

Licensing of Health Club Services

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Kathy Hochul
Governor

Robert J. Rodriguez
Secretary of State

Health Club Services

Article 30, General Business Law

Section

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Licensing of Health Club Services

§620. Legislative intent

1. The legislature finds that there exists in connection with a number of contracts for health club services, sales practices and business and financing methods which may have resulted in deception and financial hardship upon the people of this state, that existing legal remedies are inadequate to correct these abuses; that the health club services industry has a significant impact upon the economy and well being of this state and its local communities, and that the provisions of this article relating to such contracts are necessary for the public welfare.

2. The legislature declares that the purpose of this article is to safeguard the public and the ethical health club industry against deception and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of health club services by prohibiting or restricting false or misleading advertising, erroneous contract terms, harmful financial practices, and other unfair, deceptive and discriminatory practices which have been conducted by some health club operators.

§621. Definitions

1. "Contract for services." As used in this article, a contract for services means a contract for consumer services for instruction, training or assistance in bodybuilding, exercising, weight reducing, figure development, the martial arts to include, judo, karate and self-defense, or any similar course of physical training to be provided for the future use by a consumer of the facilities providing the foregoing instruction, training or assistance; or for membership in any group, club, association or organization for any of the above purposes, except however, that a contract for services shall not mean or include:

- (a) Membership in any group, club, association or organization which provides any of the foregoing services and which is organized pursuant to the provisions of the not-for-profit corporation law; or
- (b) Boarding accommodations; or
- (c) Travel arrangements contracted for less than one year in advance; or
- (d) Contracts which incorporate warranties of services or repair given in conjunction with appliances or other goods, where the sale of goods is the primary object of the contract; or
- (e) Services by a college or university chartered by the university of the State of New York, a secondary school, an elementary school, a nursery school or kindergarten; and
- (f) Contracts for services to provide instruction, training or assistance to acquire a vocation or skill conducted in a training school or by home study.
- (g) Contracts for programs which provide instruction for improving tennis skills, and are of eight weeks duration or less where the full fee does not exceed \$250.
- (h) Contracts relating solely to the seasonal use of tennis facilities.

2. "Health club" as used in this article means any person, firm, corporation, partnership, unincorporated association, or other business enterprise offering instruction, training or assistance or the facilities for the preservation, maintenance, encouragement or development of physical fitness or well being. Such term shall include but shall not be limited to health spas, sports, tennis, racquet ball, platform tennis and health clubs, figure salons, health studios, gymnasiums, weight control studios, martial arts and self-defense schools or any other similar course of physical training.

3. "Secretary" as used in this article shall mean the Secretary of State.

4. "Seller" as used in this article means any person, firm, corporation, partnership, unincorporated association or other business enterprise which operates or intends to operate a health club.

5. "Buyer" as used in this article means any individual who enters into a contract for services with a health club.

6. "Cardiopulmonary resuscitation" or "CPR" as used in this article means measures, as specified in regulations promulgated by the commissioner of health, to restore function or support ventilation in the event of a cardiac or respiratory arrest. Cardiopulmonary resuscitation shall not include measures to improve ventilation and cardiac functions in the absence of an arrest.

7. "Automated external defibrillator" or "AED" as used in this article means a medical device approved by the federal food and drug administration that

- (a) is capable of recognizing the presence or absence in a patient of ventricular fibrillation and rapid ventricular tachycardia;
- (b) is capable of determining, without intervention by an operator, whether defibrillation should be performed on the patient;
- (c) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to the patient's heart; and
- (d) upon action by an operator, delivers an appropriate electrical impulse to the patient's heart to perform defibrillation.

§622. Escrow required

All moneys received by a seller pursuant to a contract for services for use by a buyer of a health club prior to the full operation of such health club shall be placed in escrow.

1. Such funds shall be kept and maintained in an account separate and apart from any account maintained by or for the seller's personal use or for use in the construction or operation of the health club or for the payment or benefit of employees of the seller.

2. The escrow account shall be established in a bank or trust company doing business in this state.

3. The escrow account shall provide that the purpose of the account is to protect the consumer in the event that the seller fails to complete substantially and to open the facility within one year following establishment of the account. Any buyer who has advanced moneys on deposit in the escrow account may maintain a representative action pursuant to the provisions of the civil practice law and rules to close the account and to release such moneys pro-rata to all buyers similarly situated if such health club facility has not been substantially completed and opened within one year of establishment of the account or if the buyer has not had the full use of another similar facility during this period.

4. Within three business days of a request therefor, a monthly statement of the escrow account is to be furnished to consumers who have advanced funds or obligation until such account is no longer required by this article.

5. The escrow account shall provide that funds deposited therein may be withdrawn by the seller upon the completion of the proposed construction in the following manner:

- (i) one-third of the funds may be distributed to the seller upon completion of one-half of the proposed construction;
- (ii) not more than two-thirds of the funds which have been deposited in escrow may be released upon the completion of three-fourths of the proposed construction;

- (iii) the escrow agent may accept as evidence of partial completion certification of any architect or engineer licensed pursuant to the provisions of the education law that the proposed construction has been completed in accordance with the plans and specifications.

6. The escrow account shall be released by the escrow agent to the seller not more than 30 days following full operation of the facility and certification of completion from any architect or engineer licensed pursuant to the provisions of the education law.

7. In lieu of the escrow provisions required by this section, the health club may furnish information as required by the secretary, executed under penalty of perjury by an officer or owner of the health club which reasonably demonstrates financial responsibility that will enable the health club to satisfy the possible claims against the escrow required by this section. In the event the health club is controlled by, under common control, or controls another corporation and the other corporation agrees in writing to satisfy the claims against the escrow required by this section, then the financial responsibility of the other corporation shall be considered in determining the applicability of this section. In determining whether the health club has the requisite financial responsibility the secretary may consider the operating and business history and reputation of the health club and its management within and without the state as well as the operating and business history and reputation of any business controlled by, under common control with, or controlling the health club.

§622-a. Bond, letter of credit or certificate of deposit required

1. Every health club, except as provided in subdivision 10 of this section, before it enters into any contract for services for use by a buyer of a health club, shall file and at all times maintain with the secretary, in form, amount as prescribed herein and substance satisfactory to him:

- (a) A bond with a corporate surety, from a company authorized to do business in this state; or
- (b) An irrevocable letter of credit or a certificate of deposit from a New York State or federally chartered bank, trust company, savings bank or savings and loan association qualified to do business in New York State and insured by the federal deposit insurance corporation.

2. The principal sum of the bond, letter of credit, or certificate of deposit shall be;

- (a) \$50,000 if the health club sells contracts for services for a term not greater than 12 months; or
- (b) \$75,000 if the health club sells contracts for services for a term more than 12 months and up to 24 months; or
- (c) \$150,000 if the health club sells contracts for services for a term more than 24 months and up to 36 months.

3. For health clubs with three or more locations, or for multiple franchises of a common franchisor, the following amounts shall be added to the sum required in subdivision two of this section for the bond, letter of credit, or certificate of deposit:

- (a) For three to four locations an additional \$50,000,
- (b) For five to six locations an additional one \$100,000,
- (c) For seven to nine locations an additional \$150,000,
- (d) For 10 or more locations an additional \$200,000.

4. The bond, letter of credit or certificate of deposit shall be payable in favor of the people of the State of New York for the benefit of any buyer injured in the event that the seller goes out of business prior to the expiration of the buyer's contract for services, or otherwise fails to provide a

refund to the buyer after cancellation of the buyer's contract for services as provided for in §624 of this article.

5. The aggregate liability of the surety upon the bond or the banking organization upon the letter of credit or certificate of deposit to all persons for all breaches of the conditions of the bond shall in no event exceed the amount of the bond, letter of credit or certificate of deposit.

6. The bond, letter of credit or certificate of deposit filed and maintained pursuant to this section shall not be cancelled, revoked, or terminated except after notice to, and with the consent of, the secretary at least 45 days in advance of such cancellation, revocation, or termination.

7. Any person claiming against the bond, letter of credit or certificate of deposit may bring and maintain an action against the seller and the surety or bank, trust company, savings bank or savings and loan association.

8. For the purposes of this section, a health club shall be considered to be a new health club subject to the requirements of a bond, letter of credit or certificate of deposit as provided herein, at the time the health club changes ownership, or, in the case of corporate ownership, at the time 30 percent or more of the stock changes or has changed ownership. A change in ownership of a health club shall not release, cancel or terminate liability under this section under any bond, letter of credit or certificate of deposit filed for a health club as to any buyer who purchases a health club contract while such bond, letter of credit or certificate of deposit is in effect unless the transferee, purchaser, successor, or assignee of such health club obtains a bond, letter of credit or certificate of deposit under this section for the benefit of such buyer.

9. No contract for services shall be enforceable against the buyer if the seller has failed to comply with any requirements of this section.

10. Health clubs shall be excluded from the requirement to file a bond, letter of credit, or certificate of deposit if all payments for which the buyer is obligated including, but not limited to down payments, initiation fees, enrollment fees, membership fees or any other direct payments to the health club do not exceed \$150. A health club shall also be excluded from the requirement to file a bond, letter of credit or certificate of deposit, if it offers its buyers a monthly dues payment option for each dues payment plan it offers to customers, provided that:

- (a) both the annual and the monthly membership options are disclosed to customers prior to entering into any membership contract;
- (b) that the monthly dues, including any initiation fee or other charge, do not exceed \$150;
- (c) that the paid in full fee is not discounted by more than 10 percent of the sum of the initiation fee and the monthly dues payments; and
- (d) that the term of either option be no more than 12 months and that the membership contract not contain an automatic renewal provision. Additionally, any health club which owns five or more acres of real property which is used directly for the purpose for which the club is formed, and any health club the use of which is exclusively restricted to residents of a homeowners' association, cooperative or condominium and which is owned by and operated on the premises of such homeowners' association, cooperative or condominium, shall be excluded from the requirement to file a bond, letter of credit or certificate of deposit.

11. (a) Every health club shall post, in at least two conspicuous areas within the club, including, if applicable, an entrance area where buyers are required to register, a sign no smaller than nine inches by 14 inches that sets forth the following notice clearly and conspicuously:

**IMPORTANT NOTICE
FOR HEALTH CLUB MEMBERS**

New York State law requires certain health clubs to have a bond or other form of financial security to protect members in the event the club closes.

This club (insert whichever term is applicable) has posted the financial security required by law.

or

is exempt from this requirement.

YOU MAY ASK A REPRESENTATIVE OF THE CLUB FOR PROOF OF THE CLUB'S COMPLIANCE WITH THIS LAW. YOU MAY ALSO OBTAIN THIS INFORMATION FROM THE NEW YORK STATE DEPARTMENT OF STATE, DIVISION OF LICENSING SERVICES, A.E. SMITH STATE OFFICE BUILDING, 80 SOUTH SWAN STREET, P.O. BOX 22001, ALBANY, NY 12231.

(b) Health clubs that operate at two or more locations shall post notices in compliance with paragraph (a) of this subdivision at each such location.

12. The notice required by subdivision 11 of this section shall be incorporated into any contract for services executed by a health club in at least 10 point bold type.

13. Every contract for services which offers the consumer the option to pay in installments shall contain the following notice, written in at least 10 point bold type and placed directly above the space reserved for the signature of the buyer:

**THIS NOTICE PROVIDES IMPORTANT
INFORMATION ABOUT YOUR
PAYMENT OPTIONS**

You may make payments on an installment basis or in a single payment. Paying the full amount may be less expensive, but may involve financial risks to you. Read this notice carefully before making a decision.

New York State law requires certain health clubs to post a bond or other financial security to protect members in the event the club closes. This club is exempt from this requirement since it gives members the option of paying on an installment basis, therefore it need not post a bond or other form of financial security.

In deciding whether to make your payments on an installment basis, you should be aware that if the club closes, although the club will remain legally liable for a refund, you may risk losing your money if the club is unable to meet its financial obligations to members.

§623. Contract restrictions

1. No contract for services shall require payment by the person receiving service or the use of the facilities of a total amount in excess of \$3,600 per annum, provided, however, that this subdivision shall not apply to contracts relating solely to the use of tennis, platform tennis or racquet ball facilities.

2. No contract for services shall provide for a term longer than 36 months. No contract for services shall require payments or financing by the buyer over a period in excess of 37 months from the date the contract is entered into, nor shall the term of any such contract be measured by or be for the life of the buyer. Provided, however, that the services to be rendered to the buyer under the contract may extend over a period not to ex-

ceed three years from the date the contract is entered into with the right to renew, at the option of the buyer for a like period. The buyer may have 30 days after the expiration to renew the contract. The installment payments shall be in substantially equal amounts exclusive of the down payment and shall be required to be made at substantially equal intervals, not to exceed one month.

3. No contract for services may contain any provisions whereby the buyer agrees not to assert against the seller or any assignee or transferee of the health club services contract any claim or defense arising out of the health club services contract.

4. No contract for services may require the buyer to execute a promissory note or series of promissory notes which, when negotiated, cuts off as to third parties a defense which the buyer may have against the seller.

5. No contract may be assigned by one health club to another health club not located on the same premises without written consent of the buyer.

§624. Rights of cancellation of contracts for services

1. Every contract for services at a planned health club or a health club under construction shall, at the option of the buyer, be voidable in the event that the health club and the services to be provided pursuant to such contract are not available within one year from the date the contract is executed by the buyer.

2. Every contract for services shall provide that such contract may be cancelled within three business days after the date of receipt by the buyer of a copy of the written contract. Notice of cancellation shall be delivered by certified or registered United States mail at the address specified in the contract. Such contract shall contain the following written notice in at least ten point bold type: **CONSUMERS RIGHT TO CANCELLATION. YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR FURTHER OBLIGATION WITHIN THREE (3) DAYS FROM THIS DATE** Notice of cancellation shall be in writing subscribed by the buyer and mailed by registered or certified United States mail to the seller at the address specified in such form. Such notice shall be accompanied by the contract forms, membership cards and any other documents or evidence of membership previously delivered to the buyer. All moneys paid pursuant to such contract shall be refunded within 15 business days of receipt of such notice of cancellation. If the buyer has executed any credit or loan agreement to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall also be returned within 15 days.

3. Every contract for services shall provide that after such three day period for cancellation as provided in subdivision two of this section, the buyer's estate may cancel a contract for services if the buyer dies. The buyer may also cancel after three days if the buyer becomes significantly physically disabled for a period in excess of six months, or moves his residence to a location more than 25 miles from a health club operated by the seller, or after the services are no longer available or substantially available as provided in the contract because of the seller's permanent discontinuance of operation or substantial change in operation. Nothing contained herein shall restrict or prohibit the seller from offering or providing in such contract additional or broader reasons for cancellation. The seller may require reasonable evidence for a cancellation pursuant to this subdivision. Such contract shall contain the following notice captioned in at least ten point bold type:

ADDITIONAL RIGHTS TO CANCELLATION:

You may also cancel this contract for any of the following reasons:

If upon a doctor's order, you cannot physically receive the services because of significant physical disability for a period in excess of six months.

If you die, your estate shall be relieved of any further obligation for payment under the contract not then due and owing.

If you move your residence more than 25 miles from any health club operated by seller.

If the services cease to be offered as stated in the contract.

All money paid pursuant to such contract cancelled for the reasons contained in this subdivision shall be refunded within 15 days of receipt of such notice of cancellation; provided however that the seller may retain the expenses incurred and the portion of the total price representing the services used or completed, and further provided that the seller may demand the reasonable cost of goods and services which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller demand more than the full contract price from the buyer. If the buyer has executed any credit or loan agreement to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall also be returned within 15 days.

§625. Assignment of contracts for services

1. No assignee who takes a note or other obligation as consideration for a contract containing the disclosure requirements of §624 of this article shall fail to honor the consumer's right of cancellation as provided in this article.

2. No creditor holding a note or other obligation, to which a consumer has obligated himself in order to purchase a contract shall fail to honor the consumer's right of cancellation under this article if:

- (a) the creditor is a person related to the seller of services; or
- (b) the seller prepares documents used in connection with the loan; or
- (c) the creditor supplies forms to the seller used by the consumer in obtaining the loan; or
- (d) the creditor makes 20 or more loans in any calendar year, the proceeds of which are used in transactions with the same seller or with a person related to the same seller; or
- (e) the consumer is referred to the creditor by the seller; or
- (f) the creditor, directly or indirectly, pays the seller any consideration whether or not it is in connection with the particular transactions; or
- (g) the creditor participated in or was connected with the sale.

3. No assignee of a contract shall fail to give notice of the assignment to the consumer. A notice of assignment shall be in writing addressed to the consumer at the address shown on the contract and shall identify the contract.

§626. Deceptive acts prohibited

It is hereby declared to be an unfair and deceptive trade practice and unlawful for a seller to:

1. Misrepresent directly or indirectly in its advertising, promotional materials, or in any manner the size, location, facilities or equipment of its studio, or place of business or the number or qualifications of its personnel;

2. Use or refer to fictional organization divisions or position titles or make any representation which has the tendency or capacity to mislead or

deceive consumers as to the size or importance of the business, its divisions, or personnel, or in any other material respect;

3. Misrepresent directly or indirectly the size, importance, location, facilities, or equipment of the business through use of photographs, illustrations, or any other depictions in catalogs, advertisements, or other promotional materials;

4. Misrepresent the location or locations at which its services will be offered;

5. Misrepresent the nature of its courses, training devices, methods or equipment or the number, qualifications, training, or experience of its personnel, whether by means of endorsements or otherwise;

6. Misrepresent the nature and extent of any personal services, guidance, assistance, or other attention the business will provide for consumers;

7. Designate or refer to his sales representation using terms that misrepresent in any other manner, the titles, qualifications, training, experience or status of his salesmen, agents, employees, or other representatives; and

8. Misrepresent in any manner by the seller or his assignee the buyer's right to cancel under this article.

§627. Contracts void and unenforceable

1. Any contract for services which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy.

2. Any waiver by the buyer of the provisions of this article shall be deemed void and unenforceable by the seller as contrary to public policy.

§627-a. Automated external defibrillator requirements

1. Every health club as defined under paragraph b of subdivision one of section 3000-d of the public health law whose membership is 500 persons or more shall have on the premises at least one automated external defibrillator and shall have in attendance, at all times during business hours, at least one individual performing employment or individual acting as an authorized volunteer who holds a valid certification of completion of a course in the study of the operation of AEDs and a valid certification of the completion of a course in the training of cardiopulmonary resuscitation provided by a nationally recognized organization or association.

2. Health clubs and staff pursuant to subdivision one of this section shall be deemed a "public access defibrillation provider" as defined in paragraph (c) of subdivision one of section 3000-b of the public health law and shall be subject to the requirements and limitation of such section.

3. Pursuant to sections 3000-a and 3000-b of the public health law, any public access defibrillation provider, or any employee or other agent of the provider who, in accordance with the provisions of this section, voluntarily and without expectation of monetary compensation renders emergency medical or first aid treatment using an AED which has been made available pursuant to this section, to a person who is unconscious, ill or injured, shall be liable only pursuant to section 3000-a of the public health law.

§628. Private right of action

1. Any buyer damaged by a violation of this article may bring an action for recovery of damages. Judgment may be entered in an amount not to exceed three times the actual damages plus reasonable attorney fees.

2. Nothing in this article shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute, or otherwise.

§629. Violations

1. Any seller or his assignees who violate any provision of this article, or who shall counsel, aid or abet such violation shall be liable for a civil fine of not more than \$2,500 for each violation. The provisions of this article are not exclusive and do not relieve the seller or his assignees or the contracts subject to this article from compliance with all other applicable provisions of law.

2. In addition to the provisions of subdivision one of this section, any seller or his assignees who violate §622-a of this article shall be guilty of a misdemeanor.

§630. Enforcement

In addition to the remedies hereinbefore provided, the attorney general may bring an action on behalf of the people of the state to restrain further violations of this article, to enforce the provisions of §622-a of this article and for such other relief as may be appropriate.

§631. Preemption

A political subdivision, otherwise authorized, may enact a local law, identical to the provisions of this article, to enable local enforcement of the provisions of this article and such local law. Any local law not identical with the provisions of this article, or with any rules and regulations promulgated hereunder, shall be pre-empted, superseded, and of no force and effect.