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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2171

Session of  
1976

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INTRODUCED BY ABRAHAM, TRELLO, SCHMITT, FINEMAN, IRVIS,  
MANDERINO, TOLL, COHEN, STAPLETON, ROSS, TAYLOR, MORRIS,  
GLEESON, OLIVER, O'KEEFE, GIAMMARCO, McCALL, JOHNSON, PERRY,  
BERLIN, GILLESPIE, BELLOMINI, PIEVSKY, HAMMOCK AND ITKIN,  
FEBRUARY 25, 1976

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REFERRED TO COMMITTEE ON CONSUMER PROTECTION, FEBRUARY 25, 1976

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AN ACT

1 Regulating contracts for future personal services and  
2 prescribing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short Title.--This act shall be known and may be  
6 cited as the "Future Personal Services Protection Act."

7 Section 2. Definitions.--As used in this act:

8 "Contract for future personal services" means a contract for  
9 future specific services of instruction, training or assistance  
10 in physical culture, bodybuilding, exercising, reducing, figure  
11 development, dancing or any other such physical skill, or for  
12 the future specific use by an individual patron of the  
13 facilities of a dance studio, ballroom, health studio,  
14 gymnasium, or other facility used for any of the above purposes,  
15 or for membership in any group, club, association, or  
16 organization formed for any of the above purposes, but shall not

1 include contracts for instruction at schools operating pursuant  
2 to the provisions of the act of March 10, 1949 (P.L.30, No.14),  
3 known as the "Public School Code of 1949," or contracts with  
4 organizations not operated for profit, or contracts for health  
5 spa services.

6 "Contract for health spa services" means a contract for  
7 instruction, training or assistance in physical culture,  
8 bodybuilding, exercising, reducing, figure development, dancing,  
9 or any other such activity for the use of the facilities of a  
10 health spa, dance studio, gymnasium or other facility used for  
11 any of the above purposes, or for membership in any group, club,  
12 association or organization formed for any of the above  
13 purposes, such services being of a non-specific character,  
14 wherein the buyer's use of said services, as to frequency, is  
15 within the buyer's discretion, subject to the reasonable rules  
16 and regulations of the provider of health spa services, but  
17 shall not include contracts for schools operating pursuant to  
18 the provisions of the act of March 10, 1949 (P.L.30, No.14),  
19 known as the "Public School Code of 1949," or contracts with  
20 organizations not operated for profit, or contracts for future  
21 personal services.

22 Section 3. Written Contract Required.--Every contract for  
23 future personal services shall be in writing and shall be  
24 subject to the provisions of this act. A copy of the written  
25 contract shall be given to the customer at the time he signs the  
26 contract.

27 Section 4. Limitation on Amount and Payment Period;  
28 Prohibition Against Life Contract; Permissible Service Period;  
29 Advance Payments; Single Contract.--(a) No contract for future  
30 personal services shall require payment by the person receiving

1 the services or the use of the facilities of a total amount in  
2 excess of \$500.

3 (b) No contract for future personal services shall provide  
4 for a term longer than 36 months. No contract for future  
5 personal services shall require payments or financing by the  
6 buyer over a period in excess of 37 months from the date the  
7 contract is entered into, nor shall the term of any such  
8 contract be measured by or be for the life of the buyer;  
9 however, the services to be rendered to the buyer under the  
10 contract may extend over a period not to exceed three years from  
11 the date the contract is entered into with the right to renew,  
12 at the option of the buyer, for a like period. The buyer may  
13 have 30 days after the expiration to renew the contract. The  
14 installment terms must be substantially equal. Installment  
15 payments shall be substantially equal and shall be required to  
16 be made at substantially equal intervals, not exceeding one  
17 month.

18 (c) No contract for future personal services shall require  
19 payment by the person receiving the services or the use of the  
20 facilities of more than \$150 for services in advance of the  
21 first lesson or services. All moneys paid in advance by persons  
22 contracting for future personal services shall be placed by the  
23 seller of the lessons or services in an escrow account in an  
24 institution regulated by the Federal Reserve Board, the Federal  
25 Home Loan Bank Board, Comptroller of the Currency, or the  
26 Pennsylvania Department of Banking until the total number of the  
27 lessons or services represented by the amount of the advance  
28 payment placed in escrow are given to the buyer by the seller.  
29 The seller may draw on the escrow account for an amount equal to  
30 the value of services rendered under the contract. Upon

1 completion of the lessons for which the advance payment is made,  
2 the seller shall be entitled to the full amount of the advance  
3 payment placed in escrow.

4 (d) All contracts for future personal services which may be  
5 in effect between the same seller and the same buyer, the terms  
6 of which overlap for any period, shall be considered as one  
7 contract for the purposes of this act. A buyer and seller can  
8 enter into only one contract at a time, with the exception that  
9 a buyer may renew a contract 30 days before the expiration date.

10 Section 5. Waiver of Defenses Prohibited.--No contract for  
11 future personal services may contain any provisions whereby the  
12 buyer agrees not to assert against the seller or any assignee or  
13 transferee of the future personal services contract any claim or  
14 defense arising out of the future personal services contract.

15 Section 6. Cutting Off of Defenses Prohibited.--No contract  
16 for future personal services may require the buyer to execute a  
17 promissory note or series of promissory notes which, when  
18 negotiated, cut off as to third parties a defense which the  
19 buyer may have against the seller. An assignee of a provider of  
20 future personal services or a transferee of a buyer's monetary  
21 obligation incurred in a future personal services transaction  
22 shall not be liable to the buyer in respect of any claim or  
23 defense against the provider of future personal services beyond  
24 the amount originally paid by such assignee or transferee for  
25 the obligation assigned or transferred.

26 Section 7. Related Lenders Subject to Buyer's Claims and  
27 Defenses.--(a) With respect to any separate obligation incurred  
28 by a buyer in connection with a purchase of future personal  
29 services, a lender who is a related lender with respect to a  
30 provider of future personal services, shall be subject to all

1 claims and defenses of the buyer arising out of the transaction  
2 for which the loan was made, which would be assertable in an  
3 action between the buyer and the person providing future  
4 personal services, but the lender's liability in the aggregate  
5 for any one transaction shall not exceed the amount originally  
6 loaned to the buyer in respect of that transaction.

7 (b) The term "related lender" refers to a lender whose  
8 participation in a future personal services transaction is  
9 arranged by the provider of the future personal services.

10 Knowledge alone on the part of the lender that the proceeds of  
11 the loan shall be used to purchase future personal services  
12 shall not cause the lender to be a "related lender." Without  
13 limiting the scope of inquiry concerning arrangement by the  
14 seller, the seller will be deemed to have arranged the loan, and  
15 the lender may be presumed to be a "related lender" when one or  
16 more of the following circumstances exist:

17 (1) the lender or a principal officer, principal  
18 shareholder, partner, owner, or principal supplier of capital is  
19 so connected with or related by blood or through marriage to the  
20 provider of the future personal services or one of such person's  
21 principal officers, principal shareholders, partners, owners or  
22 principal supplier of capital other than that supplied by the  
23 lender, that dealings between the lender and the provider of the  
24 future personal services would not be at arm's length; or

25 (2) the seller has arranged for the extension of credit to  
26 the borrower by the lender by providing to the lender either a  
27 credit application substantially completed by the buyer or such  
28 information acquired from the buyer as to enable the lender to  
29 complete substantially such an application; or

30 (3) the provider of future personal services receives a fee

1 or other thing of value from the lender in respect of the loan  
2 or otherwise has participated, directly or indirectly, with the  
3 lender in the finance charge on the loan, or has agreed to  
4 purchase from the lender, upon default by the buyer, any  
5 collateral held for the loan; or

6 (4) the lender directly or indirectly controls, or is  
7 directly or indirectly controlled by, or is under direct or  
8 indirect common control with the provider of future personal  
9 services; or

10 (5) the lender and the provider of future personal services  
11 is engaged in a joint venture to produce future personal  
12 services obligations payable to the lender; or

13 (6) the lender has recourse to the seller for nonpayment of  
14 the loan through guaranty, reserve account or otherwise.

15 (c) An issuer of a third party credit card shall be a  
16 related lender if the future personal services are acquired by  
17 the use of its credit card and the services acquired:

18 (1) have a cash price of more than \$50; and

19 (2) the buyer has made a good faith attempt to obtain  
20 satisfactory resolution of a disagreement or problem relative to  
21 the transaction from the supplier honoring the credit card; and

22 (3) were acquired in the same state as the mailing address  
23 previously provided by the card holder or was within 100 miles  
24 from such address.

25 The amount of claims or defenses asserted by the third party  
26 credit card holder shall not exceed the amount of credit  
27 outstanding with respect to such transaction at the time the  
28 card holder first notifies the card issuer or the person  
29 honoring the credit card of such claims or defense. For the  
30 purpose of determining the amount of credit outstanding in the

1 preceding sentence, payments and credits to the card holder's  
2 account are deemed to have been applied, in the order indicated,  
3 to the payment of (i) late charges in the order of their entry  
4 to the account; (ii) finance charges in order of their entry to  
5 the account; and (iii) debits to the account other than those  
6 set forth above, in the order in which each debit entry to the  
7 account was made.

8 Section 8. Performance of Contract; Cancellation and Refund;  
9 Hourly Rate Stated.--(a) Every contract for future personal  
10 services shall provide that performance of the agreed-upon  
11 services or lessons will begin within 30 days from the date the  
12 contract is entered into, and that the contract is voidable at  
13 the option of the buyer if the seller fails to begin services  
14 within 30 days from the date the contract is entered into. Any  
15 moneys paid under such a contract shall be held in escrow until  
16 services are available.

17 (b) Every contract for future personal services shall  
18 further provide:

19 (1) That such contract may be canceled within five business  
20 days after the date of receipt by the buyer of a copy of the  
21 contract by written notice delivered in person or mailed by  
22 certified or registered United States mail to the other party at  
23 the address specified in the contract. The notice shall be  
24 accompanied by all evidence of membership previously delivered  
25 to the buyer. All moneys paid pursuant to such contract shall be  
26 refunded within ten days of receipt of the notice of  
27 cancellation, except that payment shall be made for any future  
28 personal services received prior to such cancellation.

29 (2) Where a buyer repudiates a contract after the period of  
30 rescission established in paragraph (1) (for reasons other than

1 death, permanent disability, or relocation), the seller may  
2 claim in damages no more than 10% of the unpaid balance due on  
3 the contract in addition to payment for any services which the  
4 buyer has already received.

5 (c) Every contract for future personal services shall  
6 contain a written statement of the hourly rate for the services.  
7 Such statement shall be contained in the contract before the  
8 contract is signed by the buyer.

9 Section 9. Relief from Payment Upon Death, Disability, or  
10 Relocation.--(a) Every contract for future personal services  
11 shall contain a clause providing that if, by reason of death or  
12 permanent disability, the persons agreeing to receive services  
13 is unable to receive all the services for which he has  
14 contracted, he and his estate shall be relieved from the  
15 obligation of making payment for the services other than those  
16 received prior to death or the onset of permanent disability,  
17 and that if he has prepaid any sum for services, so much of such  
18 sum as is allocable to services of which he has not availed  
19 himself shall be promptly refunded to him or his representative.  
20 The contract must provide that the buyer is entitled to a  
21 moratorium on the performance of the contract in the event of  
22 temporary disability for the duration of the temporary  
23 disability. The seller shall have the right to require the buyer  
24 to prove temporary or permanent disability by a doctor's  
25 certificate; the seller shall have the right to require that the  
26 buyer must be examined by a physician agreeable to the seller  
27 and buyer at the seller's expense.

28 (b) Contracts for future personal services shall contain a  
29 clause providing that if, by reason of the relocation of the  
30 buyer more than 25 miles from a facility operated by the seller



1 or a substantially similar facility which accepts the seller's  
2 obligation under the contract, the buyer shall be relieved from  
3 the obligation of making payment for the services other than  
4 those received prior to relocation, and that if he has prepaid  
5 any sum for services so must of such sum as is allocable to  
6 services of which he has not availed himself shall be promptly  
7 refunded to him or his representative. The seller shall have the  
8 right to require reasonable verification of relocation.

9 (c) In every case in which a person has prepaid a sum for  
10 lessons and other services under a contract for future personal  
11 services, and, by reason of death or permanent disability or  
12 relocation is unable to receive all such services, the party  
13 agreeing to furnish such services shall, on request, immediately  
14 refund to such person or his personal representative such amount  
15 of the sum prepaid as is proportionate to the amount of services  
16 not received.

17 (d) Notwithstanding the provisions of any contract to the  
18 contrary, whenever the contract price is payable in installments  
19 and the buyer is relieved from making further payments or  
20 entitled to a refund under this section, the amount of the  
21 contract price allocable to services not received shall  
22 represent at least as great a proportion of the total contract  
23 price as the sum of the periodic monthly balances not yet due  
24 bears to the sum of all the periodic monthly balances under the  
25 schedule of installments in the contract.

26 Section 10. Date of Contract.--All future personal services  
27 contracts must designate the date on which the buyer actually  
28 signs the contract.

29 Section 11. Statement of Buyer's Right.--All future personal  
30 services contracts must contain a statement of the buyer's right

1 which complies with this section. The statement must appear in  
2 at least ten-point type in the contract under the conspicuous  
3 caption: "BUYER'S RIGHT TO CANCEL", and read as follows: "If  
4 you wish to cancel this contract, you may cancel by delivering  
5 in person or by mailing a written notice by certified or  
6 registered mail to the seller. The notice must say that you do  
7 not wish to be bound by the contract and must be delivered or  
8 mailed before midnight of the fifth business day after you sign  
9 this contract. You must return with this notice all evidence of  
10 membership.

11 The notice must be delivered or mailed to .....  
12 .....

13 (Insert name and mailing address of seller).

14 You may also cancel this contract if you relocate your residence  
15 farther than 25 miles from any facility operated by the seller  
16 or from any other substantially similar facility which would  
17 accept the obligation of the seller. The seller may require  
18 verification of relocation. You may cancel if you become  
19 permanently disabled or relocate, and you are entitled to a  
20 delay on the performance of the contract if you are temporarily  
21 disabled for the duration of the temporary disability. You may  
22 be asked to prove such temporary or permanent disability by a  
23 doctor's certificate, and the seller may require that you be  
24 examined by a physician agreeable to you and the seller at the  
25 seller's expense. If you cancel because of permanent disability  
26 or relocation, the seller may keep or collect an amount equal to  
27 the value of the services or use of facilities you have already  
28 received. If you cancel after midnight of the fifth business day  
29 for reasons other than permanent disability or relocation, the  
30 seller may keep or collect an amount equal to the value of the

1 services or use of facilities already received plus a maximum of  
2 10% of the unpaid balances due on the contract."

3 Section 12. Bond; Amount; Filing.--Every provider of future  
4 personal services shall maintain a bond issued by a surety  
5 company admitted to do business in this Commonwealth. The  
6 principal sum of the bond shall be in such amount as determined  
7 by the Attorney General or his designate to adequately provide  
8 for the refund of moneys paid in advance to the provider of  
9 future personal services, except that the principal sum of the  
10 bond shall not be less than \$10,000 in the first or any  
11 subsequent year of operations. A copy of such bond shall be  
12 filed with the Department of Justice.

13 Section 13. Bond; Persons Protected.--The bond required by  
14 section 12 shall be in favor of the Commonwealth for the benefit  
15 of any person who, after entering into a contract for future  
16 personal services with the bonded provider of future personal  
17 services, is damaged by fraud or dishonesty or failure to  
18 provide the services in performance of the contract. Any person  
19 claiming against the bond may maintain an action at law against  
20 the bonded provider of future personal services and the surety.

21 The aggregate liability of the surety to all persons for all  
22 breaches of the conditions of the bonds provided herein shall in  
23 no event exceed the amount of the bond.

24 Section 14. Deposit in Lieu of Bond.--In lieu of furnishing  
25 the bond required by section 12, the provider of future personal  
26 services may provide the Department of Justice a deposit in a  
27 like amount. This deposit may be satisfied by any of the  
28 following:

29 (1) Certificates of deposit payable to the Department of  
30 Justice issued by banks doing business in this Commonwealth and

1 insured by the Federal Deposit Insurance Corporation.

2 (2) Investment certificates or share accounts assigned to  
3 the Department of Justice and issued by a savings association  
4 doing business in this Commonwealth and insured by the Federal  
5 Savings and Loan Insurance Corporation.

6 (3) Bearer bonds issued by the United States Government or  
7 by this Commonwealth.

8 (4) Cash deposited with the Department of Justice:

9 Provided, however, That when the provisions of this section are  
10 no longer applicable, the Justice Department shall return the  
11 cash deposited with interest to the provider of future personal  
12 services.

13 Section 15. Provisions not Exclusive.--The provisions of  
14 this act are not exclusive and do not relieve the parties or the  
15 contracts subject thereto from compliance with all other  
16 applicable provisions of law.

17 Section 16. Noncomplying Contracts Invalid.--Any contract  
18 for future personal services which does not comply with the  
19 applicable provisions of this act shall be void and  
20 unenforceable as contrary to public policy.

21 Section 17. Fraud Rendering Contract Void.--Any contract for  
22 future personal services entered into in reliance upon any  
23 wilful and false, fraudulent, or misleading information,  
24 representation, notice, or advertisement of the seller shall be  
25 void and unenforceable.

26 Section 18. Waiver of Provisions.--Any waiver of the buyer  
27 of the provisions of this act shall be deemed contrary to public  
28 policy and shall be void and unenforceable.

29 Section 19. Recovery of Triple Damages and Attorney Fee.--  
30 Any buyer injured by a violation of this act may bring an action

1 for the recovery of damages. Judgment may be entered for three  
2 times the amount at which the actual damages are assessed plus  
3 reasonable attorney fees.

4 Section 20. Unlawful Method, Act, or Practice.--Any methods,  
5 acts, or practices which violate any of the provisions of this  
6 act are hereby declared unlawful.

7 Section 21. Regulations.--The Attorney General may adopt  
8 such rules and regulations as may be necessary for the  
9 enforcement and administration of this act. Such rules and  
10 regulations when promulgated pursuant to the act of July 31,  
11 1968 (P.L.769, No.240), known as the "Commonwealth Documents  
12 Law," shall have the force and effect of law.

13 Section 22. Restraining Prohibited Acts.--Whenever the  
14 Attorney General or appropriate district attorney or the  
15 solicitor of any county or city of the first or second class has  
16 reason to believe that any person is using or is about to use  
17 any method, act or practice declared in this act to be unlawful  
18 and that proceedings would be in the public interest, he may  
19 bring an action in the name of the Commonwealth against such  
20 person to restrain by temporary or permanent injunction the use  
21 of such method, act or practice. The action may be brought in  
22 the court of common pleas of the county in which such person  
23 resides, has his principal place of business, or is doing  
24 business, or may be brought in the Commonwealth Court. The said  
25 courts are authorized to issue temporary or permanent  
26 injunctions to restrain and prevent violations of this act, and  
27 such injunctions shall be issued without bond.

28 Section 23. Assurances of Voluntary Compliance.--In the  
29 administration of this act, the Attorney General may accept an  
30 assurance of voluntary compliance with respect to any method,

1 act or practice deemed to be violative of the act from any  
2 person who has engaged or was about to engage in such method,  
3 act or practice. Such assurance may include a stipulation for  
4 voluntary payment by the alleged violator providing for the  
5 restitution by the alleged violator to buyers, of money,  
6 property or other things received from them in connection with  
7 the violation of this act. Any such assurance shall be in  
8 writing and be filed with the court of common pleas in which the  
9 alleged violator resides, has his principal place of business,  
10 or is doing business, or the Commonwealth Court. Such assurance  
11 of voluntary compliance shall not be considered an admission of  
12 violation for any purpose. Matters thus closed may at any time  
13 be reopened by the Attorney General for further proceedings in  
14 the public interest, pursuant to section 22.

15 Section 24. Civil Penalties; Violation of Injunction or  
16 Assurance of Voluntary Compliance.--Any person who violates the  
17 term of the injunction issued under section 22 or any of the  
18 terms of an assurance of voluntary compliance duly filed in  
19 court under section 23 shall forfeit and pay to the Commonwealth  
20 a civil penalty of not more than \$5,000 for each violation. For  
21 the purposes of this section, the court issuing an injunction,  
22 or in which an assurance of voluntary compliance is filed shall  
23 retain jurisdiction, and the cause shall be continued; in such  
24 cases the Attorney General, appropriate district attorney, or  
25 solicitor, acting in the name of the Commonwealth, may petition  
26 for recovery of civil penalties, which is in addition to other  
27 civil penalties of this act.

28 Section 25. Civil Penalties; Wilful Violation.--In any  
29 action brought under section 22, if the court finds that a  
30 person is wilfully using or has wilfully used a method, act or

1 practice declared unlawful by section 20, the Attorney General,  
2 appropriate district attorney, or solicitor acting in the name  
3 of the Commonwealth of Pennsylvania, may recover, on behalf of  
4 the Commonwealth of Pennsylvania, a civil penalty not exceeding  
5 \$2,500 per violation, which civil penalty shall be in addition  
6 to other civil penalties which may be granted under this act.

7 Section 26. Civil Penalties; Violation of Sections Relating  
8 to Bonds.--Any person who violates the provisions of sections 12  
9 or 14 relating to bonds, shall forfeit and pay to the  
10 Commonwealth a civil penalty of not more than \$2,500 for each  
11 violation. In such cases, the Attorney General, appropriate  
12 district attorney, or solicitor acting in the name of the  
13 Commonwealth may petition for recovery of civil penalties. The  
14 penalties in this section are in addition to any penalties  
15 provided for in other sections of this act.

16 Section 27. Forfeiture of Franchise or Right To Do  
17 Business.--Upon petition by the Attorney General or district  
18 attorney or solicitor, the court having jurisdiction may, in its  
19 discretion, order the dissolution, suspension or forfeiture of  
20 the franchise or right to do business of any person, firm, or  
21 corporation which violates the provisions of section 12 or 14  
22 (relating to bonding) or the terms of an injunction issued under  
23 section 22.

24 Section 28. Effective Date.--This act shall take effect  
25 immediately.