

No. 1989-87

## AN ACT

SB 134

Providing for the regulation of health club contracts; and providing for further duties of the Bureau of Consumer Protection, the Attorney General and district attorneys.

The purpose of this act is to safeguard the public interest against fraud, deceit and financial hardship and to foster and encourage competition, fair dealing and prosperity in the field of health club services by prohibiting false and misleading advertising and dishonest, deceptive and unscrupulous practices by which the public has been injured in connection with contracts for health club services.

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

Section 1. Short title.

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

Section 2. Definitions.

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

“Business day.” Any day except a Sunday or a legal holiday.

“Buyer.” A natural person who enters into a health club contract.

“Director.” The Director of the Bureau of Consumer Protection.

“Health club.” A person, firm, corporation, organization, club or association engaged in the sale of memberships in a health spa, racquet club, figure salon, weight reduction center or other physical culture service enterprise offering facilities for the preservation, maintenance, encouragement or development of physical fitness or physical well-being. The term shall not include the following:

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

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

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

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

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

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

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

“Health club services.” Services, privileges or rights offered for sale or provided by a health club.

Section 3. Contents of health club contract.

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

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

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

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

(4) A provision permitting the buyer to cancel the contract if the health club facility closes for more than 30 days and the health club fails to provide a comparable facility within ten miles of the location designated in the health club contract. Upon receipt of notice of cancellation under this paragraph, the health club shall refund to the buyer all moneys paid in excess of an amount computed by dividing the full contract price, including any initiation fee, by the number of weeks in the contract term and multiplying the result by the number of weeks elapsed in the contract term.

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

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

(7) A provision permitting the buyer to cancel the contract if the buyer moves more than 25 additional miles from the health club and is unable to transfer the contract to a comparable facility located within five miles of his new residence. Upon receipt of notice of cancellation under this paragraph, the health club shall refund to the buyer all moneys paid in excess of an amount computed as of the date of relocation by dividing the full contract price, including any initiation fee, by the number of weeks in the contract term and multiplying the result by the number of weeks elapsed in the contract term, less a predetermined fee not exceeding \$100, or, if more than half the life of the contract has expired, a predetermined fee not exceeding \$50.

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

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

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

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

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

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

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

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

(1) **Notice of consumer rights.**—

**BUYER'S RIGHT TO CANCEL**

If you wish to cancel this contract, you may cancel by delivering or mailing by certified mail, return receipt requested, written notice to this health club. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before 12 midnight of the third business day after you sign and receive a copy of this contract. The notice must be delivered or mailed to . . . (health club shall insert its name and mailing address). In some cases you may also cancel this contract if you signed it before the health club facility was completed, if the club moves or goes out of business, if you become permanently disabled or if you move from the area. If you cancel, the health club may be entitled to a certain portion of the contract price. If the health club goes out of business or refuses to give you a refund, there may be a bond or letter of credit under which you are entitled to collect. For details, read your contract carefully. Enforcement of the Health Club Act is by the Attorney General of the Commonwealth of Pennsylvania or the district attorney of the county in which the health club is located. You may also bring a private cause of action. If your rights are violated, you may contact the State Bureau of Consumer Protection or your local district attorney.

(2) **Notice of claims and defenses.**—

**NOTICE**

Any holder of this contract or note is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto 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.

Except as provided in section 13, 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. Initiation fees shall be included in the computation of any refunds due under this act.

#### Section 6. Provisions of act not exclusive.

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

#### Section 7. Noncomplying contract voidable.

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

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

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

#### Section 9. Misrepresentation rendering contract voidable.

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

#### Section 10. Waiver of provisions.

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

#### Section 11. Financial security required.

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

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

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

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

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

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

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

(b) Duration.—The financial security shall be filed and maintained regardless of whether the health club facilities are as yet completed and open to members and shall not be canceled or terminated except with the consent of the director.

(c) Number.—Each separate location where health club services are offered shall be considered a separate health club and shall file separate financial security with respect thereto, even though the separate locations are owned by the same person.

(d) Purpose.—The financial security shall be for the exclusive purpose of providing buyer refunds and shall not be deemed an asset of the health club for bankruptcy or any other purpose. The buyer's claim to any money under this section shall be prior to that of any creditor of the health club.

(e) Certification of compliance.—All health clubs shall certify to the director on or before June 1 of each year that the appropriate financial security remains in effect.

Section 12. Protection afforded.

(a) Refund to buyer.—The financial security required by section 11 shall be for the benefit of a buyer who sustains any loss or damage as a result of the breach of contract or bankruptcy by a health club.

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

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

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

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

**Section 13. Health club exempt from financial security.**

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

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

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

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

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

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

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

**Section 14. Employee available to administer CPR.**

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

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

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

(d) **Definitions.**—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“CPR.” Cardiopulmonary resuscitation, an approved lifesaving technique which involves stimulation of the lungs and heart of a victim of cardiac or pulmonary distress.

**Section 15. Offenses defined.**

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

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

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

**Section 16. Rules and regulations.**

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

**Section 17. Registration required.**

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

**Section 18. Effective date.**

This act shall take effect in 180 days.

APPROVED—The 21st day of December, A. D. 1989.

ROBERT P. CASEY