

BILL ANALYSIS

Senate Research Center

H.B. 135
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Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Most health spas (gyms) in this state require members to pay an initial membership fee. To protect members, health spas are required to obtain a \$20,000 bond (security) which must be used to repay membership fees if the health spa goes out of business. Health spas currently are required to show proof of the bond to the secretary of state before they can obtain a certificate of registration and begin operating. However, the law provides no system to ensure that these businesses are obtaining the bond before they begin operating. In addition, in some instances where a health spa had obtained a bond, \$20,000 was insufficient to repay fees to all members.

H.B. 135 allows the secretary of state to designate an appropriate bond amount for a health spa based on the number of its members, with the minimum bond amount set at \$20,000, and not to exceed \$50,000. It also sets stricter guidelines for health spas to meet in order to be exempted from posting the bond. Health spas would also be required, under H.B. 135, to include their designated certificate of registration number on any printed advertisements, as well as in their membership contracts. H.B. 135 requires that a health spa give 30 day notice of closure to the secretary of state and its members if it plans to close or relocate. The intent of H.B. 135 is to ensure health spa compliance with the current law, as well as to further protect health spa members by making certain that health spas in Texas are financially capable of repaying the members their dues in the event of closure.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 702, Occupations Code, by adding Section 702.107, as follows:

Sec. 702.107. SALES TAX PERMIT; PROOF OF REGISTRATION REQUIRED. (a) Requires a health spa operator to submit to the comptroller of public accounts (comptroller) a copy of the operator's certificate of registration at the time the operator applies for a sales tax permit.

(b) Prohibits the comptroller from issuing a sales tax permit to a health spa operator who fails to comply with this section. Requires the secretary of state to assist the comptroller in determining whether a business is a health spa under this chapter.

SECTION 2. Amends Section 702.151, Occupations Code, as follows:

Sec. 702.151. SECURITY REQUIRED. (a) Creates this subsection from existing text. Makes a conforming change.

(b) Requires the secretary of state to prescribe the amount of security required for an applicant for a health spa operator's certificate of registration in the amount determined sufficient by the secretary to protect the health spa's total membership. Prohibits the amount from being less than \$20,000 or more than \$50,000.

SECTION 3. Amends Subchapter D, Chapter 702, Occupations Code, by adding Section 702.158, as follows:

Sec. 702.158. REVIEW OF SECURITY AMOUNT. (a) Requires the secretary of state, at least once every three years, to review the amount of security a health spa operator is required to post under Section 702.151 to determine whether the amount is sufficient to protect the health spa's total membership. Authorizes the secretary to increase the amount required if the secretary determines that the increase is necessary to protect that membership but prohibits the secretary from increasing the amount above the maximum amount allowed under Section 702.151(b).

(b) Authorizes the secretary of state to adopt certain procedures necessary to implement this section.

SECTION 4. Amends Section 702.202, Occupations Code, to modify the circumstances under which a health spa operator's certificate holder is authorized to apply for an exemption under Section 702.201 (Application for Exemption).

SECTION 5. Amends Section 702.301, Occupations Code, as follows:

Sec. 702.301. GENERAL REQUIREMENTS. (a) Requires a contract to meet certain requirements and to include the health spa operator's certificate of registration number or an identification number as provided by Subsection (b).

(b) Requires the secretary of state to adopt procedures for the issuance of an identification number that is authorized to be used in a contract for purposes of Subsection (a) by health spas with more than one location in this state.

SECTION 6. Amends Section 702.304, Occupations Code, as follows:

Sec. 702.304. CANCELLATION AND REFUND NOTICE. (a) Requires a contract to include certain modified statements relating to cancellations and refunds in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material, except as provided by Subsection (b).

(b) Requires a health spa operator to include the statement under Subsection (a)(3)(B) in a contract only if the operator is required to post security with the secretary of state under Subchapter D (Security Requirements).

SECTION 7. Amends Subchapter I, Chapter 702, Occupations Code, by adding Section 702.404, as follows:

Sec. 702.404. INFORMATION REQUIRED IN ADVERTISEMENT. Prohibits a health spa operator from advertising in any print or electronic medium unless the advertisement includes the health spa operator's certificate of registration number or an identification number issued as provided by Section 702.301(b).

SECTION 8. Amends the heading to Section 702.452, Occupations Code, to read as follows:

Sec. 702.452. NOTICE REQUIREMENT BEFORE HEALTH SPA CLOSING.

SECTION 9. Amends Section 702.452, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (f), as follows:

(a) Requires a certificate holder, at least 30 days before the date a health spa is scheduled to close or relocate, to contemporaneously post a notice with modified information and to notify the secretary of state, in writing of the health spa closing or relocation and the date that the notice was first posted. Deletes existing text requiring the certificate holder to post a notice not later than the third day after the spa is closed.

(b) Makes conforming and nonsubstantive changes.

(f) Provides that the notice required under Subsection (a) is not required in the case of a fire, flood, or act of God that is not within the reasonable control of a health spa.

SECTION 10. Repealer: Sections 702.203 (Partial Ineligibility for Exemption) and 702.204 (Complete Ineligibility for Exemption), Occupations Code.

SECTION 11. Requires the comptroller of public accounts, not later than January 1, 2006, to provide the secretary of state with the name and address of each person that holds a sales tax permit issued before September 1, 2005, and provides services that may require the person to hold a health spa operator's certificate of registration under Chapter 702, Occupations Code.

SECTION 12. Effective date: September 1, 2005.