

## **IC 24-5-7**

### **Chapter 7. Health Spa Services**

#### **IC 24-5-7-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to sections 1, 2, 5, and 17 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

*As added by P.L.220-2011, SEC.395.*

#### **IC 24-5-7-1**

##### **Definitions**

Sec. 1. As used in this chapter:

"Business day" means a day other than Sunday or a legal holiday.

"Buyer" means a purchaser of services under a contract for health spa services.

"Contract" means a contract for health spa services entered into after August 31, 1983. The term includes all financial agreements provided or arranged by the health spa or the health spa's affiliates.

"Health spa" means any business entity, other than an entity that is exempt from taxation under Section 501 of the Internal Revenue Code, offering health spa services to the public.

"Health spa services" means instruction, training, or assistance in physical culture, bodybuilding, exercising, reducing, figure development, or any other health spa service, for the use of the facilities of a health spa, figure salon, weight loss clinic, gymnasium, or other facility used for the delivery of health spa services, or for membership in any group, club, association, or organization formed to deliver health spa services.

"Seller" means a seller of services under a contract for health spa services.

*As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.13.*

#### **IC 24-5-7-2**

##### **Contracts; requisites**

Sec. 2. Every contract for health spa services shall be in writing and a copy shall be furnished to the buyer at the time the contract is formed.

*As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.14.*

#### **IC 24-5-7-3**

##### **Contracts; term; limitations**

Sec. 3. (a) No contract for health spa services may require payments or financing by the buyer over a period in excess of thirty-six (36) months from the date that the contract is entered into. The term of a contract may not be measured by or be for the life of the buyer.

(b) The term of a contract may not exceed three (3) years from the

date that the contract is entered into. A buyer may renew a contract for additional periods, but the contract price for the renewal of a contract must be at least twenty-four dollars (\$24) per year.

*As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.15.*

#### **IC 24-5-7-4**

##### **Contracts; time for performance; voidability**

Sec. 4. (a) A contract for health spa services to be rendered at an existing health spa facility must provide that the performance of the agreed upon services is to begin within forty-five (45) days from the date that the contract is entered into.

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

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-5**

##### **Contracts; cancellation; notice; refunds**

Sec. 5. (a) A copy of the buyer's cancellation rights under this chapter shall be furnished in writing to the buyer at the time the contract is formed.

(b) In at least 10 point boldface type, every contract for health spa services must provide that the contract may be cancelled before midnight of the third full business day after the buyer signs the contract.

(c) A buyer may cancel the contract by written notice, in any form, delivered in person or mailed by certified or registered mail to the seller at the address specified in the contract. The notice must be accompanied by the membership cards previously delivered to the buyer.

(d) All money paid under a contract shall be refunded within thirty (30) days of receipt of the notice of cancellation.

*As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.16.*

#### **IC 24-5-7-6**

##### **Contracts; cancellation provisions; contingencies**

Sec. 6. (a) In at least ten (10) point boldface type, every health spa services contract that has not been cancelled under section 5 of this chapter must provide that the buyer or the buyer's estate may cancel the contract if any of the following occur:

(1) The buyer dies.

(2) The buyer becomes totally physically disabled for the duration of the contract.

(3) The health spa facility operated by the seller is moved to a location that is more than five (5) miles from the original facility. However, if a health spa facility is closed at any site

and a facility with similar health spa services is operated less than five (5) miles away from the closed facility, then the buyer's contract may be transferred to the operating facility, if the operator of the facility to which the contract is to be transferred accepts the transfer.

(4) The services are no longer available as provided in the contract because of the seller's permanent discontinuance of operation.

(b) This section does not restrict the seller from offering or providing in a contract additional or broader reasons for cancellation.  
*As added by P.L.249-1983, SEC.1. Amended by P.L.12-1986, SEC.8.*

#### **IC 24-5-7-7**

##### **Contracts; cancellation provisions; evidence of disability or death**

Sec. 7. The health spa may require and verify reasonable evidence of total physical disability or death. In the case of total physical disability, the health spa may also require that the buyer submit to a physical examination by a doctor agreeable to the buyer and the health spa. The cost of the examination shall be borne by the health spa.

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-8**

##### **Contracts cancelled; refunds; proration, cancellation of loan agreements**

Sec. 8. (a) All money paid pursuant to a contract for health spa services that is cancelled under this chapter shall be refunded within thirty (30) days of receipt of a notice of cancellation. However, in a cancellation under section 6 of this chapter, the seller may retain the portion of the total price representing the services used or completed plus reimbursement for the expenses incurred in an amount not to exceed twenty-five percent (25%) of the total contract price. In no instance may the seller demand more than the full contract price from the buyer.

(b) If the buyer has executed any credit or loan agreement to pay for all or part of the cancelled health spa services, that agreement shall also be cancelled and returned within thirty (30) days. Notice of the duty described by this subsection must be included in each health spa services contract, in at least ten (10) point boldface type.  
*As added by P.L.249-1983, SEC.1. Amended by P.L.12-1986, SEC.9.*

#### **IC 24-5-7-9**

##### **Compliance with other provisions of law**

Sec. 9. The provisions of this chapter are not exclusive and do not relieve the parties from compliance with other applicable provisions of law.

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-10**

##### **Contracts; voidability for noncompliance; cure by seller; actions**

Sec. 10. (a) A contract for health spa services that does not comply with this chapter is voidable at the option of the buyer.

(b) The seller may cure noncompliance with this chapter, and no legal action may be brought by the buyer for relief under this chapter unless, following receipt of written notice of such noncompliance, the seller:

- (1) fails within thirty (30) days of receipt of the notice of noncompliance to notify all buyers with whom the seller has contracted since August 31, 1983, of the noncompliance; or
- (2) fails to make all contracts for health spa services which the seller has entered into after August 31, 1983, comply with this chapter.

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-11**

##### **Contracts; voidability for false information or advertisement**

Sec. 11. Any contract for health spa services entered into in reliance upon any willfully or fraudulently disseminated false or misleading information, representation, notice, or advertisement of the seller is void and unenforceable.

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-12**

##### **Waiver of chapter provisions void**

Sec. 12. Any waiver by the buyer of part or all of this chapter is contrary to public policy and is void and unenforceable.

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-13**

##### **Surety bonds; contracts for services to be rendered at planned facilities**

Sec. 13. A health spa that sells contracts for health spa services to be rendered at a planned health spa facility or a health spa facility under construction shall file with the secretary of state a bond issued by a surety company admitted to do business in Indiana in the amount of twenty-five thousand dollars (\$25,000) or such greater amount as the secretary of state may specify by rule. The health spa is relieved from the obligation to maintain such a bond upon commencing health spa service.

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-14**

##### **Surety bonds; requisites; cancellation; notices; new bond**

Sec. 14. (a) The state of Indiana shall be the obligee under the bond.

(b) The bond shall be:

- (1) executed by the health spa as principal and by a corporate surety licensed to do business in Indiana as surety;
- (2) in such form and shall contain such terms and conditions as the secretary of state prescribes;

(3) conditioned upon the faithful performance of all obligations of a health spa to construct or commence operations at its planned facility; and

(4) effective from the date of filing with the secretary of state and shall continue in full force and effect until cancelled.

(c) The total and aggregate liability of the surety on a bond is limited to the amount specified in the bond.

(d) A health spa may not cancel a bond prior to the commencement of health spa services without the prior written approval of the secretary of state and without the secretary's approval of a substitute bond so as to provide continuous bonding of the health spa's activities prior to the commencement of health spa services.

(e) The surety on a bond may cancel a bond filed under this chapter only after the expiration of ninety (90) days from the date the surety, by registered or certified mail, return receipt requested, mails to the secretary of state and to the principal on the bond a notice of intent to cancel.

(f) Not later than thirty (30) days prior to the date upon which a bond cancellation becomes effective, the health spa shall give written notice to the secretary of state that a new bond has been obtained so as to provide continuous bond coverage of the health spa's activities prior to the commencement of health spa services.

*As added by P.L.249-1983, SEC.1.*

#### **IC 24-5-7-15**

##### **Surety bonds claims against bonds; hearing and determination; distribution of bond proceeds**

Sec. 15. (a) If any health spa fails, or is alleged to have failed, to meet its obligations prior to the commencement of health spa services, the secretary of state shall hold a hearing and determine whether there has been such a failure, determine those persons who, as buyers, have sustained financial losses recoverable under the bond and, if appropriate, distribute the bond proceeds to the persons sustaining losses, to the extent of their losses.

(b) Actions upon the bond and the right to payment under the bond extend solely to the secretary of state. However, if the secretary of state has not initiated an action upon the bond by scheduling and holding a hearing within thirty (30) days of a written request to do so, any claimant may initiate an action in the circuit court of Marion County, Indiana, to require the secretary of state to take action.

(c) If, upon a hearing, the secretary of state determines that the claims of persons who have sustained financial losses recoverable under the seller's bond exceed the amount of the bond proceeds, the proceeds shall be prorated among those persons according to the ratio that each person's loss bears to the total amount of all proven losses.

(d) The determination of the secretary of state as to liability under the bond and the amount distributed under the bond is binding upon the principal and surety of the bond.

(e) All hearings held under this section shall be held in

accordance with IC 4-21.5-3.

(f) The existence of the bond and the bond recovery procedure in no way affect or alter any other right or remedy which a person may have under applicable law.

*As added by P.L.249-1983, SEC.1. Amended by P.L.7-1987, SEC.109.*

#### **IC 24-5-7-16**

##### **Purchase of facility; assumption of membership contract liability; preservation of actions or defenses**

Sec. 16. (a) A purchaser of a health spa facility that offers health spa services to the public assumes all membership contract liability from the previous seller.

(b) Any right of action or defense arising out of a health spa services contract that the buyer has against the seller is preserved against an assignee of or successor to the contract.

*As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.17.*

#### **IC 24-5-7-16.5**

##### **Refunds; options; repair and maintenance**

Sec. 16.5. (a) Except as provided in subsection (d), if any of a health spa's facilities or services described in the contract are no longer provided before full receipt of the services and use of facilities for which the buyer contracted, the buyer is entitled to a refund based on the total consideration proportional to the elapsed time portion of the contract at the time of the unavailability, or may exercise the option provided by subsection (b).

(b) A buyer has the option, instead of the proportional refund provided in subsection (a), to choose to complete the unused portion of the contract, including renewal periods, at another location that is owned, controlled, affiliated with, or operated by the seller. A modification of the contract must be made in writing.

(c) This section does not restrict a health spa's ability to:

- (1) make improvements to the facilities or services; or
- (2) replace a facility or service with a superior facility or service.

(d) If a health spa ceases to provide services or access to facilities in order to perform regular maintenance or to repair equipment, a buyer may not exercise the rights provided in subsection (a) or (b) until the health spa has failed to provide services or access to facilities for a continuous period of thirty (30) days. However, if a health spa that has ceased to provide services or access to facilities in order to perform regular maintenance or repair equipment is unable to resume providing services or access to facilities within thirty (30) days due to circumstances beyond the control of the operator of the health spa, a buyer may not exercise the rights provided in subsection (a) or (b) until the health spa has failed to provide services or access to facilities for a continuous period of sixty (60) days.

*As added by P.L.24-1989, SEC.18.*

**IC 24-5-7-17**

**Violations by buyer or seller; actions; penalties**

Sec. 17. A purchaser of a health spa facility or a seller who violates this chapter commits a deceptive act that is actionable by the attorney general or by a buyer under IC 24-5-0.5, and is subject to the penalties set forth in that chapter.

*As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.19.*

**IC 24-5-7-18**

**Enforcement powers**

Sec. 18. The secretary of state shall have all powers necessary to accomplish the responsibilities assigned to him in this chapter including but not limited to the authority to compel the production of financial statements and such other information as the secretary of state may deem necessary.

*As added by P.L.249-1983, SEC.1.*