
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

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

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
JANUARY 23, 1989

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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13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Short title.

16 This act shall be known and may be cited as the Health Club
17 Act.

18 Section 2. Definitions.

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

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

23 "Buyer." A natural person who enters into a health club
24 contract.

25 "Director." The Director of the Bureau of Consumer
26 Protection.

27 "Health club." A person, firm, corporation, organization,
28 club or association engaged in the sale of memberships in a
29 health spa, racquet club, figure salon, weight reduction center
30 or other physical culture service enterprise offering facilities

1 for the preservation, maintenance, encouragement or development
2 of physical fitness or physical well-being. The term shall not
3 include the following:

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

8 (2) A facility owned or operated by the Federal
9 Government.

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

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

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

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

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

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

29 Section 3. Contents of health club contract.

30 (a) General rule.--Every health club contract shall be in

1 writing and shall contain the following provisions:

2 (1) The date on which the buyer actually signed the
3 contract.

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

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

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

25 (5) A provision permitting the buyer to extend the
26 membership term of the contract at no additional cost for a
27 period of time equal to the duration of a disability where
28 the buyer has a disability which precludes the buyer from
29 using one-third or more of the health club facilities for a
30 period of less than six months and the disability is verified

1 by a physician.

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

20 (7) A provision permitting the buyer to cancel the
21 contract if the buyer moves more than 25 additional miles
22 from the health club and is unable to transfer the contract
23 to a comparable facility located within five miles of his new
24 residence. Upon receipt of notice of cancellation under this
25 paragraph, the health club shall refund to the buyer an
26 amount computed as of the date of relocation by dividing the
27 full contract price, including any initiation fee, by the
28 number of weeks in the contract term and multiplying the
29 result by the number of weeks remaining in the contract term,
30 less a predetermined fee not exceeding \$100, or, if more than

1 half the life of the contract has expired, a predetermined
2 fee not exceeding \$50.

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

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

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

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

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

30 (10) A provision setting forth the name and address of

1 the surety or bank from which the health club has obtained a
2 bond or letter of credit and describing the procedure to
3 obtain a refund under such bond or letter of credit.

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

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

12 (1) Notice of consumer rights.--

13 BUYER'S RIGHT TO CANCEL

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

1 credit under which you are entitled to collect. For
2 details, read your contract carefully. Enforcement of
3 the Health Club Act is by the Attorney General of the
4 Commonwealth of Pennsylvania or the district attorney
5 of the county in which the health club is located.
6 You may also bring a private cause of action. If your
7 rights are violated, you may contact the State Bureau
8 of Consumer Protection or your local district
9 attorney.

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

11 NOTICE

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

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

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

29 Section 4. Duration of contract.

30 (a) Term.--The maximum term of a health club contract shall

1 be 36 months.

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

7 Section 5. Initiation fees.

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

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

15 Section 6. Provisions of act not exclusive.

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

19 Section 7. Noncomplying contract voidable.

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

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

23 Any health club contract entered into by the buyer within 30
24 days of the closing of a health club shall be voidable at the
25 option of the buyer.

26 Section 9. Misrepresentation rendering contract voidable.

27 A health club contract entered into by the buyer due to false
28 or misleading information, representation or advertisement of
29 the health club or its agents shall be voidable at the option of
30 the buyer.

1 Section 10. Waiver of provisions.

2 An attempted waiver by the buyer of the provisions of this
3 act shall be deemed contrary to public policy and shall be void
4 and unenforceable.

5 Section 11. Bond or letter of credit required.

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

13 (1) Health club contracts for no more than 12 months -
14 \$50,000 bond or letter of credit.

15 (2) Any health club contract for more than 12 months but
16 no more than 24 months - \$100,000 bond or letter of credit.

17 (3) Any health club contract for more than 24 months -
18 \$200,000 bond or letter of credit.

19 However, any health club that certifies in writing with the
20 director that it will sell and maintain health club contracts
21 for no more than 24 months and with no more than the number of
22 persons indicated below shall, for so long as it abides by this
23 certification, be required to file with the director such a bond
24 or letter of credit only in the amounts indicated below:

25 300 persons - \$50,000 bond or letter of credit

26 150 persons - \$25,000 bond or letter of credit

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

1 (c) Number.--Each separate location where health club
2 services are offered shall be considered a separate health club
3 and shall file a separate bond or letter of credit with respect
4 thereto, even though the separate locations are owned by the
5 same person.

6 (d) Purpose.--The bond or letter of credit shall be for the
7 exclusive purpose of providing buyer refunds and shall not be
8 deemed an asset of the health club for bankruptcy or any other
9 purpose. The buyer's claim to any money under this section shall
10 be prior to that of any creditor of the health club.

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

14 Section 12. Protection afforded.

15 (a) Refund to buyer.--The bond or letter of credit required
16 by section 11 shall be for the benefit of a buyer who sustains
17 any loss or damage as a result of the breach of contract or
18 bankruptcy by a health club.

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

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

30 (d) Limitation on liability of surety.--The aggregate

1 liability of the bond or letter of credit to all persons for all
2 breaches of the conditions of the bond or letter of credit shall
3 in no event exceed the amount of bond or letter of credit. If
4 claims filed exceed the amount of the bond, the surety shall
5 distribute the amount of the bond as a standard percentage of
6 the amount claimed by all buyers seeking relief under this
7 section.

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

13 Section 13. Health club exempt from bond or letter of credit.

14 A health club shall be exempt from filing and maintaining a
15 bond or letter of credit upon providing the director
16 satisfactory proof that all of its health club contracts meet
17 all of the following requirements:

18 (1) All health club contracts used must contain the
19 following clause:

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

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

1 contract, or the actual costs of establishing the initial
2 health club membership.

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

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

8 (5) The contract must comply with all other provisions
9 of this act.

10 Section 14. Trained personnel.

11 Every health club shall ensure that it has employees trained
12 in cardiopulmonary resuscitation (CPR).

13 Section 15. Offenses defined.

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

19 (b) Failure to register.--A health club that fails to
20 register under section 17 commits a misdemeanor of the second
21 degree.

22 (c) Failure to maintain bond.--A health club that fails to
23 obtain and maintain a bond or letter of credit under section 11
24 commits a misdemeanor of the second degree.

25 Section 16. Rules and regulations.

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

1 Section 17. Registration required.

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

6 Section 18. Effective date.

7 This act shall take effect in 120 days.