

1 **HEALTH SPA SERVICES PROTECTION ACT AMENDMENTS**

2 2021 FIRST SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Health Spa Services Protection Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends provisions regarding contracts for health spa services;
- 13 ▶ amends requirements for a health spa to qualify for an exemption from a bond, letter
- 14 of credit, or certificate of deposit; and
- 15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides retrospective operation.

20 This bill provides a special effective date.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **13-23-3**, as last amended by Laws of Utah 2021, Chapter 266

24 **13-23-4**, as last amended by Laws of Utah 2021, Chapter 266

25 **13-23-6**, as last amended by Laws of Utah 2021, Chapter 266

26 **63I-2-213**, as enacted by Laws of Utah 2011, Chapter 18

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **13-23-3** is amended to read:

30 **13-23-3. Contracts for health spa services.**

31 (1) (a) A contract for the purchase of a health spa service shall be in writing.

32 (b) The written contract described in Subsection (1)(a) shall constitute the entire
33 agreement between the consumer and the health spa.

34 (2) (a) The health spa shall provide the consumer with a fully completed copy of the
35 contract required by Subsection (1):

36 (i) at the time of the contract's execution; and

37 (ii) at any time, upon the consumer's request.

38 (b) The copy described in Subsection (2)(a) shall show:

39 (i) the date of the transaction;

40 (ii) the name and address of the health spa;

41 (iii) the name, address, and telephone number of the consumer; and

42 (iv) the consumer's primary location.

43 (3) (a) A contract described in Subsection (1):

44 (i) may not have a term in excess of 36 months; and

45 (ii) subject to Subsection (3)(b), may include an automatic renewal provision[;].

46 (b) An automatic renewal provision described in Subsection (3)(a) is effective if notice
47 of the automatic renewal provision is provided to the consumer no sooner than 60 days before,
48 and no later than 30 days before, the day on which the contract automatically renews.

49 ~~[(b)]~~ (c) Except for a lifetime membership sold before May 1, 1995, a health spa may
50 not offer a lifetime membership.

51 (4) A contract described in Subsection (1) or an attachment to the contract shall clearly
52 state each rule of the health spa that applies to:

53 (a) the consumer's use of the health spa's facilities and services; and

54 (b) cancellation and refund policies of the health spa.

55 (5) A contract described in Subsection (1) shall specify which equipment or facility of
56 the health spa:

57 (a) is omitted from the contract's coverage; or

58 (b) may be changed at the health spa's discretion.

59 (6) A contract described in Subsection (1) shall clearly:

60 (a) state the consumer's rescission rights under Section 13-23-4; and

61 (b) provide an email address and a mailing address where the consumer can send the
62 health spa a notice of intent to rescind the contract.

63 (7) ~~[A]~~ (a) Except as permitted under Subsection (7)(b), a health spa may not assign a
64 contract for a health spa service to a health spa that requires the consumer to obtain a
65 contracted health spa service at a health spa facility farther than five miles from the consumer's
66 primary location, unless the health spa:

67 ~~[(a)]~~ (i) provides the consumer the option to cancel the contract; and

68 ~~[(b)]~~ (ii) receives approval from the consumer to assign the contract.

69 (b) A health spa may assign a consumer's contract for a health spa service without
70 complying with Subsection (7)(a), if:

71 (i) during the 60-day period immediately before the day on which the health spa
72 assigns the consumer's contract, the consumer uses a health spa facility operated by the
73 assignee more frequently than the consumer's primary location;

74 (ii) the assignee changes the consumer's primary location to the health spa facility
75 described in Subsection (7)(b)(i); and

76 (iii) the health spa has a reciprocity agreement with the assignee.

77 (8) ~~[Before]~~ (a) Except as permitted under Subsection (8)(b), before a health spa
78 changes a consumer's primary location to a health spa facility farther than five miles from the
79 consumer's primary location, the health spa shall provide the consumer the option to:

80 ~~[(a)]~~ (i) cancel the contract for a health spa ~~[services]~~ service; or

81 ~~[(b)-(i)]~~ (ii) (A) continue the contract at the new ~~[location]~~ health spa facility; and

82 ~~[(i)]~~ (B) designate the ~~[newly located]~~ new health spa facility as the consumer's
83 primary location.

84 (b) A health spa may change a consumer's primary location without providing the
85 consumer the option described in Subsection (8)(a), if:

86 (i) during the 60-day period immediately before the day on which the health spa
87 changes the consumer's primary location, the consumer uses a health spa facility other than the
88 consumer's primary location more frequently than the consumer's primary location; and

89 (ii) the health spa changes the consumer's primary location to the health spa facility
90 described in Subsection (8)(b)(i).

91 (9) The provisions of this section apply regardless of when the execution of a contract
92 described in Subsection (1)(a) occurs.

93 Section 2. Section **13-23-4** is amended to read:

94 **13-23-4. Rescission.**

95 (1) A consumer may rescind a contract for the purchase of a health spa service by
96 emailing or mailing written notice of the consumer's intent to rescind:

97 (a) to the email address or mailing address the health spa provided in the contract, as
98 described in Subsection 13-23-4(6)(b); and

99 (b) (i) before midnight of the third business day after the day on which the consumer
100 and health spa execute the contract, as recorded by timestamp or postmark; or

101 (ii) if a consumer and health spa execute the contract when the consumer's primary
102 location is not fully operational and available for use, before midnight of the third business day
103 after the day on which the consumer's primary location becomes fully operational and available
104 for use, as recorded by timestamp or postmark.

105 (2) (a) A consumer who rescinds a contract under this section is entitled to a refund of
106 every payment the consumer made, less the reasonable value of any health spa service the
107 consumer actually received.

108 (b) The preparation and processing of the contract or another document is not a health
109 spa service that is deductible under Subsection (2)(a) from any refundable amount.

110 (c) In an enforcement action that the division initiates, a health spa has the burden of
111 proving that any value the health spa retains under Subsection (2)(a) is reasonable.

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

114 Section 3. Section 13-23-6 is amended to read:

115 **13-23-6. Exemptions from bond, letter of credit, or certificate of deposit**
116 **requirement.**

117 (1) A health spa is exempt from Subsections 13-23-5(2) through (5) for a health spa
118 facility, if the health spa only offers access to a health spa service at the health spa facility
119 through:

120 (a) the purchase of an individual class or session;

121 (b) the purchase of a package:

122 (i) with a defined number of classes or sessions; and

123 (ii) for which the health spa may not hold more than \$150 worth of a consumer's
124 unused credit;

125 (c) the purchase of a monthly membership or pass, payment for which the health spa
126 does not collect from a consumer more than two months in advance;

127 (d) an installment contract that:

128 (i) provides for the consumer to make all payments due under the contract, including a
129 down payment, an enrollment fee, a membership fee, or any other payment to the health spa, in
130 equal monthly installments spread over the entire term of the contract; and

131 (ii) contains the following clause: "If this health spa ceases operations at or ~~relocates~~
132 changes the consumer's primary location in violation of Utah Code Subsection 13-23-3(7) or
133 (8), no further payments under this contract shall be due to anyone, including any assignee of
134 the contract or purchaser of any note associated with or contained in this contract~~[, unless the~~
135 ~~consumer has been presented with the option to cancel the contract and has agreed to the~~
136 ~~assignment or sale of the consumer's contract]~~."; or

137 (e) a combination of health spa services described in Subsections (1)(a) through (d).

138 (2) A health spa that claims exemption from Subsections 13-23-5(2) through (5) bears
139 the burden of proving to the division that the health spa meets the exemption criteria described
140 in Subsection (1).

141 Section 4. Section 63I-2-213 is amended to read:

142 **63I-2-213. Repeal dates -- Title 13.**

143 (1) On July 1, 2022:

144 (a) Subsection 13-23-3(7)(a) is repealed and replaced with the following:

145 "(a) Except as permitted under Subsection (7)(b), a health spa may not assign a contract
146 for a health spa service unless the health spa:

147 (i) provides the consumer the option to cancel the contract; and

148 (ii) receives approval from the consumer to assign the contract."; and

149 (b) Subsection 13-23-3(8)(a) is repealed and replaced with the following:

150 "(a) Except as permitted under Subsection (8)(b), before a health spa changes a
151 consumer's primary location, the health spa shall provide the consumer the option to:

152 (i) cancel the contract for a health spa service; or

153 (ii) (A) continue the contract at the new health spa facility; and

154 (B) designate the new health spa facility as the consumer's primary location."

155 (2) Title 13, Chapter 47, Private Employer Verification Act, is repealed on the program
156 start date, as defined in Section 63G-12-102.

157 **Section 5. Retrospective operation.**

158 This bill has retrospective operation to May 5, 2021.

159 **Section 6. Effective date.**

160 If approved by two-thirds of all the members elected to each house, this bill takes effect
161 upon approval by the governor, or the day following the constitutional time limit of Utah
162 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
163 the date of veto override.