

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 819

Session of
1987

INTRODUCED BY BURNS, McHALE, KENNEY, HECKLER, J. L. WRIGHT,
COWELL, WOGAN, PERZEL AND FOX, MARCH 10, 1987

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 3, 1988

AN ACT

1 Providing for the regulation of health club contracts; and
2 providing for further duties of the Bureau of Consumer
3 Protection, the Attorney General and district attorneys.

4 The purpose of this act is to safeguard the public interest
5 against fraud, deceit and financial hardship and to foster and
6 encourage competition, fair dealing and prosperity in the field
7 of health club services by prohibiting false and misleading
8 advertising and dishonest, deceptive and unscrupulous practices
9 by which the public has been injured in connection with
10 contracts for health club services.

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11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Health Club
15 Act.

16 Section 2. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Business day." Any day except a Sunday or a legal holiday.

21 "Buyer." A natural person who enters into a health club
22 contract.

23 "Director." The Director of the Bureau of Consumer
24 Protection.

25 "Health club." A person, firm, corporation, organization,
26 club or association engaged in the sale of memberships in a
27 health spa, RACQUET CLUB, figure salon, weight reduction center, <—
28 self-defense school or other physical culture service enterprise
29 offering facilities for the preservation, maintenance,
30 encouragement or development of physical fitness or physical

1 well-being. The term shall not include the following:

2 (1) Bona fide nonprofit religious, ethnic, community or
3 service organizations whose functions as health clubs are
4 only incidental to their overall functions and purposes AS <—
5 DETERMINED BY THE DIRECTOR.

6 (2) A facility owned or operated by the Federal
7 Government.

8 (3) A facility owned or operated by this Commonwealth or
9 any of its political subdivisions.

10 (4) A nonprofit public or private school, college or
11 university WHOSE FUNCTIONS AS HEALTH CLUBS ARE ONLY <—
12 INCIDENTAL TO THEIR OVERALL FUNCTIONS AND PURPOSES AS
13 DETERMINED BY THE DIRECTOR.

14 (5) A private club owned and operated by its members.

15 "Health club contract." ~~A written~~ AN agreement in which the <—
16 buyer of health club services purchases, or becomes obligated to
17 purchase, health club services to be rendered over a period of
18 more than three months ~~and the seller of health club services~~ <—
19 ~~receives payment in advance to cover a period of more than three~~
20 ~~months~~, WHETHER OR NOT THE HEALTH CLUB IS COMPLETED OR <—
21 OPERATIONAL.

22 "Health club services." Services, privileges or rights
23 offered for sale or provided by a health club.

24 Section 3. Contents of health club contract.

25 (a) General rule.--Every health club contract shall be in
26 writing and shall contain the following provisions:

27 (1) The date on which the buyer actually signed the
28 contract.

29 (2) Provisions permitting the buyer to cancel the
30 contract without penalty within three business days of its

1 signing and the buyer receiving a fully completed copy
2 thereof. Upon receipt of notice of cancellation under this
3 paragraph, the health club shall refund to the buyer all
4 moneys, including any initiation fee, paid under the
5 contract.

6 (3) A PROVISION THAT, IF A HEALTH CLUB FACILITY <—
7 TEMPORARILY CLOSES FOR 30 DAYS OR LESS, THE BUYER SHALL
8 RECEIVE AN EXTENSION OF THE MEMBERSHIP TERM EQUAL TO THE
9 PERIOD DURING WHICH THE FACILITY IS CLOSED.

10 ~~(3)~~ (4) A provision permitting the buyer to cancel the <—
11 contract if the health club facility closes for more than ~~15~~ <—
12 30 days and the health club fails to provide a comparable
13 facility within five miles of the location designated in the
14 health club contract. Upon receipt of notice of cancellation
15 under this paragraph, the health club shall refund to the
16 buyer an amount computed by dividing the full contract price,
17 including any initiation fee, by the number of weeks in the
18 contract term and multiplying the result by the number of
19 weeks remaining in the contract term.

20 ~~(4)~~ (5) A provision permitting the buyer or his legal <—
21 representative to cancel the contract if the buyer dies or
22 suffers a physical disability AS ATTESTED TO BY THE BUYER'S <—
23 PHYSICIAN whereby the buyer becomes physically unable to use
24 a substantial portion of the facilities for 60 or more
25 consecutive days. Upon receipt of notice of cancellation
26 under this paragraph, the health club shall refund to the
27 buyer an amount computed by dividing the full contract price,
28 including any initiation fee, by the number of weeks in the
29 contract term and multiplying the result by the number of
30 weeks remaining in the contract term, less a predetermined

1 fee not exceeding \$100, or, if more than half the life of the
2 contract has expired, a predetermined fee not exceeding \$50.

3 In the case of disability, the health club may require the
4 buyer to submit to a AN ADDITIONAL physical examination by a <—
5 ~~doctor~~ PHYSICIAN agreeable to the buyer and the health club. <—
6 The ADDITIONAL cost of the examination shall be borne by the <—
7 health club.

8 ~~(5)~~ (6) A provision permitting the buyer to cancel the <—
9 contract if the buyer moves more than 25 miles from the
10 health club and is unable to transfer the contract to a
11 comparable facility located within five miles of his new
12 residence. Upon receipt of notice of cancellation under this
13 paragraph, the health club shall refund to the buyer an
14 amount computed AS OF THE DATE OF RELOCATION by dividing the <—
15 full contract price, including any initiation fee, by the
16 number of weeks in the contract term and multiplying the
17 result by the number of weeks remaining in the contract term,
18 less a predetermined fee not exceeding \$100, or, if more than
19 half the life of the contract has expired, a predetermined
20 fee not exceeding \$50.

21 ~~(6)~~ (7) Provisions that, to cancel a contract PURSUANT <—
22 TO PARAGRAPH (2), (4), (5) OR (6), the buyer shall notify the
23 health club of cancellation in writing, by certified mail,
24 return receipt requested, or by personal delivery to the
25 address specified in the health club contract; that all money
26 to be refunded upon cancellation of the health club contract
27 shall be paid within ~~30~~ 40 days of receipt of the notice of <—
28 cancellation; and that, if the buyer has executed a credit ~~or~~ <—
29 ~~lien~~, LIEN OR AUTOMATIC FUNDS TRANSFER agreement with the <—
30 health club to pay for health club services, any negotiable

1 instrument OR CREDIT OR LIEN AGREEMENT executed by the buyer <—
2 shall also be returned AND ANY AUTOMATIC TRANSFER SHALL BE <—
3 CANCELED within ~~30~~ 40 days after the cancellation. <—

4 ~~(7)~~ (8) If the health club facility is not completed and <—
5 operational on the date the health club contract is executed:

6 (i) A provision stating the date the facilities will
7 be open and available for use.

8 (ii) A provision permitting the buyer to cancel the
9 contract without penalty and receive a full refund,
10 including any initiation fee, if the facility is not
11 completed and operational by the date specified in the
12 contract.

13 (iii) A provision permitting the buyer to cancel the
14 contract without penalty and receive a full refund,
15 including any initiation fee, within three business days
16 after the facility opens or the buyer receives notice of
17 its opening, whichever occurs later.

18 ~~(8)~~ (9) A provision setting forth the name and address <—
19 of the surety or bank from which the health club has obtained
20 a bond or letter of credit and describing the procedure to
21 obtain a refund under such bond or letter of credit.

22 ~~(9)~~ (10) A provision that, until the health club has <—
23 provided the buyer with a signed copy of a contract written
24 in full compliance with this section, the buyer may cancel
25 the contract at any time.

26 (b) Notice provisions required.--A health club contract and
27 any promissory notes executed by the buyer in connection with
28 the health club contract shall contain the following provisions
29 on their faces in boldface type of a minimum size of ten points:

30 (1) Notice of consumer rights.--

1 NOTICE OF CONSUMER RIGHTS

2 If you wish to cancel this contract, you may do so by
3 delivering or mailing by certified mail, return receipt
4 requested, written notice to this health club before 12
5 midnight of the third business day after you sign and
6 receive a copy of this contract. In some cases you may
7 also cancel this contract if you signed it before the
8 health club facility was completed, if the club closes or
9 moves, if you become disabled or if you move from the
10 area. If you cancel, the health club may be entitled to a
11 certain portion of the contract price. If the health club
12 goes out of business or refuses to give you a refund, you
13 may be entitled to collect from the club's bond or letter
14 of credit. For details, read your contract carefully.

15 Enforcement of the Health Club Act is by the Attorney
16 General of the Commonwealth of Pennsylvania or the
17 district attorney of the county in which the health club
18 is located. You may also bring a private cause of action.
19 If your rights are violated, you may contact the State
20 Bureau of Consumer Protection or your local district
21 attorney.

22 (2) Notice of claims and defenses.--

23 NOTICE

24 Any holder of this contract or note is subject to all
25 claims and defenses which the debtor could assert against
26 the seller of goods or services obtained pursuant hereto
27 or with the proceeds hereof. Recovery hereunder by the
28 debtor shall not exceed amounts paid by the debtor
29 hereunder.

30 (c) Assignment of right of action.--Whether or not the

1 health club has complied with the notice requirements of this
2 section, any right of action or defense arising out of a health
3 club contract which the buyer has against the health club, and
4 which would be cut off by assignment, shall not be cut off by
5 assignment of the contract to a third-party holder, whether or
6 not the holder acquires the contract in good faith and for
7 value.

8 (d) Execution and delivery.--Every health club contract
9 shall be signed by the buyer, and a copy shall be delivered to
10 the buyer at the time the contract is executed.

11 Section 4. Duration of contract.

12 (a) Term.--The maximum term of a health club contract shall
13 be 36 months.

14 (b) Renewal.--No health club contract may contain an
15 automatic renewal clause, unless the contract provides for a
16 renewal option for continued membership which must be
17 affirmatively accepted by the buyer at the expiration of each
18 contract term.

19 SECTION 5. INITIATION FEES. <—

20 UNLESS A HEALTH CLUB HAS SECURED A BOND OR LETTER OF CREDIT
21 PURSUANT TO SECTION 10, THE AMOUNT OF ANY INITIATION FEES
22 IMPOSED BY A HEALTH CLUB SHALL BE REASONABLY RELATED TO THE
23 CLUB'S COSTS FOR ESTABLISHING THE INITIAL HEALTH CLUB
24 MEMBERSHIP. AN INITIATION FEE SHALL NOT BE IMPOSED FOR THE
25 PURPOSE OF CIRCUMVENTING THE REQUIREMENTS OF THIS ACT.

26 Section 5 6. Provisions of act not exclusive. <—

27 The provisions of this act are not exclusive and do not
28 relieve the parties or the contracts subject to this act from
29 the duty to comply with all other applicable provisions of law.

30 Section 6 7. Noncomplying contract voidable. <—

1 A health club contract which does not comply with this act
2 shall be voidable at the option of the buyer.

3 Section 7 8. Misrepresentation rendering contract voidable. <—

4 A health club contract entered into by the buyer due to false
5 or misleading information, representation or advertisement of
6 the health club or its agents shall be voidable at the option of
7 the buyer.

8 Section 8 9. Waiver of provisions. <—

9 An attempted waiver by the buyer of the provisions of this
10 act shall be deemed contrary to public policy and shall be void
11 and unenforceable.

12 Section 9 10. Bond or letter of credit required. <—

13 (a) Filing of bond.--Before entering into a health club
14 contract for health club services, a health club shall file and
15 maintain with the director, in form and substance satisfactory
16 to him, a bond ~~in the amount of \$100,000~~ with corporate surety <—
17 from a company authorized to transact business in this
18 Commonwealth, or an irrevocable letter of credit from a bank
19 insured by the Federal Deposit Insurance Corporation (FDIC), in <—
20 the ~~amount of \$100,000~~. AMOUNTS INDICATED BELOW: <—

21 HEALTH CLUB CONTRACT FOR NO MORE THAN 24 MONTHS -

22 \$100,000 BOND OR LETTER OF CREDIT

23 HEALTH CLUB CONTRACT FOR MORE THAN 24 MONTHS - \$200,000

24 BOND OR LETTER OF CREDIT

25 However, any health club that certifies in writing with the
26 director that it will sell and maintain health club contracts
27 ~~with~~ FOR no more than 24 MONTHS AND WITH NO MORE THAN the number <—
28 of persons indicated below shall, for so long as it abides by
29 this certification, be required to file with the director such a
30 bond or letter of credit only in the amounts indicated below:

1 300 persons - \$50,000 bond or letter of credit

2 150 persons - ~~\$250,000~~ \$25,000 bond or letter of credit <—

3 (b) Duration.--The bond or letter of credit shall be filed
4 and maintained regardless of whether the health club facilities
5 are as yet completed and open to members and shall not be
6 canceled or terminated except with the consent of the director.

7 (c) Number.--Each separate location where health club
8 services are offered shall be considered a separate health club
9 and shall file a separate bond or letter of credit with respect
10 thereto, even though the separate locations are owned by the
11 same person.

12 (d) Purpose.--The bond or letter of credit shall be for the
13 exclusive purpose of providing buyer refunds and shall not be
14 deemed an asset of the health club for bankruptcy or any other
15 purpose.

16 (e) Certification of compliance.--All health clubs shall
17 certify to the director on or before June 1 of each year that
18 the appropriate bond or letter of credit remains in effect.

19 Section ~~10~~ 11. Protection afforded. <—

20 (a) Refund to buyer.--The bond or letter of credit required
21 by section ~~9~~ 10 shall be for the benefit of a buyer who sustains <—
22 any loss or damage as a result of the breach of contract or
23 bankruptcy by a health club.

24 (b) Recovery.--If an injured buyer does not receive a refund
25 from the health club, he may file a claim with the surety, and,
26 if the claim is not paid, the buyer may bring an action based on
27 the bond and recover against the surety. In the case of a letter
28 of credit that has been filed with the director, the buyer shall
29 bring an action against the health club and thereafter submit
30 the final judgment he obtains to the director requesting payment

1 under the terms of the letter of credit.

2 (c) Statute of limitations.--Any claim under this section
3 shall be filed no later than six months from the date on which
4 the injury occurred.

5 (d) Limitation on liability of surety.--The aggregate
6 liability of the bond or letter of credit to all persons for all
7 breaches of the conditions of the bond or letter of credit shall
8 in no event exceed the amount of bond or letter of credit. IF <—
9 CLAIMS FILED EXCEED THE AMOUNT OF THE BOND, THE SURETY SHALL
10 DISTRIBUTE THE AMOUNT OF THE BOND OR A STANDARD PERCENTAGE OF
11 THE AMOUNT CLAIMED BY ALL BUYERS SEEKING RELIEF UNDER THIS
12 SECTION.

13 (e) Contract records.--Every health club shall maintain
14 accurate records of the name, address, contract terms and
15 payments of each buyer of health club services. These records
16 shall be open for inspection and copying by the director during
17 normal business hours or upon 48 hours' written notice.

18 SECTION 12. TRAINED PERSONNEL. <—

19 EVERY HEALTH CLUB SHALL ENSURE THAT AT LEAST ONE PERSON
20 TRAINED IN CARDIOPULMONARY RESUSCITATION (CPR) IS PRESENT ON THE
21 PREMISES OF THE HEALTH CLUB AT ALL TIMES THAT THE HEALTH CLUB IS
22 OPEN FOR BUSINESS.

23 Section ~~11~~ 13. Offenses defined. <—

24 (a) Unfair trade practices.--A violation of this act shall
25 constitute a violation of the act of December 17, 1968
26 (P.L.1224, No.387), known as the Unfair Trade Practices and
27 Consumer Protection Law, and shall be subject to the enforcement
28 provisions and private rights of action contained in that act.

29 (b) Failure to register.--A health club that fails to
30 register under section ~~13~~ 15 commits a misdemeanor of the second <—

1 degree.

2 (c) Failure to maintain bond.--A health club that fails to
3 obtain and maintain a bond or letter of credit under section
4 ~~9(a)~~ 10 commits a misdemeanor of the second degree. <—

5 Section ~~12~~ 14. Rules and regulations. <—

6 The director may adopt rules and regulations necessary to
7 enforce and administer this act. These rules and regulations,
8 when promulgated pursuant to the act of July 31, 1968 (P.L.769,
9 No.240), referred to as the Commonwealth Documents Law, shall
10 have the force and effect of law.

11 Section ~~13~~ 15. Registration required. <—

12 At least 30 days prior to advertising, offering for sale,
13 selling or providing health club services PURSUANT TO A HEALTH <—
14 CLUB CONTRACT, a health club shall register with the director on
15 a form and in a substance satisfactory to the director.

16 Section ~~14~~ 16. Effective date. <—

17 This act shall take effect in 120 days.