

HOUSE BILL No. 4179

January 30, 1997, Introduced by Reps. Baird, Wojno, Schroer, Hale, LaForge, Willard, Martinez, Wallace, Cherry, Ciaramitaro, DeHart, Prusi, Schermesser, McBryde and Goschka and referred to the Committee on Regulatory Affairs.

A bill to regulate contracts for physical fitness services; to require bonding of physical fitness services providers; to prescribe penalties; and to prescribe remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "physical fitness services contract act".

3 Sec. 3. As used in this act:

4 (a) "Contract" means a prepaid or credit contract for physi-
5 cal fitness services of 1 month in duration or longer.

6 (b) "Customer" means a person who contracts for the use of
7 physical fitness services.

8 (c) "Person" means an individual, group, association, part-
9 nership, corporation, trust, or other legal entity.

10 (d) "Physical fitness services" means services or facilities
11 that are purported primarily to assist customers in physical

1 exercise, in weight control, or in body or figure development,
2 including, but not limited to, a fitness center, studio, salon,
3 spa class or club, and athletic or sports club.

4 (e) "Provider" means a person that enters into a contract
5 with customers to provide physical fitness services.

6 Sec. 5. (1) A contract shall conform to all of the follow-
7 ing requirements:

8 (a) The contract shall be in writing and include an attach-
9 ment stating the total assets, total debt, and number of years
10 the provider has been engaged in business as a provider. A copy
11 shall be given to the customer at the time of signing.

12 (b) In addition to any right to cancel otherwise provided by
13 law, the contract may be canceled by the customer within 3 days
14 after its execution if the customer sends a written letter or
15 notice of cancellation to the provider before midnight of the
16 third business day after the contract is signed by the customer.
17 The notice shall be hand delivered to the provider or sent by
18 first-class mail to the address provided in the contract. Notice
19 of cancellation is given when deposited in a mailbox with postage
20 prepaid or when it is hand delivered. Within 45 days of receipt
21 of the written notice or letter of cancellation, the provider
22 shall return any payments made by the customer in connection with
23 the contract.

24 (c) The contract shall contain a provision in the following
25 language:

26 "Customer Right to Cancel Within 3 Days After
27 Execution of Contract

1 (b) Contain a provision under which the term of the contract
2 is longer than 36 months. Upon expiration of a contract, the
3 provider may offer to the customer the right to renew his or her
4 contract for a period not to exceed 36 months.

5 (c) Require payments or financing by the customer for a
6 period that extends more than 1 month beyond the expiration of
7 the contract.

8 (d) Contain a provision under which the customer agrees not
9 to assert against the provider or an assignee or transferee of
10 the contract any claim or defense arising out of the contract or
11 the customer's activities at the provider's facility.

12 (e) Require the customer to execute a promissory note or
13 series of promissory notes that, if negotiated, would cut off a
14 defense against third parties that the customer would have
15 against the provider.

16 (f) Contain a provision under which the provider may assign
17 the contract to another provider without the written consent of
18 the customer.

19 Sec. 7. (1) In addition to the customer's right to cancel a
20 contract under section 5 or as otherwise provided by law, a cus-
21 tomer or his or her personal representative may cancel a contract
22 if any of the following occurs:

23 (a) The customer dies.

24 (b) The customer becomes significantly physically or men-
25 tally disabled for a period of more than 3 months.

1 (c) The physical fitness services offered under the contract
2 are not available to the customer because the provider does any
3 of the following:

4 (i) Fails to open a planned facility.

5 (ii) Permanently discontinues operation of a facility.

6 (iii) Substantially changes the operation of a facility.

7 (d) The customer moves his or her residence to a location
8 more than 25 miles from the provider's facility or a facility
9 that is substantially similar to the provider's facility and that
10 will accept the provider's obligation under the contract.

11 (2) The provider may require reasonable evidence of the
12 reason for a customer's cancellation of a contract under this
13 section.

14 Sec. 9. (1) Before offering a contract to a prospective
15 customer, while operating a facility, and for 1 year after ceas-
16 ing to offer physical fitness services, a provider shall obtain a
17 surety bond for each individual facility. The bond shall be in a
18 form approved by the attorney general, issued by a company quali-
19 fied to write bonds in this state, and filed with the attorney
20 general within 30 days of its procurement.

21 (2) The surety bond shall be in 1 of the following amounts
22 for each individual facility maintained by a provider:

23 (a) \$25,000.00 if the provider sells contracts for a term
24 not greater than 24 months.

25 (b) \$100,000.00 if the provider sells contracts for a term
26 of 24 months to 36 months.

1 (3) The surety bond shall run to the attorney general for
2 the benefit of any customer or class of customers who have done
3 both of the following:

4 (a) Suffered damages because a provider ceased operation,
5 failed to open a facility, or failed to honor a customer's right
6 to cancel a contract under this act.

7 (b) Obtained a judgment for damages that remains unsatisfied
8 30 days after the judgment is entered.

9 (4) The sale of a facility does not release, cancel, or ter-
10 minate liability under any bond filed under this section as to
11 the transferee, purchaser, successor, or assignee of the facility
12 while the bond is in effect, unless the transferee, purchaser,
13 successor, or assignee obtains a bond under this section.

14 (5) The fact that a provider has filed a bankruptcy petition
15 or that the provider's debts have been discharged in bankruptcy
16 is not a bar or defense to a surety's obligation under a bond
17 filed under this section.

18 (6) In addition to any other remedy provided in this act,
19 the attorney general may bring an action to enforce this
20 section.

21 Sec. 11. Misrepresenting, directly or indirectly, in adver-
22 tising, promotional materials, or in any other manner any of the
23 following regarding physical fitness services is an unfair,
24 unconscionable, or deceptive method, act, or practice in viola-
25 tion of the Michigan consumer protection act, 1976 PA 331,
26 MCL 445.901 to 445.922:

1 (a) The size, location, available facilities, or equipment.

2 (b) The nature of courses offered, membership programs,
3 training devices or methods, services, pricing structure, or
4 price discounts or sales.

5 (c) The number, qualifications, title, status, training, or
6 experience of personnel, agents, employees, or other
7 representatives.

8 (d) Organizational divisions or personnel position titles
9 that would tend to mislead or deceive a customer as to the impor-
10 tance of the physical fitness services.

11 (e) The customer's right to cancel a contract under this
12 act.

13 Sec. 13. A customer injured as the result of the violation
14 of this act or the attorney general may bring an action to
15 recover damages, including costs and reasonable attorney fees,
16 and for injunctive relief.

17 Sec. 15. A contract that does not comply with this act is
18 voidable by the customer. A waiver by the customer of any provi-
19 sion of this act is void.