

**Effective 5/13/2014**

**13-23-5 Registration -- Bond, letter of credit, or certificate of deposit required -- Penalties.**

- (1)
  - (a)
    - (i) It is unlawful for any health spa facility to operate in this state unless the facility is registered with the division.
    - (ii) Registration is effective for one year. If the health spa facility renews its registration, the registration shall be renewed at least 30 days prior to its expiration.
    - (iii) The division shall provide by rule for the form, content, application process, and renewal process of the registration.
  - (b) Each health spa registering in this state shall designate a registered agent for receiving service of process. The registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.
  - (c) The division shall charge and collect a fee for registration under guidelines provided in Section 63J-1-504.
  - (d) If an applicant fails to file a registration application or renewal by the due date, or files an incomplete registration application or renewal, the applicant shall pay a fee of \$25 for each month or part of a month after the date on which the registration application or renewal were due to be filed, in addition to the registration fee described in Subsection (1)(c).
  - (e) A health spa registering or renewing a registration shall provide the division a copy of the liability insurance policy that:
    - (i) covers the health spa; and
    - (ii) is in effect at the time of the registration or renewal.
- (2)
  - (a) Each health spa shall obtain and maintain:
    - (i) a performance bond issued by a surety authorized to transact surety business in this state;
    - (ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or
    - (iii) a certificate of deposit.
  - (b) The bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of:
    - (i) the health spa's violation of this chapter; or
    - (ii) the health spa's going out of business or relocating and failing to offer an alternate location within five miles.
  - (c)
    - (i) The division may recover from the bond, letter of credit, or certificate of deposit the costs of collecting and distributing funds under this section, up to 10% of the face value of the bond, letter of credit, or certificate of deposit but only if the consumers have fully recovered their damages first.
    - (ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit may not exceed the amount of the bond, letter of credit, or certificate of deposit.
    - (iii) The health spa shall maintain a bond, letter of credit, or certificate of deposit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.
  - (d) A health spa providing services at more than one location shall comply with the requirements of Subsection (2)(a) for each separate location.
  - (e) The division may impose a fine against a health spa that fails to comply with the requirements of Subsection (2)(a) of up to \$100 per day that the health spa remains out of compliance. All

penalties received shall be deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.

- (3)
- (a) The minimum principal amount of the bond, letter of credit, or certificate of credit required under Subsection (2) shall be based on the number of unexpired contracts for health spa services to which the health spa is a party, in accordance with the following schedule:
- | Principal Amount of<br>Bond, Letter of Credit,<br>or Certificate of Deposit | Number of Contracts |
|---|---------------------|
| \$15,000  | 500 or fewer        |
| 35,000  | 501 to 1,500        |
| 50,000  | 1,501 to 3,000      |
| 75,000  | 3,001 or more       |
- (b) A health spa that is not exempt under Section 13-23-6 shall comply with Subsection (3)(a) with respect to all of the health spa's unexpired contracts for health spa services, regardless of whether a portion of those contracts satisfies the criteria in Section 13-23-6.
- (4) Each health spa shall obtain the bond, letter of credit, or certificate of deposit and furnish a certified copy of the bond, letter of credit, or certificate of deposit to the division prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services. A health spa is considered to be in compliance with this section only if the proof provided to the division shows that the bond, letter of credit, or certificate of credit is current.
- (5) Each health spa shall:
- (a) maintain accurate records of the bond, letter of credit, or certificate of credit and of any payments made, due, or to become due to the issuer; and
- (b) open the records to inspection by the division at any time during normal business hours.
- (6) If a health spa changes ownership, ceases operation, discontinues facilities, or relocates and fails to offer an alternate location within five miles within 30 days after its closing, the health spa is subject to the requirements of this section as if it were a new health spa coming into being at the time the health spa changed ownership. The former owner may not release, cancel, or terminate the owner's liability under any bond, letter of credit, or certificate of deposit previously filed with the division, unless:
- (a) the new owner has filed a new bond, letter of credit, or certificate of deposit for the benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of deposit; or
- (b) the former owner has refunded all unearned payments to consumers.
- (7) If a health spa ceases operation or relocates and fails to offer an alternative location within five miles, the health spa shall provide the division with 45 days prior notice.

Amended by Chapter 189, 2014 General Session