

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
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**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Office of the Attorney General TITLE NUMBER: 142

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: Series 13

TITLE OF RULE BEING PROPOSED: Health Spas

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill No. 243

SECTION 64-9-3(a), PASSED ON March 10, 1990

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: July 1, 1990

Robert J. Farnout

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 13
HEALTH SPAS

- Section 1. General
- 2. Definitions
- 3. Surety bond, Letter of Credit, and Alternatives
- 4. Contract requirements
- 5. Cancellation of contracts
- 6. Pre-opening sale of contracts
- 7. Unfair or deceptive acts or practices
- 8. Violation of the rule; enforcement

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TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 13
HEALTH SPAS

§ 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 the program of physical exercise or provides the members use of the facilities of the health spa for a program of physical exercise regardless of whether or not the business has wet areas, such as a pool, whirlpool, or steam room. 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 "Market location" means the area within a ten mile radius of the health spa.

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

2.8 "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.

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

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

2.11 "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.

2.12 "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, Letter of Credit, and Alternatives.

Except as hereinafter provided, each health spa registering to do business in this state shall post a surety bond or letter of credit in the amount of fifty thousand dollars, or the equivalent in cash or marketable securities, with the attorney general. The form of bond and letter of credit 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, and no letter of credit shall be accepted for filing unless it is from a bank insured by the Federal Deposit Insurance Corporation. The surety may cancel the bond at any time upon giving thirty days prior written notice to the attorney general. The letter of credit shall not be cancelled or terminated except with the consent of the attorney general. The bond or letter of credit shall be in favor of the State of West Virginia and shall cover only claims by consumers for prorated refunds of monies tendered in advance for membership in a health spa which subsequently closes or is otherwise unable to provide services for the full period of time paid by the consumer.

A health spa is not required to post a surety bond, letter of credit or other indicator of financial security under this section if it charges an application fee, initiation fee, or other initial charge no higher than twenty-five dollars, and either (a) limits its sale of long-term contracts to no longer than three (3) months, or (b) agrees to require advance payment of no more than one-third of the full purchase price of contracts longer than three (3) months and accepts monthly

payments for the balance of the contract period spread out equally over the rest of the contract period.

A health spa is required to send the attorney general's consumer protection division a letter thirty (30) days prior to opening indicating how it plans to comply with the options offered under this section.

The provision of this section shall not apply to health spas otherwise covered by this rule that have operated in this state for a continuous period of three (3) years or longer in the same market location and with the same principals, officers, or corporate identity including subsidiary. For purposes of this section, "operated in this state" does not include periods of pre-opening sales of membership; but, rather, only periods when the health spa is open and providing services to members.

§ 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.

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."

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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.

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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. Pre-opening sale of contracts.

Health spas who solicit and sell memberships prior to fully opening for business and providing all promised services and facilities may not use membership fees collected to build facilities or obtain equipment. Monies collected for memberships prior to opening and providing all promised services and facilities must be placed in an escrow account with an insured financial institution and may not be used by the health spa for operational expenses until it opens and provides promised services and facilities.

§ 142-13-7. Unfair or deceptive acts or practices.

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

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7.1 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.

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

7.2.1 Qualification of staff;

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

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

7.2.4 Membership rights; or

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

7.3 Advertise that it is bonded by the state or that a letter of credit is held by the state.

7.4 Fail to register to do business in this state.

7.5 Fail to either post a surety bond or letter of credit as required by section 3 of this rule or comply with the provisions of section 3 which allows a health spa an alternative to posting a bond or letter of credit.

7.6 Fail to notify the attorney general's consumer protection division of the option the health spa chooses under section 3 of this rule.

7.7 Fail to deposit funds required to be escrowed under section six of this rule.

7.8 Withdraw funds deposited in an escrow account pursuant to section six of this rule before the health spa opens for business and provides all promised services to consumers who have purchased memberships.

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§ 142-13-8. Violation of the rule; enforcement.

8.1 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 Chapter 46A of the West Virginia Code may be used to enforce the provisions of this rule.

8.2 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.

8.3 The department may request, and the courts or administrative 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.



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STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-8986

CONSUMER HOTLINE
(800) 368-8808

December 15, 1987

The Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157-K
Charleston, West Virginia 25305

Re: Proposed legislative rule
pertaining to Health Spas

Dear Secretary Hechler:

Enclosed please find the Notice of Rule Modification and a corrected copy of the above-referenced Rule. It has been modified as authorized by the Legislative Rule-Making Review Committee. Please file the Rule, as modified, in the official records of your office.

If you have questions, please contact me at your convenience.

Sincerely,

ROBERT J. LAMONT, Director
Senior Deputy Attorney General
Consumer Protection Division

RJL/lp

Enclosure

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

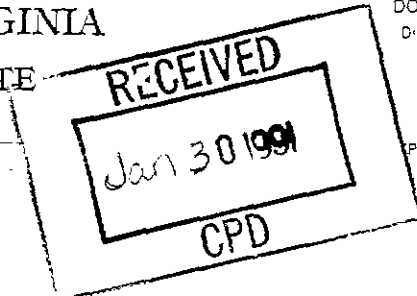
WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

Plus all the volunteer
help we can get)



TO: Bob Lamont
AGENCY: Attorney General
FROM: JUDY COOPER, DIRECTOR ADMINISTRATIVE LAW DIVISION
DATE: January 29, 1991

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 13 TITLE Health Spas

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Robert J. Jamont
TITLE OF PERSON SIGNING: Senior Deputy Attorney General
DATE: Feb. 11, 1991