

HOUSE No. 1552

By Mr. Natsios of Holliston, petition of Andrew S. Natsios for legislation to establish procedures for opening and operating health clubs within the Commonwealth. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Four.

AN ACT PERTAINING TO HEALTH CLUBS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. "Contract" means an oral or written agreement
2 by which one becomes a member of a health club.

3 "Facilities" means equipment, physical structures, and other
4 tangible property utilized by a health club to conduct its business.
5 The term includes, but is not limited to, saunas, whirlpool baths,
6 gymnasiums, running tracks, swimming pools, shower areas, and
7 exercise equipment.

8 "Health club" means an establishment which provides services
9 or facilities which purport to improve or maintain the user's
10 physical condition or appearance through weight control, exercise,
11 dieting, or a combination of these. The term includes, but is not
12 limited to, establishments referred to by such terms as reducing
13 salon, spa, exercise club, exercise gym, health studio, health club,
14 weight control center, or other similar term and includes any
15 establishment primarily operated for the purpose of teaching a
16 form of forms of self defense such as judo or karate. As used in this
17 chapter, the term "health club" shall not include, and this chapter
18 shall not apply to services rendered by:

- 19 (a) Any nonprofit public or private school, collage, or university;
- 20 (b) The state, or any of its political subdivisions; or
- 21 (c) Any nonprofit religious, ethnic, community, or service
22 organization.

23 “Member” or “buyer” means a natural person who enters into a
24 health club contract or attains a status entitling him to the services
25 or facilities of a health club.

26 “Prepayment” means any payment for services or the use of
27 facilities made before the services or facilities are made available by
28 the health club. It is not a prepayment if a payment for services or
29 the use of facilities is made on the same day the services or use of the
30 facilities is provided. Money or other consideration received by a
31 health club from a financial institution upon the assignment or sale
32 of a contract shall be considered a prepayment to the extent the
33 member is required to make prepayments to the financial
34 institution pursuant to the contract.

35 “Seller” means the person, corporation, partnership, association,
36 or other entity engaged in the operation of a health club as defined
37 in this section, and who offers for sale the right to use the facilities
38 or the services of the health club.

39 “Services” means programs, plans, guidance, or instruction
40 provided by a health club for health club members. The term
41 includes, but is not limited to, diet planning, exercise instruction, exercise
42 programs, and instructional classes.

43 “Special offer or discount” means any offer of health club
44 services or the use of health club facilities at a reduced price or
45 without charge to the member or prospective member.

1 SECTION 2. Any person, corporation, partnership, asso-
2 ciation, or other entity operating or intending to open or operate a
3 health club within this state shall:

4 (a) File a registration statement with the attorney general's
5 consumer protection division. Such registration statement shall
6 contain the name and address of the health club; the names and
7 addresses of the officers, directors, and stockholders of the health
8 club and its parent corporation, if such an entity exists; the type of
9 available facilities; a written list of each piece of equipment and
10 each service which the club has available for use by buyers;
11 approximate size of the health club measured in square feet;
12 whether or not a shower area is provided; and

13 (b) Post a surety bond in the amount of \$10,000 with the

14 attorney general's consumer protection division. The type of surety
15 bond shall be designated by the division. No bond shall be accepted
16 for filing unless it is with a surety company authorized to do
17 business in this state. Any person who is damaged by any violation
18 of this chapter, or by the seller's breach of the contract sale or any
19 obligation arising therefrom may bring an action against the bond
20 to recover damages suffered and any other amounts allowable by
21 law. The attorney general, in any action brought under this chapter
22 or any other applicable provisions of law, may proceed against said
23 bond.

24 (c) The division may from time to time exempt from the
25 bonding requirement set forth in subparagraph (b) any health club
26 if the health club furnishes to the division a copy of its financial
27 statements, certified by its president or principal to be true and
28 correct, and such other documentation as the division may require,
29 establishing to the satisfaction of the division sufficient financial
30 responsibility to satisfy the possible claims of the type which might
31 be brought against the bond. Health clubs exempted by the
32 division from posting a bond under this subparagraph shall
33 annually file documentation, as the division deems appropriate,
34 establishing sufficient financial responsibility to continue to be
35 exempt from the bonding requirement of subparagraph (b).

1 SECTION 3. Contract Requirements; Disclosure of Cancel- 2 lation Rights.

1 (a) A fully completed copy of each contract shall be delivered to
2 the buyer at the time the contract is signed. Every contract shall
3 constitute the entire agreement between the seller and the buyer,
4 shall be in writing, and shall be signed by the buyer, and shall
5 designate the date on which the buyer signed the contract.

6 (b) Each contract shall state in at least 10 point boldface type the
7 following:

8 "NOTICE TO BUYER: DO NOT SIGN THIS CONTRACT
9 UNTIL YOU HAVE READ ALL OF IT. ALSO, DO NOT SIGN
10 THIS CONTRACT IF IT CONTAINS ANY BLANK SPACES."

11 (c) Every purchaser of a membership shall be entitled to cancel
12 his or her contract within 3 business days by notifying the health

13 club in writing by midnight of the third business day following the
14 date of purchase of the membership contract. Written notification
15 is deemed given if mailed or delivered by midnight of the third
16 business day. All money collected pursuant to the contract shall be
17 refunded to the purchaser exercising the right to cancel.

18 (d) Each contract shall contain the following notice in at least 10
19 point boldface type:

20 IF WITHIN 3 BUSINESS DAYS YOU DECIDE YOU DO
21 NOT WISH TO REMAIN A MEMBER OF THIS HEALTH
22 CLUB, YOU MAY CANCEL THIS AGREEMENT BY DELIV-
23 ERING OR MAILING A NOTICE, CERTIFIED MAIL, TO
24 THE HEALTH CLUB BY MIDNIGHT OF THE THIRD
25 BUSINESS DAY FOLLOWING YOUR PURCHASE OF THE
26 CONTRACT. IF YOU DELIVER THE NOTICE PERSON-
27 ALLY, YOU ARE ENTITLED TO A RECEIPT. YOUR
28 NOTICE MUST MAKE KNOWN THAT YOU DO NOT WISH
29 TO BE BOUND BY THE CONTRACT. THE NOTICE MUST
30 BE DELIVERED OR MAILED BY CERTIFIED MAIL TO
31 (insert name and address of health club).

1 SECTION 4. List of Membership Plans.

2 I. Each health club operating in this state shall prepare a
3 comprehensive list of all membership plans offered for sale by the
4 health club and the respective price of each plan. The list shall be
5 shown to each prospective purchaser of a membership plan.

6 II. A health club is prohibited from selling a membership plan
7 not included in this list and in the registration statement.

1 SECTION 5. Buyer's Rights.

2 Every seller of a prepaid health club services contract shall:

3 (a) Refund to the buyer the pro rata cost of any unused services,
4 within 15 days after request therefor, if:

5 (1) The buyer is unable to receive benefits from the seller's
6 services by reason of death or disability; or

7 (2) The buyer relocates more than 25 miles from the seller's
8 facility and any substantially similar facility that will accept the
9 seller's obligation under the contract and this section; or

10 (3) The seller relocates his facility more than 8 miles from its

11 present location, or if the seller's facility is closed permanently.

12 (b) Refund to the buyer the pro rata cost of any unused services
13 under all contracts between the parties, within 15 days after request
14 therefor, if the aggregate price of all contracts in force between the
15 parties exceeds \$1,000. Provided, however, if the contract so
16 provides, the seller may retain a cancellation fee of not more than
17 25 percent of the pro rata cost of unused services on all contracts,
18 not to exceed \$250.

19 II. Upon the occurrence of any of the circumstances enumerated
20 in subparagraph's I(a) or (b) of this section, the buyer or his estate
21 shall be relieved of any further obligation for payment under the
22 contract not then due and owing.

1 SECTION 6. Remedies.

2 I. Any violation of the provisions of this chapter is an unfair or
3 deceptive act or practice within the meaning of;

4 II. The rights, obligations, and remedies provided in this
5 chapter shall be in addition to any other rights, obligations, or
6 remedies provided for by law or in equity.

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