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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 134 Session of  
1989

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INTRODUCED BY GREENLEAF, BELL, HELFRICK, LEWIS, FISHER,  
SALVATORE, SHUMAKER, WENGER, AFFLERBACH, O'PAKE AND LYNCH,  
JANUARY 23, 1989

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 23, 1989

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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.

11 TABLE OF CONTENTS

12 Section 1. Short title.  
13 Section 2. Definitions.  
14 Section 3. Contents of health club contract.  
15 Section 4. Duration of contract.  
16 Section 5. Initiation fees.  
17 Section 6. Provisions of act not exclusive.

1 Section 7. Noncomplying contract voidable.

2 Section 8. Effect of facility closing on certain contracts.

3 Section 9. Misrepresentation rendering contract voidable.

4 Section 10. Waiver of provisions.

5 Section 11. ~~Bond or letter of credit~~ FINANCIAL SECURITY <—  
6 required.

7 Section 12. Protection afforded.

8 Section 13. Health club exempt from ~~bond or letter of credit~~ <—  
9 FINANCIAL SECURITY. <—

10 Section 14. ~~Trained personnel~~ EMPLOYEE AVAILABLE TO <—  
11 ADMINISTER CPR.

12 Section 15. Offenses defined.

13 Section 16. Rules and regulations.

14 Section 17. Registration required.

15 Section 18. Effective date.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. Short title.

19 This act shall be known and may be cited as the Health Club  
20 Act.

21 Section 2. Definitions.

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

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

26 "Buyer." A natural person who enters into a health club  
27 contract.

28 "Director." The Director of the Bureau of Consumer  
29 Protection.

30 "Health club." A person, firm, corporation, organization,

1 club or association engaged in the sale of memberships in a  
2 health spa, racquet club, figure salon, weight reduction center  
3 or other physical culture service enterprise offering facilities  
4 for the preservation, maintenance, encouragement or development  
5 of physical fitness or physical well-being. The term shall not  
6 include the following:

7 (1) Bona fide nonprofit religious, ethnic, community or  
8 service organizations whose functions as health clubs are  
9 only incidental to their overall functions and purposes as  
10 determined by the director.

11 (2) A facility owned or operated by the Federal  
12 Government.

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

15 (4) A nonprofit public or private school, college or  
16 university whose functions as health clubs are only  
17 incidental to their overall functions and purposes as  
18 determined by the director.

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

20 (6) A weight reduction organization which emphasizes  
21 diet and nutrition and which does not provide physical  
22 exercise facilities and does not conduct a physical exercise  
23 program on the premises as part of its services and as  
24 determined by the director.

25 "Health club contract." An agreement in which the buyer of  
26 health club services purchases, or becomes obligated to  
27 purchase, health club services to be rendered over a period of  
28 more than three months, whether or not the health club is  
29 completed or operational.

30 "Health club services." Services, privileges or rights

1 offered for sale or provided by a health club.

2 Section 3. Contents of health club contract.

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

5 (1) The date on which the buyer actually signed the  
6 contract.

7 (2) Provisions permitting the buyer to cancel the  
8 contract without penalty within three business days of its  
9 signing and the buyer receiving a fully completed copy  
10 thereof. Upon receipt of notice of cancellation under this  
11 paragraph, the health club shall refund to the buyer all  
12 moneys, including any initiation fee, paid under the  
13 contract.

14 (3) A provision that, if a health club facility  
15 temporarily closes for 30 days or less, the buyer shall  
16 receive an extension of the membership term equal to the  
17 period during which the facility is closed.

18 (4) A provision permitting the buyer to cancel the  
19 contract if the health club facility closes for more than 30  
20 days and the health club fails to provide a comparable  
21 facility within ~~five~~ TEN miles of the location designated in <—  
22 the health club contract. Upon receipt of notice of  
23 cancellation under this paragraph, the health club shall  
24 refund to the buyer all moneys paid in excess of an amount  
25 computed by dividing the full contract price, including any  
26 initiation fee, by the number of weeks in the contract term  
27 and multiplying the result by the number of weeks elapsed in  
28 the contract term.

29 (5) A provision permitting the buyer to extend the  
30 membership term of the contract at no additional cost for a

1 period of time equal to the duration of a disability where  
2 the buyer has a disability which precludes the buyer from  
3 using one-third or more of the health club facilities for a  
4 period of less than six months and the disability is verified  
5 by a physician.

6 (6) A provision permitting the buyer or his legal  
7 representative to cancel the contract if the buyer dies or  
8 becomes permanently disabled. A permanent disability means a  
9 condition which precludes the buyer from using one-third or  
10 more of the facilities for six months or more and the  
11 condition is verified by a physician. Upon receipt of notice  
12 of cancellation under this paragraph, the health club shall  
13 refund to the buyer all moneys paid in excess of an amount  
14 computed by dividing the full contract price, including any  
15 initiation fee, by the number of weeks in the contract term  
16 and multiplying the result by the number of weeks elapsed in  
17 the contract term, less a predetermined fee not exceeding  
18 \$100, or, if more than half the life of the contract has  
19 expired, a predetermined fee not exceeding \$50. In the case  
20 of permanent disability, the health club may require the  
21 buyer to submit to a physical examination by a physician  
22 agreeable to the buyer and the health club. The additional  
23 cost of the examination shall be borne by the health club.

24 (7) A provision permitting the buyer to cancel the  
25 contract if the buyer moves more than 25 additional miles  
26 from the health club and is unable to transfer the contract  
27 to a comparable facility located within five miles of his new  
28 residence. Upon receipt of notice of cancellation under this  
29 paragraph, the health club shall refund to the buyer all  
30 moneys paid in excess of an amount computed as of the date of

1 relocation by dividing the full contract price, including any  
2 initiation fee, by the number of weeks in the contract term  
3 and multiplying the result by the number of weeks elapsed in  
4 the contract term, less a predetermined fee not exceeding  
5 \$100, or, if more than half the life of the contract has  
6 expired, a predetermined fee not exceeding \$50.

7 (8) Provisions that, to cancel a contract pursuant to  
8 paragraph (2), (4), (6) or (7), the buyer shall notify the  
9 health club of cancellation in writing, by certified mail,  
10 return receipt requested, or by personal delivery to the  
11 address specified in the health club contract; that all money  
12 to be refunded upon cancellation of the health club contract  
13 shall be paid within 40 days of receipt of the notice of  
14 cancellation; and that, if the buyer has executed a credit,  
15 lien or automatic funds transfer agreement with the health  
16 club to pay for health club services, any negotiable  
17 instrument or credit or lien agreement executed by the buyer  
18 shall also be returned and any automatic transfer shall be  
19 canceled within 40 days after the cancellation.

20 (9) If the health club facility is not completed and  
21 operational on the date the health club contract is executed:

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

24 (ii) A provision permitting the buyer to cancel the  
25 contract without penalty and receive a full refund,  
26 including any initiation fee, if the facility is not  
27 completed and operational by the date specified in the  
28 contract.

29 (iii) A provision permitting the buyer to cancel the  
30 contract without penalty and receive a full refund,

1 including any initiation fee, within three business days  
2 after the facility opens or the buyer receives notice of  
3 its opening, whichever occurs later.

4 (10) A provision setting forth the name and address of  
5 the surety or bank from which the health club has obtained a  
6 bond or letter of credit and describing the procedure to  
7 obtain a refund under such bond or letter of credit.

8 (11) A provision that, until the health club has  
9 provided the buyer with a signed copy of a contract written  
10 in full compliance with this section, the buyer may cancel  
11 the contract at any time.

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

16 (1) Notice of consumer rights.--

17 BUYER'S RIGHT TO CANCEL

18 If you wish to cancel this contract, you may cancel  
19 by delivering or mailing by certified mail, return  
20 receipt requested, written notice to this health  
21 club. The notice must say that you do not wish to be  
22 bound by the contract and must be delivered or mailed  
23 before 12 midnight of the third business day after  
24 you sign and receive a copy of this contract. The  
25 notice must be delivered or mailed to . . . (health  
26 club shall insert its name and mailing address). In  
27 some cases you may also cancel this contract if you  
28 signed it before the health club facility was  
29 completed, if the club moves or goes out of business,  
30 if you become permanently disabled or if you move

1 from the area. If you cancel, the health club may be  
2 entitled to a certain portion of the contract price.  
3 If the health club goes out of business or refuses to  
4 give you a refund, there may be a bond or letter of  
5 credit under which you are entitled to collect. For  
6 details, read your contract carefully. Enforcement of  
7 the Health Club Act is by the Attorney General of the  
8 Commonwealth of Pennsylvania or the district attorney  
9 of the county in which the health club is located.  
10 You may also bring a private cause of action. If your  
11 rights are violated, you may contact the State Bureau  
12 of Consumer Protection or your local district  
13 attorney.

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

15 NOTICE

16 Any holder of this contract or note is subject to all  
17 claims and defenses which the debtor could assert  
18 against the seller of goods or services obtained  
19 pursuant hereto or with the proceeds hereof. Recovery  
20 hereunder by the debtor shall not exceed amounts paid  
21 by the debtor hereunder.

22 (c) Assignment of right of action.--Whether or not the  
23 health club has complied with the notice requirements of this  
24 section, any right of action or defense arising out of a health  
25 club contract which the buyer has against the health club, and  
26 which would be cut off by assignment, shall not be cut off by  
27 assignment of the contract to a third-party holder, whether or  
28 not the holder acquires the contract in good faith and for  
29 value.

30 (d) Execution and delivery.--Every health club contract



1 shall be signed by the buyer, and a copy shall be delivered to  
2 the buyer at the time the contract is executed.

3 Section 4. Duration of contract.

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

6 (b) Renewal.--No health club contract may contain an  
7 automatic renewal clause, unless the contract provides for a  
8 renewal option for continued membership which must be  
9 affirmatively accepted by the buyer at the expiration of each  
10 contract term.

11 Section 5. Initiation fees.

12 Except as provided in section 13, the amount of any  
13 initiation fees imposed by a health club shall be reasonably  
14 related to the club's costs for establishing the initial health  
15 club membership. An initiation fee shall not be imposed for the  
16 purpose of circumventing the requirements of this act.

17 Initiation fees shall be included in the computation of any  
18 refunds due under this act.

19 Section 6. Provisions of act not exclusive.

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

23 Section 7. Noncomplying contract voidable.

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

26 Section 8. Effect of facility closing on certain contracts.

27 Any health club contract entered into by the buyer within 30  
28 days of the closing of a health club shall be voidable at the  
29 option of the buyer.

30 Section 9. Misrepresentation rendering contract voidable.

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

5 Section 10. Waiver of provisions.

6 An attempted waiver by the buyer of the provisions of this  
7 act shall be deemed contrary to public policy and shall be void  
8 and unenforceable.

9 Section 11. ~~Bond or letter of credit~~ FINANCIAL SECURITY <—

10 required.

11 (a) Filing of ~~bond~~ FINANCIAL SECURITY.--Before entering into <—  
12 a health club contract for health club services, a health club  
13 shall file and maintain with the director, in form and substance  
14 satisfactory to him, a bond with corporate surety from a company  
15 authorized to transact business in this Commonwealth, ~~or an~~ <—  
16 irrevocable letter of credit from a bank insured by the Federal  
17 Deposit Insurance Corporation (FDIC), OR A MORTGAGE OR JUDGMENT <—  
18 NOTE SECURED BY AN INTEREST IN REAL ESTATE OWNED BY THE HEALTH  
19 CLUB in the amounts indicated below:

20 (1) Health club contracts for no more than 12 months -  
21 \$50,000.~~bond or letter of credit.~~ <—

22 (2) Any health club contract for more than 12 months but  
23 no more than 24 months - \$100,000.~~bond or letter of credit.~~ <—

24 (3) Any health club contract for more than 24 months -  
25 \$200,000.~~bond or letter of credit.~~ <—

26 However, any health club that certifies in writing with the  
27 director that it will sell and maintain health club contracts  
28 for no more than 24 months and with no more than the number of  
29 persons indicated below shall, for so long as it abides by this  
30 certification, be required to file with the director such a ~~bond~~ <—

1 ~~or letter of credit~~ FINANCIAL SECURITY only in the amounts <—  
2 indicated below:  
3           300 persons - \$50,000 ~~bond or letter of credit~~ <—  
4           150 persons - \$25,000 ~~bond or letter of credit~~ <—  
5       (B) MORTGAGE OR JUDGMENT NOTE.--WHEN THE FINANCIAL SECURITY <—  
6 FILED WITH THE DIRECTOR IS IN THE FORM OF A MORTGAGE OR JUDGMENT  
7 NOTE, IT SHALL BE ACCOMPANIED BY AN APPRAISAL OF THE PLEDGED  
8 PROPERTY SATISFACTORY TO THE DIRECTOR, TOGETHER WITH A TITLE  
9 INSURANCE POLICY FROM AN INSURANCE COMPANY AUTHORIZED TO DO  
10 BUSINESS IN THIS COMMONWEALTH OR A CERTIFICATE FROM AN ATTORNEY  
11 WHO IS ADMITTED TO PRACTICE IN THIS COMMONWEALTH CERTIFYING THAT  
12 THE HEALTH CLUB HAD AN UNENCUMBERED EQUITY IN THE PROPERTY  
13 PLEDGED OF AT LEAST 125% OF THE AMOUNT OF FINANCIAL SECURITY  
14 REQUIRED UNDER SUBSECTION (A) AT THE TIME THE MORTGAGE OR  
15 JUDGMENT NOTE WAS ENTERED OF RECORD.  
16       **~~(b)~~** (C) Duration.--The ~~bond or letter of credit~~ FINANCIAL <—  
17 SECURITY shall be filed and maintained regardless of whether the  
18 health club facilities are as yet completed and open to members  
19 and shall not be canceled or terminated except with the consent  
20 of the director.  
21       **~~(c)~~** (D) Number.--Each separate location where health club <—  
22 services are offered shall be considered a separate health club  
23 and shall file ~~a separate bond or letter of credit~~ SEPARATE <—  
24 FINANCIAL SECURITY with respect thereto, even though the  
25 separate locations are owned by the same person.  
26       **~~(d)~~** (E) Purpose.--The ~~bond or letter of credit~~ FINANCIAL <—  
27 SECURITY shall be for the exclusive purpose of providing buyer  
28 refunds and shall not be deemed an asset of the health club for  
29 bankruptcy or any other purpose. The buyer's claim to any money  
30 under this section shall be prior to that of any creditor of the

1 health club.

2 ~~(e)~~ (F) Certification of compliance.--All health clubs shall <—  
3 certify to the director on or before June 1 of each year that  
4 the appropriate ~~bond or letter of credit~~ FINANCIAL SECURITY <—  
5 remains in effect.

6 Section 12. Protection afforded.

7 (a) Refund to buyer.--The ~~bond or letter of credit~~ FINANCIAL <—  
8 SECURITY required by section 11 shall be for the benefit of a  
9 buyer who sustains any loss or damage as a result of the breach  
10 of contract or bankruptcy by a health club.

11 (b) Recovery.--If an injured buyer does not receive a refund  
12 from the health club, he may file a claim with the surety, and,  
13 if the claim is not paid, the buyer may bring an action based on  
14 the bond and recover against the surety. In the case of a letter  
15 of credit that has been filed with the director, the buyer shall  
16 bring an action against the health club and thereafter submit  
17 the final judgment he obtains to the director requesting payment  
18 under the terms of the letter of credit. IN THE CASE OF A <—  
19 MORTGAGE OR JUDGMENT NOTE THAT HAS BEEN FILED WITH THE DIRECTOR,  
20 THE BUYER MAY BRING AN APPROPRIATE LEGAL ACTION AGAINST THE  
21 HEALTH CLUB AND, UPON OBTAINING A FINAL JUDGMENT, SATISFY HIS  
22 CLAIM FROM THE PROCEEDS.

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

26 (d) Limitation on liability of surety.--The aggregate  
27 liability of the bond or letter of credit to all persons for all  
28 breaches of the conditions of the bond ~~or~~, letter of credit OR <—  
29 MORTGAGE OR JUDGMENT NOTE shall in no event exceed the amount of  
30 bond ~~or~~, letter of credit OR MORTGAGE OR JUDGMENT NOTE. If <—

1 claims filed exceed the amount of the bond, the surety shall  
2 distribute the amount of the bond as a standard percentage of  
3 the amount claimed by all buyers seeking relief under this  
4 section.

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

10 Section 13. Health club exempt from ~~bond or letter of credit~~ <—

11 FINANCIAL SECURITY. <—

12 A health club shall be exempt from filing and maintaining a <—

13 ~~bond or letter of credit~~ FINANCIAL SECURITY upon providing the <—

14 director satisfactory proof that all of its health club

15 contracts meet all of the following requirements:

16 (1) All health club contracts used must contain the  
17 following clause:

18 Under this contract, no further payments shall be due  
19 to anyone, including any purchaser of any note  
20 associated with or contained in this contract, in the  
21 event the health club at which the contract is  
22 entered into ceases operation and fails to offer a  
23 comparable alternate location within ~~five~~ TEN miles. <—

24 (2) All payments due under the contract must be in equal  
25 monthly installments spread over the entire term of the  
26 contract, except that a club may charge and collect at the  
27 beginning of the contract, an initiation fee not to exceed  
28 the lesser of six monthly installments to be made under the  
29 contract, or the actual costs of establishing the initial  
30 health club membership.

1 (3) There may be no payments of any type, including, but  
2 not limited to, down payments, membership fees or any other  
3 direct payment to the health club, other than the monthly  
4 payments and initiation fees described in paragraph (2).

5 (4) The term of the contract may not exceed 12 months.

6 (5) The contract must comply with all other provisions  
7 of this act.

8 ~~Section 14. Trained personnel.~~ <—

9 ~~Every health club shall ensure that it has employees trained~~  
10 ~~in cardiopulmonary resuscitation (CPR).~~

11 SECTION 14. EMPLOYEE AVAILABLE TO ADMINISTER CPR. <—

12 (A) GENERAL RULE.--EVERY HEALTH CLUB SHALL EMPLOY AND HAVE  
13 ON THE HEALTH CLUB'S PREMISES DURING THE CLUB'S HOURS OF  
14 OPERATION A PERSON WHO IS TRAINED AND CERTIFIED TO ADMINISTER  
15 CPR.

16 (B) NATURE OF EMPLOYMENT.--AN EMPLOYEE WHO IS TRAINED AND  
17 CERTIFIED TO ADMINISTER CPR MAY BE HIRED PRIMARILY TO FULFILL  
18 OTHER FUNCTIONS FOR THE EMPLOYING HEALTH CLUB.

19 (C) NUMBER OF EMPLOYEES CERTIFIED.--IF A HEALTH CLUB IS OPEN  
20 FOR MORE THAN EIGHT HOURS A DAY AND MORE THAN FIVE DAYS A WEEK,  
21 IT SHALL EMPLOY MORE THAN ONE PERSON WHO IS TRAINED AND  
22 CERTIFIED TO ADMINISTER CPR.

23 (D) MONITORING.--THE DEPARTMENT SHALL MONITOR EACH LICENSED  
24 FITNESS CENTER TO ENSURE THAT THE PROVISIONS OF THIS SECTION ARE  
25 BEING CARRIED OUT. IT MAY IMPOSE THE PENALTY PROVIDED FOR IN  
26 SUBSECTION (G).

27 (E) TRAINING.--THE DEPARTMENT SHALL DETERMINE WHETHER AN  
28 ADEQUATE CPR TRAINING PROGRAM IS BEING PROVIDED WITHIN EACH  
29 COUNTY AND SHALL INITIATE AND PROVIDE PROGRAMS IN EACH COUNTY  
30 WITHOUT ONE.

1 (F) REGULATIONS.--THE SECRETARY SHALL DEVISE AND PROMULGATE  
2 REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS  
3 SECTION.

4 (G) PENALTY.--THE OWNER OF A HEALTH CLUB WHICH DOES NOT  
5 PROVIDE AN EMPLOYEE WHO IS TRAINED AND CERTIFIED TO ADMINISTER  
6 CPR COMMITS A SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE  
7 SENTENCED TO PAY A FINE OF \$1,000.

8 (H) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
9 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
10 SUBSECTION:

11 "CPR." CARDIOPULMONARY RESUSCITATION, AN APPROVED LIFESAVING  
12 TECHNIQUE WHICH INVOLVES STIMULATION OF THE LUNGS AND HEART OF A  
13 VICTIM OF CARDIAC OR PULMONARY DISTRESS.

14 "DEPARTMENT." THE DEPARTMENT OF HEALTH OF THE COMMONWEALTH.

15 "SECRETARY." THE SECRETARY OF HEALTH OF THE COMMONWEALTH.

16 Section 15. Offenses defined.

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

22 (b) Failure to register.--A health club that fails to  
23 register under section 17 commits a misdemeanor of the second  
24 degree.

25 (c) Failure to maintain bond.--A health club that fails to  
26 obtain and maintain a ~~bond or letter of credit~~ FINANCIAL  
27 SECURITY under section 11 commits a misdemeanor of the second  
28 degree.

29 Section 16. Rules and regulations.

30 The director may adopt rules and regulations necessary to

1 enforce and administer this act. These rules and regulations,  
2 when promulgated pursuant to the act of July 31, 1968 (P.L.769,  
3 No.240), referred to as the Commonwealth Documents Law, shall  
4 have the force and effect of law.

5 Section 17. Registration required.

6 At least 30 days prior to advertising, offering for sale,  
7 selling or providing health club services pursuant to a health  
8 club contract, a health club shall register with the director on  
9 a form and in a substance satisfactory to the director.

10 Section 18. Effective date.

11 This act shall take effect in ~~120~~ 180 days.

<—