
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 AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
FEBRUARY 23, 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 (6) A WEIGHT REDUCTION ORGANIZATION WHICH EMPHASIZES <—
16 DIET AND NUTRITION AND WHICH DOES NOT PROVIDE PHYSICAL
17 EXERCISE FACILITIES AND DOES NOT CONDUCT A PHYSICAL EXERCISE
18 PROGRAM ON THE PREMISES AS PART OF ITS SERVICES AND AS
19 DETERMINED BY THE DIRECTOR.

20 "Health club contract." An agreement in which the buyer of
21 health club services purchases, or becomes obligated to
22 purchase, health club services to be rendered over a period of
23 more than three months, whether or not the health club is
24 completed or operational.

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

27 Section 3. Contents of health club contract.

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

30 (1) The date on which the buyer actually signed the

1 contract.

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

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

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

23 (5) A provision permitting the buyer or his legal
24 representative to cancel the contract if the buyer dies or
25 suffers a physical disability as attested to by the buyer's
26 physician whereby the buyer becomes physically unable to use
27 a substantial portion of the facilities for 60 or more
28 consecutive days. Upon receipt of notice of cancellation
29 under this paragraph, the health club shall refund to the
30 buyer an amount computed by dividing the full contract price,

1 including any initiation fee, by the number of weeks in the
2 contract term and multiplying the result by the number of
3 weeks remaining in the contract term, less a predetermined
4 fee not exceeding \$100, or, if more than half the life of the
5 contract has expired, a predetermined fee not exceeding \$50.
6 In the case of disability, the health club may require the
7 buyer to submit to an additional physical examination by a
8 physician agreeable to the buyer and the health club. The
9 additional cost of the examination shall be borne by the
10 health club.

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

24 (7) Provisions that, to cancel a contract pursuant to
25 paragraph (2), (4), (5) or (6), the buyer shall notify the
26 health club of cancellation in writing, by certified mail,
27 return receipt requested, or by personal delivery to the
28 address specified in the health club contract; that all money
29 to be refunded upon cancellation of the health club contract
30 shall be paid within 40 days of receipt of the notice of

1 cancellation; and that, if the buyer has executed a credit,
2 lien or automatic funds transfer agreement with the health
3 club to pay for health club services, any negotiable
4 instrument or credit or lien agreement executed by the buyer
5 shall also be returned and any automatic transfer shall be
6 canceled within 40 days after the cancellation.

7 (8) If the health club facility is not completed and
8 operational on the date the health club contract is executed:

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

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

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

21 (9) A provision setting forth the name and address of
22 the surety or bank from which the health club has obtained a
23 bond or letter of credit and describing the procedure to
24 obtain a refund under such bond or letter of credit.

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

29 (b) Notice provisions required.--A health club contract and
30 any promissory notes executed by the buyer in connection with

1 the health club contract shall contain the following provisions
2 on their faces in boldface type of a minimum size of ten points:

3 (1) Notice of consumer rights.--

4 NOTICE OF CONSUMER RIGHTS

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

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

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

26 NOTICE

27 Any holder of this contract or note is subject to all
28 claims and defenses which the debtor could assert against
29 the seller of goods or services obtained pursuant hereto
30 or with the proceeds hereof. Recovery hereunder by the

debtor shall not exceed amounts paid by the debtor
hereunder.

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

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

Section 4. Duration of contract.

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

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

Section 5. Initiation fees.

Unless a health club has secured a bond or letter of credit pursuant to section 10, the amount of any initiation fees imposed by a health club shall be reasonably related to the club's costs for establishing the initial health club membership. An initiation fee shall not be imposed for the purpose of circumventing the requirements of this act.

Section 6. Provisions of act not exclusive.

The provisions of this act are not exclusive and do not

1 relieve the parties or the contracts subject to this act from
2 the duty to comply with all other applicable provisions of law.
3 Section 7. Noncomplying contract voidable.

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

6 Section 8. Misrepresentation rendering contract voidable.

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

11 Section 9. Waiver of provisions.

12 An attempted waiver by the buyer of the provisions of this
13 act shall be deemed contrary to public policy and shall be void
14 and unenforceable.

15 Section 10. Bond or letter of credit required.

16 (a) Filing of bond.--Before entering into a health club
17 contract for health club services, a health club shall file and
18 maintain with the director, in form and substance satisfactory
19 to him, a bond with corporate surety from a company authorized
20 to transact business in this Commonwealth, or an irrevocable
21 letter of credit from a bank insured by the Federal Deposit
22 Insurance Corporation (FDIC), in the amounts indicated below:

23 Health club contract for no more than 24 months -

24 \$100,000 bond or letter of credit

25 Health club contract for more than 24 months - \$200,000

26 bond or letter of credit

27 However, any health club that certifies in writing with the
28 director that it will sell and maintain health club contracts
29 for no more than 24 months and with no more than the number of
30 persons indicated below shall, for so long as it abides by this

1 certification, be required to file with the director such a bond
2 or letter of credit only in the amounts indicated below:

3 300 persons - \$50,000 bond or letter of credit

4 150 persons - \$25,000 bond or letter of credit

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

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

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

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

21 Section 11. Protection afforded.

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

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

1 bring an action against the health club and thereafter submit
2 the final judgment he obtains to the director requesting payment
3 under the terms of the letter of credit.

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

7 (d) Limitation on liability of surety.--The aggregate
8 liability of the bond or letter of credit to all persons for all
9 breaches of the conditions of the bond or letter of credit shall
10 in no event exceed the amount of bond or letter of credit. If
11 claims filed exceed the amount of the bond, the surety shall
12 distribute the amount of the bond or a standard percentage of
13 the amount claimed by all buyers seeking relief under this
14 section.

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

20 Section 12. Trained personnel.

21 Every health club shall ensure that at least one person
22 trained in cardiopulmonary resuscitation (CPR) is present on the
23 premises of the health club at all times that the health club is
24 open for business.

25 Section 13. Offenses defined.

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

1 (b) Failure to register.--A health club that fails to
2 register under section 15 commits a misdemeanor of the second
3 degree.

4 (c) Failure to maintain bond.--A health club that fails to
5 obtain and maintain a bond or letter of credit under section 10
6 commits a misdemeanor of the second degree.

7 Section 14. Rules and regulations.

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

13 Section 15. Registration required.

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

18 Section 16. Effective date.

19 This act shall take effect in 120 days.