

# Code of Virginia

## § 59.1-294. Short title.

This chapter shall be known and may be cited as the "Virginia Health Spa Act."

(1984, c. 738.)

## § 59.1-295. Statement of purpose.

The purpose of this chapter is to safeguard the public interest against fraud, deceit, and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health spa services by prohibiting false and misleading advertising, and dishonest, deceptive, and unscrupulous practices by which the public has been injured in connection with contracts for health spa services.

(1984, c. 738.)

## § 59.1-296. Definitions.

As used in this chapter:

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

"Buyer" means a natural person who enters into a health spa contract.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Comparable alternate facility" means a health spa facility that is reasonably of like kind, in nature and quality, to the health spa facility originally contracted, whether such facility is in the same location but owned by a different health spa or is at another location of the same health spa.

"Contract price" means the sum of the initiation fee, if any, and all monthly fees except interest required by the health spa contract.

"Facility" means a location where health spa services are offered as designated in a health spa contract.

"Health spa" means any person, firm, corporation, organization, club or association whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise with exercise machines or devices, or whose primary purpose is to engage in the sale of the right or privilege to use exercise machines or devices. The term "health spa" shall not include the following: (i) 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; (ii) any private club owned and

operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school, college or university; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 80 percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Health spa contract" means an agreement whereby the buyer of health spa services purchases, or becomes obligated to purchase, health spa services.

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

"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.

"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, 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 is initially executed.

"Out of business" means the status of a facility that is permanently closed and for which there is no comparable alternate facility.

"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.

"Relocation" means the provision of health spa services by the health spa that entered into the membership contract at a location other than that designated in the member's contract.

(1984, c. 738; 1985, c. 585; 1986, c. 187; 1990, cc. 392, 433; 1991, c. 149; 1992, c. 102; 2003, c. 344; 2007, c. 683; 2010, c. 439.)

**§ 59.1-296.1. Registration; fees.**

A. It shall be unlawful for any health spa to offer, advertise, or execute or cause to be executed by the buyer any health spa contract in this Commonwealth unless each facility of the health spa has been properly registered with the Commissioner at the time of the offer, advertisement, sale or execution of a health spa contract. The registration shall (i) disclose the address, ownership, date of first sales and date of first opening of the facility and such other information as the Commissioner may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee per each annual registration in the amount indicated below:

Number of unexpired contracts originally written for more than one month	Registration fee
0 to 250	\$200
251 to 500	\$300
501 to 2000	\$700
2001 or more	\$800

Further, it shall be accompanied by a late fee of \$50 if the registration renewal is neither postmarked nor received on or before July 1. In the event that a spa operates multiple facilities, a \$50 late fee for the first facility and \$25 for each additional facility shall accompany the registrations. For each successive 30 days after August 1, an additional \$25 shall be added for each facility. Each separate facility where health spa services are offered shall be considered a separate facility and shall file a separate registration, even though the separate facilities are owned or operated by the same health spa.

B. Any health spa which sells a health spa contract prior to registering pursuant to this section and, if required, submits the appropriate surety required by § 59.1-306 shall pay a late filing fee of \$100 for each 30-day period the registration or surety is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

(1985, c. 585; 1988, c. 13; 1990, cc. 392, 433; 2010, c. 439.)

## **§ 59.1-296.2. Contracts sold on prepayment basis.**

A. Each health spa selling contracts or health spa services on a prepayment basis shall notify the Commissioner of the proposed facility for which prepayments will be solicited and shall deposit all funds received from such prepayment contracts in an account established in a financial institution authorized to transact business in the Commonwealth until the health spa has commenced operations in the facility and the facility has remained open for a period of 30 days. The account shall be established and maintained only in a financial institution which agrees in writing with the Commissioner to hold all funds deposited and not to release such funds until receipt of written authorization from the Commissioner. The prepayment funds deposited will be eligible for withdrawal by the health spa after the facility has been open and providing services pursuant to its health spa contracts for 30 days and the Commissioner gives written authorization for withdrawal.

B. The provisions of this section shall not apply to any facility duly registered pursuant to the provisions of § 59.1-296.1 for which a bond or letter of credit in the amount of \$100,000 has been posted.

(1985, c. 585; 1990, cc. 392, 433; 2010, c. 439.)

### **§ 59.1-296.2:1. Prepayment contracts; prohibited practices; relocation; refund.**

A. No health spa shall sell a health spa contract on a prepayment basis without disclosing in the contract the date on which the facility shall open. The opening date shall not be later than 12 months from the signing of the contract.

B. No health spa shall close or relocate any facility without first giving notice to the Commissioner and conspicuously posting a notice both within and outside each entrance to the facility being closed or relocated of the closing or relocation date. Such notice shall be provided at least 30 days prior to the closing or relocation date. If a relocation is to occur, the Commissioner and the facility's members shall be provided with the address of the specific new facility at the time of this notice.

C. No health spa shall knowingly and willfully make any false statement in any registration application, statement, report or other disclosure required by this chapter.

D. No health spa shall refuse or fail, after notice from the Commissioner, to produce for the Commissioner's review any of the health spa's books or records required to be maintained by this chapter.

E. Unless it so discloses fully in 10-point bold-faced type or larger on the face of each health spa contract, no health spa shall sell any health spa contract if any owner of the health spa, regardless of the extent of his ownership, previously owned in whole or in part a health spa that closed for business any facility and failed to:

1. Refund all moneys due to holders of health spa contracts; or
2. Provide comparable alternate facilities with another health spa that agreed in writing to honor all provisions of the health spa contracts or at another facility operated by the originally contracting health spa.

F. No health spa that has failed to provide the Commissioner the appropriate surety pursuant to § 59.1-306 shall sell a health spa contract unless that contract contains a statement that reads as follows: "This spa is not permitted, pursuant to the Virginia Health Spa Act, to accept any initiation fee in excess of \$125 or any payment for more than the prorated monthly fee for the month when the contract is initially executed plus one full month in advance."

Such disclosure shall be printed in 10-point bold-faced type or larger on the face of each contract.

(1990, cc. 392, 433; 1993, c. 686; 2003, c. 344; 2004, c. 988; 2010, c. 439.)

### **§ 59.1-296.3. Initiation fees.**

Whenever a refund is due a buyer, any initiation fee charged by a health spa shall be prorated over the life of the contract or twelve months, whichever is greater.

(1985, c. 585; 1990, cc. 392, 433.)

### **§ 59.1-297. Right of cancellation.**

A. Every health spa contract for the sale of health spa services may be cancelled under the following circumstances:

1. A buyer may cancel the contract without penalty within three business days of its making and, upon notice to the health spa of the buyer's intent to cancel, shall be entitled to receive a refund of all moneys paid under the contract.
2. A buyer may cancel the contract if the facility relocates or goes out of business and the health spa fails to provide comparable alternate facilities within five driving miles of the location designated in the health spa contract. Upon receipt of notice of the buyer's intent to cancel, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.
3. The contract may be cancelled if the buyer dies or becomes physically unable to use a substantial portion of the services for 30 or more consecutive days. If the buyer becomes physically unable to use a substantial portion of the services for 30 or more consecutive days and wishes to cancel his contract, he must provide the health spa with a signed statement from his doctor, physician assistant, or nurse practitioner verifying that he is physically unable to use a substantial

portion of the health spa services for 30 or more consecutive days. Upon receipt of notice of the buyer's intent to cancel, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1. In the case of disability, the health spa may require the buyer to submit to a physical examination by a doctor, physician assistant, or nurse practitioner agreeable to the buyer and the health spa within 30 days of receipt of notice of the buyer's intent to cancel. The cost of the examination shall be borne by the health spa.

B. The buyer shall notify the health spa of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address of the health spa as specified in the health spa contract.

C. If the customer has executed any credit or lien agreement with the health spa or its representatives or agents to pay for all or part of health spa services, any such negotiable instrument executed by the buyer shall be returned to the buyer within 30 days after such cancellation.

D. If the spa agrees to allow a consumer to cancel for any other reason not outlined in this section, upon receipt of notice of cancellation by the buyer, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.

(1984, c. 738; 1990, cc. 392, 433; 2003, c. 344; 2004, c. 855; 2006, c. 396; 2010, c. 439.)

### **§ 59.1-297.1. Payment and calculation of refunds.**

A. All refunds for cancellation of membership shall be paid within 30 days of the health spa's receipt of written notice of cancellation by the buyer and calculated by:

1. Dividing the contract price by the term of the contract in days;
2. Multiplying the number obtained in subdivision 1 by the number of days between the effective date of the contract and the date of cancellation;  
and
3. Subtracting the number obtained in subdivision 2 from the total price paid on the health spa contract.

B. In the event of the health spa going out of business, the date of cancellation shall be the date the health spa ceased providing health spa services at the facility.

C. A health spa issuing a refund to a buyer under this chapter shall do so within 30 days of the health spa receiving a notice of cancellation pursuant to § 59.1-297, or within 30 days of the permanent closing of the facility designated in the buyer's contract.

(2003, c. 344; 2010, c. 439.)

### **§ 59.1-297.2. Automatic termination of a health spa contract.**

A health spa contract shall be considered terminated automatically if the designated facility closes permanently and the health spa does not provide a comparable alternate facility. A facility closes temporarily if it closes for a reasonable period of time (i) for renovations to all or a portion of the facility, (ii) because the lease for the facility has been canceled, or (iii) because of a fire, or a flood or other act of God, or other cause not within the reasonable control of the health spa. If a facility closes temporarily, it shall within 14 days from the time of the temporary closing provide notice of the date it expects to reopen, which date shall be within a reasonable period of time from the time the facility temporarily closes, to the Commissioner and shall conspicuously post such notice both within and outside each entrance to the facility.

(2003, c. 344; 2010, c. 439.)

### **§ 59.1-298. Notice to buyer.**

A copy of the executed health spa contract shall be delivered to the buyer at the time the contract is executed. All health spa contracts shall (i) be in writing, (ii) be signed by the buyer, (iii) designate the date on which the buyer actually signed the contract, (iv) state the starting and expiration dates of the initial membership period, (v) separately identify any initiation fee, (vi) either in the contract itself or in a separate notice provided to the buyer at the time the contract is executed, notify each buyer that the buyer should attempt to resolve with the health spa any complaint the buyer has with the health spa, and that the Virginia Department of Agriculture and Consumer Services, Office of Consumer Affairs regulates health spas in the Commonwealth pursuant to the provisions of the Virginia Health Spa Act, and (vii) contain the provisions set forth in § 59.1-297 under a conspicuous caption: "BUYER'S RIGHT TO CANCEL" that shall read substantially as follows:

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

(Health spa shall insert its name and mailing address.)

If canceled within three business days, you will be entitled to a refund of all moneys paid. You may also cancel this contract if this spa goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the facility designated in this contract. You may also cancel if you become physically unable to use a substantial portion of the health spa services for 30 or more consecutive days, and your estate may cancel in the event of your death. You must prove you are unable to use a substantial portion of the health spa services by a doctor's, physician assistant's, or nurse practitioner's certificate, and the health spa may also require that you submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, physician assistant, or nurse practitioner agreeable to you and the health spa. If you cancel after the three business days, the health spa may retain or collect a portion of the contract

price equal to the proportionate value of the services or use of facilities you have already received. Any refund due to you shall be paid within 30 days of the effective date of cancellation.

(1984, c. 738; 1990, cc. 392, 433; 2003, c. 344; 2004, c. 855; 2006, c. 396; 2010, c. 439.)

#### **§ 59.1-299. Duration of contract.**

No health spa contract shall have a duration for a period longer than thirty-six months, including any renewal period; however, a health spa contract may exceed thirty-six months provided that:

1. Any initiation fee does not exceed ten times the initial monthly fee;
2. All payments for health spa services, other than the initiation fee, are collected as monthly fees on a monthly basis;
3. After an initial term of not more than twelve months, either party may cancel the health spa contract upon not more than thirty days' notice; and
4. The monthly fee is never reduced below eighty percent of the monthly fee at the time the contract is initially executed.

(1984, c. 738; 1990, cc. 392, 433; 1992, c. 117.)

#### **§ 59.1-300. Provisions of this chapter not exclusive.**

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

(1984, c. 738.)

#### **§ 59.1-301. Noncomplying contract voidable.**

Any health spa contract which does not comply with the applicable provisions of this chapter shall be voidable at the option of the buyer.

(1984, c. 738.)

#### **§ 59.1-302. Fraud rendering contract void.**

Any health spa contract 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.

(1984, c. 738.)

**§ 59.1-303. Waiver of provisions void and unenforceable.**

Any waiver by the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

(1984, c. 738.)

**§ 59.1-304. Notice of preservation of buyers' rights.**

All health spa contracts 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 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.**

(1984, c. 738.)

**§ 59.1-305. Prohibition against assignment of health spa contract cutting off buyer's right of action or defense against seller; conditions.**

Whether or not the health spa has complied with the notice requirements of § 59.1-304, any right of action or defense arising out of a health spa contract 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 to any third party holder, whether or not the holder acquires the contract in good faith and for value.

(1984, c. 738; 2003, c. 344.)

**§ 59.1-306. Bond or letter of credit required; exception.**

A. Every health spa, before it enters into a health spa contract and accepts any moneys in excess of the prorated monthly fee for the month when the contract is initially executed plus one month's fees or accepts any initiation fee in excess of \$125, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

Number of applicable contracts	Amount of bond or letter of credit
0 to 250	\$10,000
251 to 500	\$20,000
501 to 750	\$30,000
751 to 1000	\$40,000
1001 to 1250	\$50,000

1251 to 1500	\$60,000
1501 to 1750	\$70,000
1751 to 2000	\$80,000
2001 or more	\$100,000

For purposes of calculating the number of applicable unexpired health spa contracts when determining the required amount of bond or letter of credit, health spa contracts entered into on or after January 1, 2005, with a term that exceeds 13 months shall be counted as multiple health spa contracts, such that the number of applicable contracts counted with respect thereto shall equal the total of the number of full years and any partial year in its term. However, this paragraph shall not apply (i) to health spa contracts that are payable only on a monthly basis and for which the initiation fee is no more than \$250, or (ii) if the number of the health spa's contracts in effect with a term that exceeds 13 months is less than 10 percent of the total of its health spa contracts.

The number of applicable unexpired contracts shall be separately calculated for each facility.

A health spa shall file a separate bond or letter of credit with respect to each separate facility, even though the separate facilities are owned or operated by the same health spa.

However, no health spa shall be required to file with the Commissioner bonds or letters of credit in excess of \$300,000. If the \$300,000 limit is applicable, then the bonds or letters of credit filed by the health spa shall apply to all facilities owned or operated by the same health spa.

B. A health spa may sell health spa contracts of up to 36 months' duration for a facility for which a health spa has not filed a bond or letter of credit so long as the amount of payment actually charged, due or received under the health spa contracts each month by the health spa or any holder thereunder does not exceed the monthly fee calculated pursuant to the definition thereof in § 59.1-296, with the exception that the payment actually charged may include a maximum initiation fee of \$125 for health spa contracts of 13 months or more in duration.

(1984, c. 738; 1985, c. 585; 1990, cc. 392, 433; 1992, c. 117; 2004, c. 988; 2010, c. 439.)

### **§ 59.1-307. Bond or letter of credit; persons protected.**

A. The bond or letter of credit required by § 59.1-306 shall be in favor of the Commonwealth for the benefit of (i) any buyer injured by having paid money for health spa services in a facility which fails to open by the date provided by the contract, which date shall not be in excess of twelve months from the signing of the contract; (ii) any buyer injured by having paid money for health spa services in a facility which goes out of business prior to the expiration of the buyer's health spa contract; or (iii) any buyer injured as a result of a violation of this chapter.

B. 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 cancelled or terminated except with the consent of the Commissioner.

(1984, c. 738; 1987, c. 547.)

### **§ 59.1-308. Change in ownership of health spa.**

For purposes of this chapter, a health spa shall be considered a new health spa and subject to the requirements of a bond or letter of credit at the time the health spa changes ownership. Any health spa which has more than fifty percent ownership by the same stockholder(s) and/or partner(s) shall be considered as owned by the same owner. A change in ownership shall not release, cancel or terminate liability under any bond or letter of credit previously filed unless the Commissioner agrees in writing to such release, cancellation or termination because the new owner has filed a new bond or letter of credit for the benefit of the previous owner's members or because the former owner has refunded all unearned payments to its members. Every change in ownership shall be reported in writing to the Commissioner at least ten days prior to the effective date of the change in ownership.

(1984, c. 738; 1985, c. 585; 1990, cc. 392, 433.)

#### **§ 59.1-308.1. Production of records.**

Every health spa, upon the written request of the Commissioner, shall make available to the Commissioner its prepayment bank account records and all membership contracts for inspection and copying, to enable the Commissioner reasonably to determine compliance with this chapter. Every health spa shall maintain a true copy of each health spa contract executed between the health spa and a buyer. Each contract shall be maintained for its term, including any renewal. Every health spa shall maintain the executed health spa contracts at a designated location where the contracts may be inspected by the Commissioner. If the location designated by the health spa is outside Virginia, the health spa shall pay the reasonable travel costs of an inspection by the Commissioner.

(1985, c. 585; 1990, cc. 392, 433.)

#### **§ 59.1-308.2. Investigations.**

A. The Commissioner may:

1. Make necessary public or private investigations within or without this Commonwealth to determine any violations of the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter; and

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation.

B. For the purpose of any investigation or proceeding under this chapter, the Commissioner may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. If any person fails to obey a subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may adopt reasonable regulations to implement the provisions of this chapter and such regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

(1990, cc. 392, 433.)

### **§ 59.1-309. Enforcement; penalties.**

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

(1984, c. 738.)

### **§ 59.1-310. Applicability.**

Sections 59.1-297, 59.1-298, 59.1-299, 59.1-304 and 59.1-305 shall not apply to health spa contracts entered into before the effective date of this chapter.

(1984, c. 738.)