

## Chapter 23 Health Spa Services Protection Act

### 13-23-1 Short title.

This chapter is known as the "Health Spa Services Protection Act."

Enacted by Chapter 105, 1987 General Session

### 13-23-2 Definitions.

As used in this chapter:

- (1) "Business enterprise" means a sole proprietorship, partnership, association, joint venture, corporation, limited liability company, or other entity used in carrying on a business.
- (2) "Consumer" means a purchaser of health spa services for consideration.
- (3) "Division" means the Division of Consumer Protection.
- (4)
  - (a) "Health spa" means a business enterprise that provides access to a facility:
    - (i) for a charge or a fee; and
    - (ii) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.
  - (b) "Health spa" does not include:
    - (i) a licensed physician who operates a facility at which the physician engages in the practice of medicine;
    - (ii) a hospital, intermediate care facility, or skilled nursing care facility;
    - (iii) a public or private school, college, or university;
    - (iv) the state or a political subdivision of the state;
    - (v) the United States or a political subdivision of the United States;
    - (vi) a person offering instruction if the person does not:
      - (A) utilize an employee or independent contractor; or
      - (B) grant a consumer the use of a facility containing exercise equipment;
    - (vii) a business enterprise, the primary operation of which is to teach self-defense or a martial art, including kickboxing, judo, or karate;
    - (viii) a business enterprise, the primary operation of which is to teach or allow an individual to develop a specific skill rather than develop or preserve physical fitness, including gymnastics, tennis, rock climbing, or a winter sport;
    - (ix) a business enterprise, the primary operation of which is to teach or allow an individual to practice yoga or Pilates;
    - (x) a private employer who owns and operates a facility exclusively for the benefit of the employer's employees, retirees, or family members, if the operation of the facility:
      - (A) is only incidental to the overall function and purpose of the employer's business; and
      - (B) is offered on a nonprofit basis;
    - (xi) an individual providing professional services within the scope of the individual's license with the Division of Professional Licensing;
    - (xii) a country club;
    - (xiii) a nonprofit religious, ethnic, or community organization;
    - (xiv) a residential weight reduction center;
    - (xv) a business enterprise that only offers virtual services;

- (xvi) a business enterprise that only offers a credit for a service that a separate business enterprise offers;
  - (xvii) the owner of a lodging establishment, as defined in Section 29-2-102, if the owner only provides access to the lodging establishment's facility to:
    - (A) a guest, as defined in Section 29-2-102; or
    - (B) an operator or employee of the lodging establishment;
  - (xviii) an association, declarant, owner, lessor, or developer of a residential housing complex, planned community, or development, if at least 80% of the individuals accessing the facility reside in the housing complex, planned community, or development; or
  - (xix) a person offering a personal training service exclusively as an employee or independent contractor of a health spa.
- (5) "Health spa facility" means a facility to which a business entity provides access:
- (a) for a charge or a fee; and
  - (b) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.
- (6)
- (a) "Health spa service" means instruction, a service, a privilege, or a right that a health spa offers for sale.
  - (b) "Health spa service" includes a personal training service.
- (7) "Personal training service" means the personalized instruction, training, supervision, or monitoring of an individual's physical fitness or well-being, through exercise, weight control, or athletics.
- (8) "Primary location" means the health spa facility that a health spa designates in a contract for health spa services as the health spa facility the consumer in the contract will primarily use for health spa services.

Amended by Chapter 400, 2022 General Session

Amended by Chapter 415, 2022 General Session

### **13-23-3 Contracts for health spa services.**

- (1)
- (a) A contract for the purchase of a health spa service shall be in writing.
  - (b) The written contract described in Subsection (1)(a) shall constitute the entire agreement between the consumer and the health spa.
- (2)
- (a) The health spa shall provide the consumer with a fully completed copy of the contract required by Subsection (1):
    - (i) at the time of the contract's execution; and
    - (ii) at any time, upon the consumer's request.
  - (b) The copy described in Subsection (2)(a) shall show:
    - (i) the date of the transaction;
    - (ii) the name and address of the health spa;
    - (iii) the name, address, and telephone number of the consumer; and
    - (iv) the consumer's primary location.
- (3)
- (a) A contract described in Subsection (1):
    - (i) may not have a term in excess of 36 months; and
    - (ii) subject to Subsection (3)(b), may include an automatic renewal provision.

- (b) An automatic renewal provision described in Subsection (3)(a) is effective if notice of the automatic renewal provision is provided to the consumer no sooner than 60 days before, and no later than 30 days before, the day on which the contract automatically renews.
- (c) Except for a lifetime membership sold before May 1, 1995, a health spa may not offer a lifetime membership.
- (4) A contract described in Subsection (1) or an attachment to the contract shall clearly state each rule of the health spa that applies to:
  - (a) the consumer's use of the health spa's facilities and services; and
  - (b) cancellation and refund policies of the health spa.
- (5) A contract described in Subsection (1) shall specify which equipment or facility of the health spa:
  - (a) is omitted from the contract's coverage; or
  - (b) may be changed at the health spa's discretion.
- (6) A contract described in Subsection (1) shall clearly:
  - (a) state the consumer's rescission rights under Section 13-23-4; and
  - (b) provide an email address and a mailing address where the consumer can send the health spa a notice of intent to rescind the contract.
- (7)
  - (a) If a consumer and a health spa enter into a contract described in Subsection (1) before May 4, 2022, the health spa may:
    - (i) assign the contract to another health spa that requires the consumer to obtain a contracted health spa service at a health spa facility within five driving miles from the consumer's initial primary location; or
    - (ii) change the consumer's primary location to a health spa facility within five driving miles from the consumer's initial primary location.
  - (b) If a consumer and a health spa enter into a contract described in Subsection (1) on or after May 4, 2022, the health spa may not:
    - (i) assign the contract to another health spa that requires the consumer to obtain a contracted health spa service at a health spa facility within five driving miles from the consumer's initial primary location, unless the health spa that enters into the contract includes in the contract a disclaimer that:
      - (A) is in at least 12-point, bold type on the first page of the contract; and
      - (B) states that the health spa may assign the contract to another health spa requiring the consumer to obtain a contracted health spa service at another facility within five driving miles from the consumer's initial primary location; or
    - (ii) change the consumer's primary location to a health spa facility within five driving miles from the consumer's initial primary location, unless the health spa includes in the contract a disclaimer that:
      - (A) is in at least 12-point, bold type on the first page of the contract; and
      - (B) states that the health spa may change the consumer's primary location to a health spa facility within five driving miles from the consumer's initial primary location.
- (8)
  - (a) Except as permitted under Subsection (8)(b), a health spa may not assign a contract for a health spa service to a health spa that requires the consumer to obtain a contracted health spa service at a health spa facility farther than five driving miles from the consumer's initial primary location, unless the health spa:
    - (i) provides the consumer the option to cancel the contract; and
    - (ii) receives approval from the consumer to assign the contract.

- (b) A health spa may assign a consumer's contract for a health spa service without complying with Subsection (8)(a), if:
  - (i) during the 60-day period immediately before the day on which the health spa assigns the consumer's contract, the consumer uses a health spa facility operated by the assignee more frequently than the consumer's primary location;
  - (ii) the assignee changes the consumer's primary location to the health spa facility described in Subsection (8)(b)(i); and
  - (iii) the health spa has a reciprocity agreement with the assignee.
- (9)
  - (a) Except as permitted under Subsection (9)(b), before a health spa changes a consumer's primary location to a health spa facility farther than five driving miles from the consumer's initial primary location, the health spa shall provide the consumer the option to:
    - (i) cancel the contract for a health spa service; or
    - (ii)
      - (A) continue the contract at the new health spa facility; and
      - (B) designate the new health spa facility as the consumer's primary location.
  - (b) A health spa may change a consumer's primary location without providing the consumer the option described in Subsection (9)(a), if:
    - (i) during the 60-day period immediately before the day on which the health spa changes the consumer's primary location, the consumer uses a health spa facility other than the consumer's primary location more frequently than the consumer's primary location; and
    - (ii) the health spa changes the consumer's primary location to the health spa facility described in Subsection (9)(b)(i).
- (10) The provisions of this section apply regardless of when the execution of a contract described in Subsection (1)(a) occurs.

Amended by Chapter 400, 2022 General Session

**13-23-4 Rescission.**

- (1) A consumer may rescind a contract for the purchase of a health spa service by emailing or mailing written notice of the consumer's intent to rescind:
  - (a) to the email address or mailing address the health spa provided in the contract, as described in Subsection 13-23-3(6)(b); and
  - (b)
    - (i) before midnight of the third business day after the day on which the consumer and health spa execute the contract, as recorded by timestamp or postmark; or
    - (ii) if a consumer and health spa execute the contract when the consumer's primary location is not fully operational and available for use, before midnight of the third business day after the day on which the consumer's primary location becomes fully operational and available for use, as recorded by timestamp or postmark.
- (2)
  - (a) A consumer who rescinds a contract under this section is entitled to a refund of every payment the consumer made, less the reasonable value of any health spa service the consumer actually received.
  - (b) The preparation and processing of the contract or another document is not a health spa service that is deductible under Subsection (2)(a) from any refundable amount.
  - (c) In an enforcement action that the division initiates, a health spa has the burden of proving that any value the health spa retains under Subsection (2)(a) is reasonable.

- (3) The rescission of a contract under this section is effective upon the health spa's receipt of written notice of the consumer's intent to rescind the contract.

Amended by Chapter 274, 2022 General Session

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

- (1)
  - (a)
    - (i) A health spa may not operate a health spa facility in this state unless the health spa registers the health spa facility with the division in accordance with this section.
    - (ii) Registration of a health spa facility under this chapter is effective for one year.
    - (iii) To renew a health spa facility registration under this section, the health spa shall submit a registration renewal application to the division at least 30 days before the day on which the health spa facility's registration expires.
    - (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish:
      - (A) the initial health spa facility registration process, including the content of any forms;
      - (B) the health spa facility registration renewal process, including the content of any forms; and
      - (C) a surety exemption process, including the content of any forms.
    - (b) Each health spa registering a health spa facility in this state shall designate a registered agent for receiving service of process.
    - (c) A health spa's registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.
    - (d) The division shall charge and collect a fee for registration and registration renewal under guidelines provided in Section 63J-1-504.
    - (e) If a health spa fails to submit a complete registration renewal application before the day on which a health spa facility's registration expires, the health spa shall pay a fee of \$25 for each month or part of a month that passes:
      - (i) after the day on which the registration expires; and
      - (ii) before the day on which the health spa submits a complete registration renewal application.
    - (f) The fee described in Subsection (1)(e) is in addition to the registration renewal fee described in Subsection (1)(d).
    - (g) 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 registration renewal.
    - (h) If information in an application to register or renew the registration of a health spa facility materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the day on which the information changes or becomes incorrect or incomplete, correct the application or submit the correct information to the division in a manner that the division establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (2)
    - (a) Except as provided in Section 13-23-6, for each health spa facility a health spa operates, the 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 described in Subsection (2)(a) shall be payable to the division for the benefit of a consumer who incurs damages as the result of the health spa:
  - (i) violating this chapter; or
  - (ii) going out of business.
- (c)
  - (i) After each consumer has fully recovered damages, the division may recover from the bond, letter of credit, or certificate of deposit described in Subsection (2)(a) the costs of collecting and distributing funds under this section, in an amount up to 10% of the face value of the bond, letter of credit, or certificate of deposit.
  - (ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit described in this Subsection (2) may not exceed the amount of the bond, letter of credit, or certificate of deposit.
  - (iii) A health spa shall maintain a bond, letter of credit, or certificate of deposit described in this Subsection (2) in force for one year after the day on which the health spa notifies the division in writing that the health spa has ceased all activities regulated under this chapter at the health spa facility.
- (d)
  - (i) The division may impose a fine against a health spa that fails to comply with the requirements of this Subsection (2) of up to \$100 per day that the health spa remains out of compliance.
  - (ii) The division shall deposit each fine the division collects under this Subsection (2)(d) into the Consumer Protection Education and Training Fund created in Section 13-2-8.
- (3)
  - (a) In accordance with the schedule established in Subsection (3)(b), a health spa shall base the minimum principal amount of the bond, letter of credit, or certificate of deposit required under Subsection (2) on:
    - (i) the number of unexpired contracts for a health spa service, at the time the health spa submits the health spa facility registration or registration renewal application, that designate the health spa facility as the consumer's primary location; or
    - (ii) if at the time the health spa submits the health spa facility registration application the health spa has not executed a contract for a health spa service that designates the health spa facility as a consumer's primary location, the number of contracts for a health spa service designating the health spa facility as a consumer's primary location that the health spa reasonably expects to execute during the health spa facility's first year of registration.

(b)

Principal Amount of Bond, Letter of Credit, or Certificate of Deposit	Number of Contracts
\$5,000	100 or fewer
\$10,000	101 to 250
\$15,000	251 to 500
35,000	501 to 1,500
50,000	1,501 to 3,000

75,000

3,001 or more

- (c) A health spa shall comply with Subsections (3)(a) and (b) with respect to all of the health spa's unexpired contracts for a health spa service that do not satisfy the criteria in Section 13-23-6.
- (4) A health spa shall furnish a copy of the current bond, letter of credit, or certificate of deposit to the division before selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide a health spa service.
- (5) A health spa shall:
  - (a) maintain accurate records of:
    - (i) the bond, letter of credit, or certificate of deposit; and
    - (ii) of each payment made, due, or to become due to the issuer; and
  - (b) open the records described in Subsection (5)(a) to inspection by the division at any time during normal business hours.
- (6)
  - (a) A health spa with a health spa facility registered under this section shall submit a new initial registration for the health spa facility, if the health spa:
    - (i) changes ownership;
    - (ii) permanently ceases and then again commences operation at the health spa facility; or
    - (iii) relocates the health spa facility.
  - (b) The former owner of a health spa 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:
    - (i) 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
    - (ii) the former owner has refunded all unearned payments to consumers.
- (7) If a health spa permanently ceases operation or relocates a health spa facility, the health spa shall provide the division notice at least 45 days before the day on which health spa permanently ceases operation or relocates the health spa facility.

Amended by Chapter 400, 2022 General Session

**13-23-6 Exemptions from bond, letter of credit, or certificate of deposit requirement.**

- (1) A health spa is exempt from Subsections 13-23-5(2) through (5) for a health spa facility, if the health spa only offers access to a health spa service at the health spa facility through:
  - (a) the purchase of an individual class or session;
  - (b) the purchase of a package:
    - (i) with a defined number of classes or sessions; and
    - (ii) for which the health spa may not hold more than \$150 worth of a consumer's unused credit;
  - (c) the purchase of a monthly membership or pass, payment for which the health spa does not collect from a consumer more than two months in advance;
  - (d) an installment contract that:
    - (i) provides for the consumer to make all payments due under the contract, including a down payment, an enrollment fee, a membership fee, or any other payment to the health spa, in equal monthly installments spread over the entire term of the contract; and
    - (ii) contains the following clause: "If this health spa ceases operations at or changes the consumer's primary location in violation of Utah Code Subsection 13-23-3(7), (8), or (9), no

further payments under this contract shall be due to anyone, including any assignee of the contract or purchaser of any note associated with or contained in this contract."; or

- (e) a combination of health spa services described in Subsections (1)(a) through (d).
- (2) For purposes of finding the principal amount for the bond, letter of credit, or certificate of deposit required under Section 13-23-5, a health spa is not required to include in the calculation described in Subsection 13-23-5(3) a contract that offers access to a health spa service as described in Subsection (1).
- (3) A health spa that claims exemption from Subsections 13-23-5(2) through (5) or that a contract should be excluded from the calculation described in Subsection 13-23-5(3) bears the burden of proving to the division that the health spa or contract meets the relevant criteria described in Subsection (1) or (2).

Amended by Chapter 400, 2022 General Session

### **13-23-7 Enforcement -- Costs and attorney's fees -- Penalties.**

- (1)
  - (a) The division may, on behalf of a consumer or on the division's own behalf, file an action for injunctive relief, damages, or both to enforce this chapter.
  - (b) In addition to any relief granted, the division is entitled to an award for reasonable attorney's fees, court costs, and reasonable investigative expenses.
- (2)
  - (a) A person who willfully violates a provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in this chapter, is guilty of a class B misdemeanor.
  - (b) Each day a violation described in Subsection (2)(a) is committed or permitted to continue constitutes a separate punishable offense.
  - (c) In the case of a second offense, the person is guilty of a class A misdemeanor.
  - (d) In the case of a third or subsequent offense, the person is guilty of a third degree felony.
- (3)
  - (a) In addition to any other penalty available under this chapter, a person who violates this chapter is subject to:
    - (i) a cease and desist order; and
    - (ii) an administrative fine of up to \$2,500 for each separate violation that is not a violation described in Subsection 13-23-5(2)(d) up to \$10,000 for any series of violations arising out of the same operative facts.
  - (b) The division shall deposit all administrative fines collected under this chapter into the Consumer Protection Education and Training Fund created in Section 13-2-8.

Amended by Chapter 266, 2021 General Session

### **13-23-8 Grounds for denial, suspension, or revocation.**

The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application or registration upon a finding that the order is in the public interest and that:

- (1) the application for registration or renewal is incomplete or misleading in a material respect;
- (2) the applicant or person registered under this chapter or an officer, director, agent, or employee of the applicant or registrant has:
  - (a) violated this chapter;
  - (b) violated Chapter 11, Utah Consumer Sales Practices Act;



- (c) been enjoined by a court, or is the subject of an administrative order issued in this or another state, if the injunction or order:
  - (i) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or
  - (ii) is based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;
- (d) obtained or attempted to obtain a registration by misrepresentation;
- (e) failed to timely provide the division with any information required by this chapter; or
- (f) failed to pay a fine imposed by the division;
- (3) the applicant's or registrant's bond, letter of credit, or certificate of deposit ceases to be in effect;
- (4) the applicant or registrant requested an exemption from maintaining a bond, letter of credit, or certificate of deposit under Section 13-23-6, but does not meet the requirements for exemption;
- (5) the applicant or registrant excluded from the principal amount calculation described in Subsection 13-23-5(3) for a bond, letter of credit, or certificate of deposit, a contract that did not meet the requirements for exclusion described in Section 13-23-6; or
- (6) the applicant or registrant ceases to provide health spa services.

Amended by Chapter 400, 2022 General Session