but had such large memberships that individuals received only pennies of what they were owed.

Requiring that gyms produce proof of registration when applying for a sales tax license would ensure that members were covered from the beginning, which is important because most such facilities go under within three to five years of opening.

Ongoing analysis of the sufficiency of a security bond is important because gym and health spa membership may grow. The static security bond in current law does not reflect the reality of how these businesses grow. If membership doubles, it is important that the security bond grow with it.

The bill would prevent the new bond requirements from being onerous for existing businesses. Health spas that have more than \$50,000 in assets and had operated under substantially the same management for five years would be exempt.

OPPONENTS
SAY:

Increasing the amount of the bond may prevent new health spas and gyms from opening. The cost of opening such facilities is enormous, mostly because of the amount of equipment required. Also, the security bond market is very tight with few companies issuing surety bonds and many requiring full collateralization.

The security bond should be linked to something other than the sales tax license because a new one is not required for each new site. A health spa operator could ignore the required security bond for subsequent sites because all could be operated under a single sales tax license.

The problem that this bill seeks to address really exists only in big cities where there is high revenue potential for a new gym or health spa, so the bill should target the bond requirements to those areas. Instead of requiring a bond from all health spa operators, the amount of bond could be based on metropolitan statistical area population thresholds or another measure of the size of the potential market.

NOTES:

The committee substitute differs from the bill as introduced in that it would change the bond to a range of \$20,000 to \$50,000, link it to the sales tax permit, require the secretary of state to review it every five years, and require the certificate of registration number in advertisements.