
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 134 Session of
1989

INTRODUCED BY GREENLEAF, BELL, HELFRICK, LEWIS, FISHER,
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JANUARY 23, 1989

SENATE AMENDMENTS TO HOUSE AMENDMENTS, NOVEMBER 28, 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 ten 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 all moneys paid in excess of an amount computed by
22 dividing the full contract price, including any initiation
23 fee, by the number of weeks in the contract term and
24 multiplying the result by the number of weeks elapsed in the
25 contract term.

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

1 period of less than six months and the disability is verified
2 by a physician.

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

21 (7) A provision permitting the buyer to cancel the
22 contract if the buyer moves more than 25 additional miles
23 from the health club and is unable to transfer the contract
24 to a comparable facility located within five miles of his new
25 residence. Upon receipt of notice of cancellation under this
26 paragraph, the health club shall refund to the buyer all
27 moneys paid in excess of an amount computed as of the date of
28 relocation by dividing the full contract price, including any
29 initiation fee, by the number of weeks in the contract term
30 and multiplying the result by the number of weeks elapsed in

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

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

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

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

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

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

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

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

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

13 (1) Notice of consumer rights.--

14 BUYER'S RIGHT TO CANCEL

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

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

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

12 NOTICE

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

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

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

30 Section 4. Duration of contract.

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

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

8 Section 5. Initiation fees.

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

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

16 Section 6. Provisions of act not exclusive.

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

20 Section 7. Noncomplying contract voidable.

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

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

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

27 Section 9. Misrepresentation rendering contract voidable.

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

1 the buyer.

2 Section 10. Waiver of provisions.

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

6 Section 11. Financial security required.

7 (a) Filing of financial security.--Before entering into a
8 health club contract for health club services, a health club
9 shall file and maintain with the director, in form and substance
10 satisfactory to him, a bond with corporate surety from a company
11 authorized to transact business in this Commonwealth OR an <—
12 irrevocable letter of credit from a bank insured by the Federal
13 Deposit Insurance Corporation (FDIC), ~~or a mortgage or judgment~~ <—
14 ~~note secured by an interest in real estate owned by the health~~
15 ~~club~~ in the amounts indicated below:

16 (1) Health club contracts for no more than 12 months -
17 \$50,000 BOND OR LETTER OF CREDIT. <—

18 (2) Any health club contract for more than 12 months but
19 no more than 24 months - \$100,000 BOND OR LETTER OF CREDIT. <—

20 (3) Any health club contract for more than 24 months -
21 \$200,000 BOND OR LETTER OF CREDIT. <—

22 However, any health club that certifies in writing with the
23 director that it will sell and maintain health club contracts
24 for no more than 24 months and with no more than the number of
25 persons indicated below shall, for so long as it abides by this
26 certification, be required to file with the director such
27 financial security only in the amounts indicated below:

28 300 persons - \$50,000 BOND OR LETTER OF CREDIT <—

29 150 persons - \$25,000 BOND OR LETTER OF CREDIT <—

30 ~~(b) Mortgage or judgment note. When the financial security~~ <—

1 ~~filed with the director is in the form of a mortgage or judgment~~
2 ~~note, it shall be accompanied by an appraisal of the pledged~~
3 ~~property satisfactory to the director, together with a title~~
4 ~~insurance policy from an insurance company authorized to do~~
5 ~~business in this Commonwealth or a certificate from an attorney~~
6 ~~who is admitted to practice in this Commonwealth certifying that~~
7 ~~the health club had an unencumbered equity in the property~~
8 ~~pledged of at least 125% of the amount of financial security~~
9 ~~required under subsection (a) at the time the mortgage or~~
10 ~~judgment note was entered of record.~~

11 ~~(e)~~ (B) Duration.--The financial security shall be filed and <—
12 maintained regardless of whether the health club facilities are
13 as yet completed and open to members and shall not be canceled
14 or terminated except with the consent of the director.

15 ~~(d)~~ (C) Number.--Each separate location where health club <—
16 services are offered shall be considered a separate health club
17 and shall file separate financial security with respect thereto,
18 even though the separate locations are owned by the same person.

19 ~~(e)~~ (D) Purpose.--The financial security shall be for the <—
20 exclusive purpose of providing buyer refunds and shall not be
21 deemed an asset of the health club for bankruptcy or any other
22 purpose. The buyer's claim to any money under this section shall
23 be prior to that of any creditor of the health club.

24 ~~(f)~~ (E) Certification of compliance.--All health clubs shall <—
25 certify to the director on or before June 1 of each year that
26 the appropriate financial security remains in effect.

27 Section 12. Protection afforded.

28 (a) Refund to buyer.--The financial security required by
29 section 11 shall be for the benefit of a buyer who sustains any
30 loss or damage as a result of the breach of contract or

1 bankruptcy by a health club.

2 (b) Recovery.--If an injured buyer does not receive a refund
3 from the health club, he may file a claim with the surety, and,
4 if the claim is not paid, the buyer may bring an action based on
5 the bond and recover against the surety. In the case of a letter
6 of credit that has been filed with the director, the buyer shall
7 bring an action against the health club and thereafter submit
8 the final judgment he obtains to the director requesting payment
9 under the terms of the letter of credit. ~~In the case of a~~ <—
10 ~~mortgage or judgment note that has been filed with the director,~~
11 ~~the buyer may bring an appropriate legal action against the~~
12 ~~health club and, upon obtaining a final judgment, satisfy his~~
13 ~~claim from the proceeds.~~

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

17 (d) Limitation on liability of surety.--The aggregate
18 liability of the bond or letter of credit to all persons for all
19 breaches of the conditions of the bond OR letter of credit ~~or~~ <—
20 ~~mortgage or judgment note~~ shall in no event exceed the amount of
21 bond OR letter of credit ~~or mortgage or judgment note~~. If claims <—
22 filed exceed the amount of the bond, the surety shall distribute
23 the amount of the bond as a standard percentage of the amount
24 claimed by all buyers seeking relief under this section.

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

30 Section 13. Health club exempt from financial security.

1 A health club shall be exempt from filing and maintaining
2 financial security upon providing the director satisfactory
3 proof that all of its health club contracts meet all of the
4 following requirements:

5 (1) All health club contracts used must contain the
6 following clause:

7 Under this contract, no further payments shall be due
8 to anyone, including any purchaser of any note
9 associated with or contained in this contract, in the
10 event the health club at which the contract is
11 entered into ceases operation and fails to offer a
12 comparable alternate location within ten miles.

13 (2) All payments due under the contract must be in equal
14 monthly installments spread over the entire term of the
15 contract, except that a club may charge and collect at the
16 beginning of the contract, an initiation fee not to exceed
17 the lesser of six monthly installments to be made under the
18 contract, or the actual costs of establishing the initial
19 health club membership.

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

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

25 (5) The contract must comply with all other provisions
26 of this act.

27 Section 14. Employee available to administer CPR.

28 (a) General rule.--Every health club shall employ and have
29 on the health club's premises during the club's hours of
30 operation a person who is trained and certified to administer

1 CPR.

2 (b) Nature of employment.--An employee who is trained and
3 certified to administer CPR may be hired primarily to fulfill
4 other functions for the employing health club.

5 (c) Number of employees certified.--If a health club is open
6 for more than eight hours a day and more than five days a week,
7 it shall employ more than one person who is trained and
8 certified to administer CPR.

9 ~~(d) Monitoring. The department shall monitor each licensed~~ <—
10 ~~fitness center to ensure that the provisions of this section are~~
11 ~~being carried out. It may impose the penalty provided for in~~
12 ~~subsection (g).~~

13 ~~(e) Training. The department shall determine whether an~~
14 ~~adequate CPR training program is being provided within each~~
15 ~~county and shall initiate and provide programs in each county~~
16 ~~without one.~~

17 ~~(f) Regulations. The secretary shall devise and promulgate~~
18 ~~regulations necessary to carry out the provisions of this~~
19 ~~section.~~

20 ~~(g) Penalty. The owner of a health club which does not~~
21 ~~provide an employee who is trained and certified to administer~~
22 ~~CPR commits a summary offense and shall, upon conviction, be~~
23 ~~sentenced to pay a fine of \$1,000.~~

24 ~~(h)~~ (D) Definitions.--As used in this section, the following <—
25 words and phrases shall have the meanings given to them in this
26 subsection:

27 "CPR." Cardiopulmonary resuscitation, an approved lifesaving
28 technique which involves stimulation of the lungs and heart of a
29 victim of cardiac or pulmonary distress.

30 ~~"Department." The Department of Health of the Commonwealth.~~ <—

1 ~~"Secretary." The Secretary of Health of the Commonwealth.~~

2 Section 15. Offenses defined.

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

8 (b) Failure to register.--A health club that fails to
9 register under section 17 commits a misdemeanor of the second
10 degree.

11 (c) Failure to maintain bond.--A health club that fails to
12 obtain and maintain financial security under section 11 commits
13 a misdemeanor of the second degree.

14 Section 16. Rules and regulations.

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

20 Section 17. Registration required.

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

25 Section 18. Effective date.

26 This act shall take effect in 180 days.