
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2171 Session of
1976

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

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, FEBRUARY 25, 1976

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.