

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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1989 JUL 12 PM 1:09

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Office of the Attorney General TITLE NUMBER: 142
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code § 46A-6-103 & § 46A-7-102(1)(e)
AMENDMENT TO AN EXISTING RULE: YES ___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Health Spas

DATE OF PUBLIC HEARING: August 11, 1989 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Office of the Attorney General
Consumer Protection Division-Conf. Room
812 Quarrier Street, L&S Bldg., 6th Fl.
Charleston, West Virginia 25301

COMMENTS LIMITED TO: ORAL ___ , WRITTEN ___ , BOTH x

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: 812 Quarrier Street
L&S Bldg., 6th Fl.
Charleston, WV 25301

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL.

Charles G. Brown

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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Rule Title: Health Spas

1999 JUL 12 PM 1:09

Type of Rule: Legislative Interpretive

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
PROCEDURAL

Agency Office of the Attorney General Address 812 Quarrier St., 6th Floor
Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Current Expense	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Repairs and Alterations	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Equipment	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Other	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

2. Explanation of above estimates:

No estimated cost increase or decrease.

3. Objectives of these rules: The proposed legislative rule is designed to protect consumers against unfair or deceptive acts or practices in connection with the sale and provision of consumer services by health spas.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: _____

7/12/89

Signature of Agency Head or Authorized Representative

Charles G. Brown

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TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 13
HEALTH SPAS

SUMMARY OF PROPOSED RULE

The purpose of this rule is to protect consumers from unfair or deceptive acts or practices in connection with the sale and provision of consumer services by health spas.

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 13
HEALTH SPAS

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SECRETARY OF STATE

§ 142-13-1. General.

1.1 Scope - This legislative rule defines certain deceptive acts or practices and sets forth certain requirements for sellers and providers of consumer services by health spas in West Virginia, its counties, and all political subdivisions.

1.2 Authority - W. Va. Code § 46A-7-102(1)(e) and Code § 46A-6-103.

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - Not applicable.

1.6 Penalties - Except as otherwise indicated, a violation of this rule constitutes a violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-104 and any person violating the provisions of this rule or the provisions of the West Virginia Consumer Credit and Protection Act shall be subject to a civil penalty in the amount of Five Thousand Dollars for each transaction or occurrence of a repeated and willful violation.

1.7 Construction - This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act, W. Va. Code 46A-1-101 et seq.

1.8 Severability - If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

§ 142-13-2. Definitions.

2.1 "Business day" means all days except legal federal or state holidays and Sundays.

2.2 "Contract" means an oral or written agreement by which one becomes a member of a health spa.

2.3 "Department" means the office of the attorney general of West Virginia.

2.4 "Facilities" means equipment, physical structures, improvements to leasehold premises, and other tangible property, real, personal, or mixed, used by a health spa at each location to conduct its business including, but not limited to, saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment.

2.5 "Health spa" means a business primarily involved in the sale of memberships that provides the members instruction in a program of physical exercise or provides the members use of the facilities of the health spa for a program of physical exercise. The term does not include an organization that is tax exempt under 26 U.S.C. 501 et seq., or a private club owned and operated by its members.

2.6 "Member" means a natural person entitled to the benefits of membership in a health spa.

2.7 "Membership" means the status under a contract between an individual and a health spa that entitles the individual to the use of services of facilities of the health spa.

2.8 "Person" means an individual, corporation, association, organization, partnership, business trust, trust, estate, and any other legal entity.

2.9 "Purchaser" means a person who purchases a health spa membership.

2.10 "Seller" means a person who owns or operates a health spa or who offers for sale the right to use the facilities or the services of the health spa.

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Legislative Rule
§ 142-13-2

2.11 "Services" means programs, plans, guidance, or instruction that a health spa provides for its members, including diet planning, exercise instruction, exercise programs, and instructional classes.

§ 142-13-3. Surety Bond.

Each health spa registering to do business in this state shall post a surety bond in the amount of Fifty Thousand Dollars, or the equivalent in cash or marketable securities, with the attorney general. The type of bond shall be designated by the attorney general. No surety bond shall be accepted for filing unless it is with a surety company authorized to do business in this state. The surety may cancel the bond at any time upon given thirty days' prior written notice to the attorney general. Any person who is damaged by any violation of this rule, any provision of the West Virginia Consumer Credit and Protection Act, or by the seller's breach of the contract for sale or any obligation arising therefrom, may bring an action against the bond to recover damages suffered and any other amounts allowable by law. The attorney general, in any action brought under this rule or any other applicable provisions of law, may likewise proceed against the bond. In no event shall the aggregate liability of the surety for all claims exceed the amount of the surety bond.

§ 142-13-4. Contract requirements.

4.1 The health spa must deliver a fully completed copy of a contract to a purchaser before the contract is signed. The contract constitutes the entire agreement between the seller and the purchaser. The contract must be in writing and must be signed by the purchaser. If the health spa is not open at the time the contract is entered, the contract must clearly state the proposed opening date of the health spa. At the time of delivery the health spa must give the purchaser a written receipt for any payment made by the purchaser under the contract.

4.2 No health spa contract can be sold for a period of time greater than two years.

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4.3 A contract may not require or entail the execution of a note or series of notes by the purchaser that when separately negotiated will cut off as to third parties a claim or defense that the purchaser may have against the seller.

4.4 Each contract shall state in at least 10-point boldfaced type:

4.4.1 "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

4.4.2 "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office.)"

4.4.3 "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE COMPARABLE FACILITIES WITHIN TEN MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN TEN MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY CANCEL THIS CONTRACT BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office.)"

4.4.4 "IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS.

(Address of the health spa home office.)"

§ 142-13-5. Cancellation of contracts.

5.1 A member may cancel a contract before the fourth business day after the date on which the contract is executed by notifying the health spa of the cancellation in writing. Written notification is considered given if the notification is mailed to the home office of the health spa and postmarked not later than midnight of the third business day after execution of the contract. The health spa shall refund all money paid to the purchaser exercising the right to cancel within seven days of the cancellation.

5.2 A member may cancel a contract on written notice by mail to the home office of the health spa if the health spa goes out of business and fails to provide comparable facilities within ten miles or moves its facilities more than ten miles from the location in which the member is enrolled. A member may cancel a contract in the same manner if the health spa fails to provide advertised services. If a contract is cancelled under this subsection, the member is liable for an amount equal to the value of services received and facilities used under the contract up to the date of the cancellation, and if the member has paid money under the contract in excess of that amount the health spa shall promptly refund to the member the excess within twenty days of the cancellation.

5.3 A purchaser of a membership or the legal representative of a purchaser may cancel a contract if the member dies or becomes totally and permanently disabled after the date on which the contract takes effect. The purchaser remains liable for an amount equal to the value of services received and facilities used by the member under the contract up to the day on which the death occurred or the disability was incurred. The health spa shall make a pro rata refund of funds paid under the contract in an amount based on the time remaining in the contract term up to a maximum of 50 percent of the total contract amount. The health spa may require a purchaser or the purchaser's estate to provide reasonable proof of total and permanent disability or death.

§ 142-13-6. Unfair or deceptive acts or practices.

It shall be an unfair or deceptive act or practice for a health spa to:

6.1 Offer special sales or discounts unless such special sales or discounts are made in writing and are made available to all prospective members who have not previously been members of the health spa.

6.2 Make any misrepresentation to current members, prospective members or purchasers of membership contracts regarding:

6.2.1 Qualification of staff;

6.2.2 Availability, quality, or extent of facilities or services;

6.2.3 Results obtained through exercise, dieting, or weight control programs;

6.2.4 Membership rights; or

6.2.5 The period that a special offer or discount will be available.

6.2.6 Advertise that it is bonded by the state.

6.3 Fail to register to do business in this state.

6.4 Fail to post a surety bond as required by Section 3 of this rule.

§ 142-13-7. Violation of the rule; enforcement.

7.1 Any violation of the provisions of this rule is an unfair or deceptive act or practice within the meaning of W. Va. Code § 46A-6-104. Any right, remedy or power set forth in this Chapter 46A may be used to enforce the provisions of this rule.

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7.2 The rights, obligations, and remedies provided in this rule shall be in addition to any other rights, obligations, or remedies provided for by law or in equity.

7.3 The Department may request, and the courts or administrator tribunals shall be empowered to order, any writs, orders, or other relief as may be necessary for the enforcement of the provisions of this rule, including, but not limited to, injunctive relief, restitution, civil penalties, costs, fees, expenses of investigation, affirmative disclosure, advertising or mailings.



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

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July 12, 1989

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1989 JUL 12 PM 1:09
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

The Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, West Virginia 25305

Re: Filing of Proposed Legislative Rule

Dear Secretary Hechler:

Enclosed for filing please find attached one (1) original and one (1) copy of a Proposed Legislative Rule pertaining to the prevention of unfair or deceptive acts or practices in the connection with the sale and provision of consumer services by health spas.

In addition, I have attached a fiscal note and a summary of the proposed rule.

If you have any questions, or if you are in need of any additional information, please feel free to contact me anytime.

Very truly yours

CHARLES G. BROWN
ATTORNEY GENERAL

CB/lp

Enclosures