

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1202

H.P. 901 House of Representatives, April 9, 1987
Reference to the Committee on Business Legislation
suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative RYDELL of Brunswick.

Cosponsored by Representatives DORE of Auburn, GURNEY of
Portland, and Senator BRANNIGAN of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Protect Consumers who
Join Health Spas.

1
2
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 32 MRSA c. 113 is enacted to read:

7

CHAPTER 113

8

REGULATION OF HEALTH SPAS

9

§11401. Short title

10 This chapter shall be known and may be cited as
11 the "Health Spa Regulations Act."

12

§11402. Definitions

1 As used in this chapter, unless the context oth-
2 erwise indicates, the following terms have the fol-
3 lowing meanings.

4 1. Business day. "Business day" excludes Satur-
5 day, Sunday of legal holidays.

6 2. Commissioner. "Commissioner" means the Com-
7 missioner of Professional and Financial Regulation.

8 3. Contract. "Contract" means an agreement by
9 which a natural person is entitled to membership in a
10 health spa or use of the facilities of a health spa.

11 4. Facilities. "Facilities" means equipment,
12 physical structures and other tangible property used
13 by a health spa to conduct its business.

14 5. Health spa. "Health spa" means any person or
15 a business enterprise employing at least 3 persons
16 primarily offering in one or more outlets instruc-
17 tion, training or assistance, or the facilities for
18 the preservation, maintenance, encouragement or de-
19 velopment of physical fitness or well being. This
20 term includes, but is not limited to, "figure sa-
21 lons," "health studios" and "weight control studios."
22 This term does not include:

23 A. Any nonprofit public or private school, col-
24 lege or university;

25 B. Any nonprofit religious, ethnic, community or
26 service organization;

27 C. Any establishment which does not have as one
28 of its primary purposes or businesses the provi-
29 sion of health club services or facilities; or

30 D. Tennis clubs, racquetball courts, golf clubs,
31 creative dance studios or other facilities which
32 primarily specialize in a particular sport, self-
33 defense discipline or creative art.

34 6. Member. "Member" means a natural person who
35 enters into or receives the benefit of a health spa
36 contract.

1 7. Outlet. "Outlet" means an owned or rented
2 facility primarily devoted to the health spa busi-
3 ness.

4 §11403. Health spa contract

5 1. Written contract. All health spa contracts
6 shall be in writing and delivered to the member at
7 the time the contract is signed.

8 2. Contract requirements. Each contract shall
9 contain the following provisions:

10 A. A right to cancellation. Each member shall be
11 entitled to cancel his contract within 3 business
12 days after signing. Notice of cancellation shall
13 be effective upon deposit of that notice in the
14 United States mail, addressed to the health spa's
15 business address. The health spa shall refund
16 the member's fee within 15 days after receipt of
17 the member's written cancellation; and

18 B. A right to a refund upon health spa's closing
19 or relocation. The health spa shall refund the
20 price of the unused portion of the contract if
21 the health spa goes out of business and fails to
22 provide facilities within 5 miles of, or moves
23 the facility more than 5 miles from, the location
24 designated in the contract. The health spa shall
25 be deemed to have gone out of business if it
26 fails to provide facilities within 5 miles of the
27 location designated in the contract for a period
28 in excess of 14 consecutive days.

29 3. Refunds. The refunds due under subsection 2
30 shall be determined by dividing the contract price by
31 the number of weeks in the contract term and multi-
32 plying the result by the number of weeks remaining in
33 the contract term. The health spa shall provide
34 those refunds within 15 days after receipt of the
35 member's written notice of cancellation.

36 4. Duration. No contract may provide for a term
37 in excess of 36 months.

38 §11404. Registration and bonding requirements

1 No health spa may solicit members, accept payment
2 from members or prospective members, or operate a
3 health spa without complying with the following re-
4 quirements.

5 1. Registration statement. All health spas must
6 file with the commissioner an annual registration
7 statement which contains the following informa-
8 tion:

9 A. The name and address of the health spa;

10 B. The names and addresses of the officers, di-
11 rectors and stockholders of the health spa and
12 its parent corporation, if that entity exists;

13 C. The type of available facilities;

14 D. A written list of each piece of equipment and
15 each service which the club has available for
16 use by members;

17 E. Approximate size of the health spa measured
18 in square feet;

19 F. Whether or not shower facilities are pro-
20 vided;

21 G. The names and addresses of employees who pro-
22 vide guidance, instruction or training to members
23 and their respective qualifications for employ-
24 ment in the health spa field;

25 H. Description and cost of each membership plan
26 to be offered; and

27 I. A full and complete disclosure of any com-
28 pleted or pending litigation initiated against
29 the health spa and any of its officers or direc-
30 tors within the last 3 years.

31 2. Registration fee. The annual registration
32 fee shall be \$25.

33 3. Surety required. Each health spa or health
34 spa outlet offering contracts under which the member
35 must pay for a membership term of 3 months or more in

1 advance shall maintain a \$25,000 surety in one of the
2 following forms:

3 A. A surety bond from a company authorized to do
4 business in this State;

5 B. A letter of credit from a bank insured by the
6 Federal Deposit Insurance Corporation; or

7 C. An escrow account with a licensed bank or
8 savings institution located in this State.

9 The maximum surety for a number of outlets owned by a
10 single health spa shall be \$100,000.

11 4. Copy of statement. The health spa shall
12 maintain at its facilities a copy of the registration
13 statement filed with the commissioner. The registra-
14 tion statement shall be available for inspection at
15 the health spa by current or prospective health spa
16 members.

17 §11405. List of membership plans

18 1. Maintenance of list. All health spas shall
19 maintain a written list of all membership plans of-
20 fered for sale by the health spa and the respective
21 price of each plan. The list shall be provided to
22 each prospective member prior to the signing of a
23 health spa contract.

24 2. Sale of memberships. No health spa may sell
25 a membership plan not included in the written list
26 and in the registration statement required by section
27 11404.

28 §11406. Information required by health spa upon per-
29 manent closing of facility

30 Within 15 days of the permanent closing of a
31 health spa facility, the health spa shall file the
32 following materials with the commissioner:

33 1. Membership list. A list of the names and ad-
34 resses of all health spa members;

35 2. Member contracts. Copies of each member's
36 health spa contract; and

1 3. Payment records. Record of payments made by
2 each member under the health spa contract.

3 §11407. Prohibited acts

4 It shall be unlawful for any health spa:

5 1. Noncompliance. To fail to comply with any
6 provision of this chapter, including, but not limited
7 to:

8 A. Failure to register pursuant to section
9 11404;

10 B. Failure to provide any member or prospective
11 member with a copy of the registration statement
12 required by section 11404;

13 C. Failure to secure a bond, letter of credit or
14 escrow account as required by section 11404; and

15 D. Failure to refund the membership fee of any
16 member following written cancellation under sec-
17 tion 11403;

18 2. Misrepresentations. To make any misrepresenta-
19 tion concerning the health spa facilities, the na-
20 ture of its courses, training devices, methods or
21 equipment, or the number qualifications, training or
22 experience of its personnel; and

23 3. Misleading representations. To make any
24 false, misleading or deceptive representations re-
25 garding the health spa, its facilities or services.

26 §11408. Remedies

27 1. Violation. Any violation of this chapter
28 shall constitute a violation of the Unfair Trade
29 Practices Act, Title 5, chapter 10.

30 2. Class D crime. An intentional violation of
31 this chapter shall be a Class D crime.

32 3. Bond, letter of credit or escrow account.
33 Any member who is damaged by a violation of any pro-
34 vision of this chapter, by the health spa's breach of

1 contract or by the health spa's violation of Title 5,
2 section 207, relating to the solicitation of members
3 or the operation of the health spa may bring an ac-
4 tion against the bond, letter of credit or escrow ac-
5 count to recover damages suffered. The Attorney Gen-
6 eral may bring an action against the bond or escrow
7 account under Title 5, section 209, to recover dam-
8 ages relating to the health spa's violation of any
9 provision of this chapter or Title 5, section 207.
10 The aggregate liability of the surety company or bank
11 or savings institution shall be only for actual dam-
12 ages and shall not exceed the amount of the bond or
13 escrow account.

14

STATEMENT OF FACT

15 The purpose of this bill is to ensure truthful
16 disclosures to prospective health spa members and to
17 protect consumers who have paid membership fees in
18 the event the health spa closes due to insolvency.
19 The term "health spa" does not include tennis clubs,
20 self-defense studios, dance studios or similar opera-
21 tions.

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