




HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

MEMO

January 8, 1976

**SUBJECT:** Analysis of Health Spa Bill

**TO:** Honorable C. L. Schmitt, Chairman  
Consumer Protection Committee

**FROM:** Marvin J. Mundel   
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Section 1. Short Title - "Health Spa Consumer Protection Act"

Section 2. Definitions - "Contract for future personal services" is any contract for services to be received after the contract is entered into. These services are dance lessons, martial arts, or any other self-improvement activity. The buyer is paying for specific amounts of services or use of facilities, for example, hours of dance lessons.

The bill does not apply to a contract entered into by public schools, or non-profit organizations (such as YMCA), or future personal services contracts. (Future personal services contracts are the subject of a companion bill. The major difference between a future specific service and a health spa is that the spa buyer does not pay for specific blocs of service, but instead may use the spa services at his discretion, subject to the reasonable rules of the spa operator).

Section 3. Every contract for health spa services must be in writing; a copy of the written contract must be given to the buyer at the time that he signs the contract.

Section 4. Contract Restrictions

(a) The buyer and seller can enter into only one contract at a time, with the exception that a buyer may renew the contract 30 days before the expiration date.

(b) limits the amount of a spa contract to \$1200

(c) puts a time limit on such contracts: 36 months. The buyer may have 30 days after the expiration to renew the contract. The installment terms must be substantially equal in amount and time, and the intervals between payments cannot be longer than one month.

(d) No health spa services contract may contain a provision by which a buyer agrees not to assert against the seller or assignee any defense or claims arising from the contract.

(e) The assignee of any note negotiated in connection with a health spa services contract is subject to the same claims and defenses that the seller of the services is subject to. The maximum amount of the assignee's liability is the amount that the assignee paid for the note.

Section 5. In the event of a transaction, in which the seller and the lender have some type of close relationship in connection with the transaction, the lender shall be considered a related lender. He will be treated as an assignee, even though technically there has been no assignment of the note, but merely a referral by the seller to the lender. The maximum liability of the related lender is the amount originally loaned to the buyer, with the exception of a credit card holder whose maximum liability is the balance outstanding with respect to such transaction at the time the card holder first notified the card issuer or person honoring the credit card of such claim or defense.

Section 6. (a) Contracts for health spas must provide that the performance by the seller must begin within 30 days from the date of the signing of the contract, and buyer can cancel if seller fails to comply with the 30-day rule.

(b) A spa contract at a planned spa facility or one which is under construction at the time that the contract is signed, can be cancelled by the buyer if the facilities and agreed upon services are not available within 12 months after the date of the signing of the contract. The seller must provide written notice by registered or certified mail to the buyer if the services are not to be available within 12 months from the date of the signing of the contract. The seller must give this notice as soon as he knows or has reason to know that the services will not be available within the 12 month period. However, if the seller fails to provide this notice in compliance with this subsection, the buyer may still cancel the contract after the 30-day period provided in subsection (a).

(c) The buyer may cancel the contract for any reason within five business days after the date of receipt by the buyer of a copy of the contract; he must give the seller written notice either delivered in person or mailed by certified or registered mail. The notice must be accompanied by evidence of membership previously delivered to the buyer. The buyer is then entitled to a complete refund of any moneys paid.

Section 7. (a) If the buyer dies or becomes permanently disabled, he may cancel but he or his estate shall be liable only for the pro-rata portion of services already received prior to death or the onset of permanent disability, plus a reasonable predetermined fee of a maximum of 5% of the outstanding balance or \_\_\_\_\_; whichever is less, if the seller chooses to charge a predetermined fee.

If the buyer becomes temporary disabled, he is entitled to a delay of the performance of the terms of the contract for the duration of the temporary disability.

The seller has the right to require reasonable verification of death or permanent or temporary disability. He may require the buyer be examined by a doctor agreeable to both seller and buyer at the seller's expense.

(b) If the buyer relocates more than 25 miles from the seller's facility or a similar facility which accepts the seller's obligation under the contract, the buyer may cancel, but he is liable for the pro-rata portion of services received, plus a reasonable predetermined fee of a maximum of 5% of the outstanding balance or \$50, whichever is less, if the seller chooses to impose such a predetermined fee.

Section 8. All health spa services contracts must designate the date on which the buyer actually signs the contract.

Section 9. Requires a statement of buyer's right in at least 10-point type in the contract (dealing with right to cancel or right to delay in performance of the contract).

Section 10. Requires the seller to post a pre-opening bond in a minimum amount of \$25,000, and the amount may be increased by the Attorney General to a maximum of \$100,000. The bond must be kept until 90 days following opening of the spa, as certified by engineer or architect or general contractor.

Section 11. In lieu of a bond, the Attorney General may accept proof of financial responsibility; such proof must be furnished until 90 days after certified opening.

Section 12. In lieu of a bond, the spa may furnish a deposit, consisting of certificates of deposit, investment certificates, government bonds or cash (if cash, when the deposit is returned, it must be with interest). The deposit must be kept until 90 days after certified opening.

Section 13. The spa can establish an escrow account in lieu of a bond. As the construction is partially completed, the funds may be returned to the seller on a partial basis. All of the escrow funds may be returned to the provider of the health spa service 90 days after the certified opening.

Section 14. The provisions of common law and other statutes are not affected by this law.

Section 15. Any contract which does not comply with the provisions of this act is unenforceable.

Section 16. Any contract entered into in reliance upon fraud is void and unenforceable.

Section 17. Any waiver by the buyer of the provision of this act is unenforceable.

Section 18. Any buyer may file a personal suit if he has been injured by a violation of this act. He may recover treble damages and attorney's fees.

Section 19. No person may use the term "therapist" or any other professional term in connection with the operation of a spa unless he is licensed or registered.

Section 20. All violations of this act are considered unlawful.

Section 21. The Attorney General may adopt regulations for the enforcement of this act.

Section 22. The Attorney General or district attorney or solicitor of the county or city of the first or second class may bring an action in Common Pleas Court or Commonwealth Court to restrain unlawful acts by temporary or permanent injunction.

Section 23. The Attorney General may accept an assurance of voluntary compliance with respect to any unlawful method, act or practice. Such assurance may provide for restitution. Such assurance shall be in writing and filed with the appropriate court. Such assurances are not considered admissions of violations.

Section 24. Civil Penalty - For violating an injunction or assurance of voluntary compliance, Maximum - \$5000 per violation.

Section 25. Civil Penalty - For wilful violations of this act, Maximum - \$2500 per violation.

Section 26. Civil Penalty - For a violation of the section relating to bond, Maximum \$2500 per violation.

These penalties are cumulative. They may be used in combination.

Section 27. For violating an injunction or a section relating to a bond, the court, upon petition of the Attorney General, district attorney or solicitor, may order the dissolution, suspension or forfeiture of the franchise or right to do business of any offending person firm or corporation.

Section 28. The buyer of a health spa services contract may assign the contract. However, such contract may not be reassigned to the optional buyer by any assignee.

Section 29. This act shall take effect immediately upon enactment.