

## Physical Fitness Services Act

(815 ILCS 645/1) (from Ch. 29, par. 51)

Sec. 1. Short title. This Act shall be known and may be cited as the "Physical Fitness Services Act". (Source: P.A. 82-346.)

(815 ILCS 645/2) (from Ch. 29, par. 52)

Sec. 2. Definitions.

(a) "Physical fitness center" or "center" means any person or business entity offering physical fitness services to the public.

(b) "Physical fitness services" or "services" includes instruction, training or assistance in physical culture, bodybuilding, exercising, weight reducing, figure development, judo, karate, self-defense training, or any similar activity; use of the facilities of a physical fitness center for any of the above activities; or membership in any group formed by a physical fitness center for any of the above purposes.

(c) "Basic physical fitness services" means access or membership to the physical fitness center and the use of the equipment and facilities as well as any classes, programs or physical fitness services offered by the physical fitness center as provided under subsection (b) of this Section, which are allowed for or provided as part of the membership fee or package, and excluding optional physical fitness services and any non-physical fitness services which may be offered by the physical fitness center.

(d) "Optional physical fitness services" means additional goods or physical fitness services offered by the physical fitness center which are not part of the membership package or contract but are available for additional cost and includes, but are not limited to, personal training services, physical fitness, wellness or exercise classes, nutritional counseling, weight reduction, court time, privileges to use other physical fitness centers, and use of specialized physical fitness equipment or facilities such as rock climbing walls or aquatic facilities.

(e) "Personal training services" means services performed for a fee by a personal trainer or fitness instructor for individuals or groups relating to developing, monitoring or supervising physical training, exercise or fitness programs, education and instruction regarding the use of exercise equipment or techniques, or rendering advice relating to any of the aforementioned subjects or related issues such as diet.

(f) "Non-physical fitness services" means services or amenities offered by the physical fitness center which are not directly related to physical fitness activities and which are not included in the price of membership to the physical fitness center and includes, but are not limited to, locker fees, spa treatments, massage, tanning, personal grooming services, laundry fees, room rental, parking, food and beverage, vitamins, nutritional supplements, shoes, clothing, clothing apparel, and sports or exercise equipment.

(Source: P.A. 94-663, eff. 1-1-06; 94-687, eff. 11-3-05.)

(815 ILCS 645/3) (from Ch. 29, par. 53)

Sec. 3. Applicability. (a) Except as provided in Section 14, governmental and not-for-profit entities are exempt from the requirements of this Act.

(b) The provisions of this Act are not exclusive, and do not exempt any contract for physical fitness services, nor the parties thereto, from any other applicable law, nor prohibit the enforcement by any person of any right otherwise provided by law.

(Source: P.A. 84-414; 84-729.)

(815 ILCS 645/4) (from Ch. 29, par. 54)

Sec. 4. Contract requirements: written contract. Every contract for physical fitness services shall be in writing and shall be subject to this Act. All provisions, requirements and prohibitions which are mandated by this Act shall be contained in the written contract before it is signed by the customer. A copy of the written contract shall be given to the customer at the time the customer signs the contract. Physical fitness centers shall maintain original copies of all contracts for services for as long as such contracts are in effect and for a period of 3 years thereafter. (Source: P.A. 84-850.)

(815 ILCS 645/5) (from Ch. 29, par. 55)

Sec. 5. Contract requirements: disclosure of costs. Every contract for physical fitness services shall set forth the customer's total payment obligation for services to be received pursuant to the contract. (Source: P.A. 82-346.)

(815 ILCS 645/6) (from Ch. 29, par. 56)

Sec. 6. Contract requirements: cancellation and refund. (a) Every contract for physical fitness services shall provide that: (1) the contract may be cancelled by the customer within 3 business days after the first business day after the contract is signed by the customer, and that all monies paid pursuant to said contract shall be refunded to the customer. For the purposes of this Section, business day shall mean any day on which the facility is open for business. A customer purchasing a plan at a facility which has not yet opened for business at the time the contract is signed, or who does not purchase a contract at an existing facility, shall have seven calendar days in which to cancel the contract and receive a full refund of all monies paid. The customer's rights to cancel described herein are in addition to any other contract rights or remedies provided by law; (2) in the event of the relocation of a customer's residence to farther than 25 miles from the center's facilities, and upon the failure of the original center to designate a center, with comparable facilities and services within 25 miles of the customer's new residence, which agrees to accept the original center's obligations under the contract, the customer may cancel the contract and shall be liable for only that portion of the charges allocable to the time before reasonable evidence of such relocation is presented to the center, plus a reasonable fee if so provided in the contract, but such fee shall not exceed 10% of the unused balance, or \$50, whichever is less; and (3) if the customer, because of death or disability, is unable to use or receive all services contracted for, the customer, or his estate as the case may be, shall be liable for only that portion of the charges allocable to the time prior to death or the onset of disability. The center shall in such event have the right to require and verify reasonable evidence of such death or disability.

(b) Every contract for physical fitness services shall provide that notice of cancellation pursuant to subsection (a) of this Section shall be made in writing and delivered by certified or registered mail to the center at the address specified in the contract. All refunds to which a customer or his estate is entitled shall be made within 30 days of receipt by the center of the cancellation notice. (Source: P.A. 84-850.)

(815 ILCS 645/7) (from Ch. 29, par. 57)

Sec. 7. Contract requirements: planned centers. Every contract for physical fitness services at a planned physical fitness center or a center under construction shall further provide that, in the event that the facilities and services contracted for are not available within 12 months from the date the contract is entered into, or within 3 months of a date specified in the contract, whichever is earlier, the contract may be cancelled at the option of the customer, and all payments refunded within 30 days of receipt by the center of the cancellation notice. (Source: P.A. 82-346.)

(815 ILCS 645/8) (from Ch. 29, par. 58)

Sec. 8. Prohibited contract provisions.

(a) No contract for basic physical fitness services shall require payment of a total amount in excess of \$2500 per year, and every such contract must so provide in writing; except that this limit shall not apply to any contract for: (1) family or couple memberships, or (2) group memberships, where the purchaser is a corporation or other business entity or any social, fraternal or charitable organization not created for the purpose of encouraging this contractual arrangement.

(b) No contract for family or couple memberships for basic physical fitness services shall require payment in excess of \$2,500 per year per person covered under the membership.

(c) No contract for physical fitness services shall require payments or financing over a period in excess of 3 years from the date the contract is entered into, nor shall the term of any such contract be measured by the life of the customer. The initial term of services to be rendered under the contract may not extend over a period of more than 2 years from the date the parties enter into the contract; provided that the customer may be given an option to renew the contract for consecutive periods of not more than one year each for a reasonable consideration not less than 10% of the cash price of the original membership.

(d) No contract for physical fitness services shall require or entail the execution of any note by the customer which, when separately negotiated, will cut off as to third parties any right of action or defense which the customer may have against the physical fitness center. No right of action or defense arising out of a contract for physical fitness services which the customer has against the center shall be cut off by assignment of the contract whether or not the assignee acquires the contract in good faith and for value. Such an assignee is not a holder in due course. (Source: P.A. 94-663, eff. 1-1-06; 94-687, eff. 11-3-05.)

(815 ILCS 645/9) (from Ch. 29, par. 59)

Sec. 9. General provisions.

(a) All contracts for basic physical fitness services which may be in effect between the same center and the same customer, the terms of which overlap for any period, shall be considered as one contract for the purposes of this Act. No physical fitness center may sell, induce, or permit any purchaser of basic physical fitness services to become obligated directly or contingently under more than one contract for services at the same time for purposes of avoiding the provisions of this Act.

(b) Any waiver by the customer of the provisions of this Act shall be void and unenforceable.

(c) Any contract for physical fitness services which does not comply with the applicable provisions of this Act shall be void and unenforceable.

(d) If any court finds, as a matter of law, that a contract or any provision thereof was unconscionable when made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result. (Source: P.A. 94-687, eff. 11-3-05.)

(815 ILCS 645/10) (from Ch. 29, par. 60)

Sec. 10. Prohibited acts. (a) Unfair or deceptive acts and practices are prohibited, including but not limited to: use of coercive sales tactics; misrepresentation of the quality, benefits or nature of services; misrepresentation of the qualifications or numbers of personnel, or the present or maximum number of customers who may contract to use the facilities of the center; or misrepresentation of the skills or abilities of any customer or potential customer.

(b) Any contract for physical fitness services entered into in reliance upon any false, fraudulent, or misleading information, representation, notice, or advertisement of the physical fitness center or any of its employees or agents shall be void and unenforceable. (Source: P.A. 82-346.)

(815 ILCS 645/11) (from Ch. 29, par. 60.1)

Sec. 11. Enforcement by customer. Any customer injured by a violation of this Act may bring an action for the recovery of damages. Judgment may be entered for 3 times the amount at which the actual damages are assessed, plus costs and reasonable attorneys' fees. (Source: P.A. 82-346.)

(815 ILCS 645/12) (from Ch. 29, par. 60.2)

Sec. 12. Enforcement by Attorney General. All remedies, penalties and authority granted to the Attorney General by the "Consumer Fraud and Deceptive Practices Act", approved July 24, 1961, as now or hereafter amended, shall be available to him for the enforcement of this Act, and Sections 3, 4, 5, 6, 6.1, 7 and 10 of that Act are hereby incorporated by reference into this Act. In addition, in any action brought by the Attorney General to enforce this Act, the court may order that persons who incurred actual damages be awarded 3 times the amount at which actual damages are assessed. (Source: P.A. 82-346.)

(815 ILCS 645/13) (from Ch. 29, par. 60.3)

Sec. 13. Preopening sales escrow. (a) All moneys received by a physical fitness center pursuant to contracts for physical fitness services prior to the full operation of such center shall be placed in escrow. Such funds shall be kept and maintained in an account separate and apart from any account maintained for the physical fitness center's use or for use in the construction or operation of the physical fitness center or for the payment or benefit of employees of the physical fitness center. Such escrow account shall be established in a bank or trust company doing business in this State.

(b) The escrow account shall provide that the purpose of the account is to protect customers in the event that the physical fitness center fails to substantially complete and open the facility within one year following establishment of the account. Any customer who has paid money which is on deposit in the escrow account may maintain a representative action to close the account and to release such moneys pro rata to all customers similarly situated if such physical fitness center has not been substantially completed and opened within one year of establishment of the account.

(c) A monthly statement of the escrow account is to be furnished to customers who have advanced funds or obligations until such

account is closed in accordance with this Section.

(d) The escrow account shall be released by the escrow agent to the physical fitness center not less than thirty days nor more than sixty days following the completion of construction of the proposed physical fitness center as evidenced by (1) a certificate of an architect licensed in this State or a certificate of occupancy issued by the municipality or county where the physical fitness center is located, and (2) a contractor's statement and waivers of liens as to all suppliers of materials and services for the construction of the physical fitness center.

(e) In lieu of the escrow required by this Section, the physical fitness center may furnish such evidence as the Attorney General may require, executed under penalty of perjury by an officer or owner of the physical fitness center, which reasonably demonstrates sufficient financial responsibility to enable the physical fitness center to satisfy all possible claims in the event that the facility or services are not timely provided. In determining whether the physical fitness center has the requisite financial responsibility, the Attorney General may consider the operating and business history and reputation of the physical fitness center and its management within and without the State as well as the operating and business history and reputation of any business or corporation controlled by, under common control with, or controlling the physical fitness center. (Source: P.A. 82-346.)

(815 ILCS 645/14) (from Ch. 29, par. 60.4)

Sec. 14. (a) A physical fitness center shall have available and on its premises, at all times during which members of such physical fitness center or other persons are engaged in physical fitness activities or receiving physical fitness services, at least one person who holds a valid certificate indicating that he has successfully completed a course of training in basic cardiopulmonary resuscitation which complies with generally recognized standards for basic cardiopulmonary resuscitation.

(b) A person holding a valid certificate who in good faith provides emergency cardiopulmonary resuscitation to a member of the physical fitness center or other person shall not be liable for his act or omission in providing such resuscitation, unless such act or omission was willful or wanton, as provided in Section 17 of the "Emergency Medical Services (EMS) Systems Act", as now or hereafter amended.

(c) For the purposes of this Section, the term "physical fitness center" includes not-for-profit entities which offer physical fitness services to the public. A "physical fitness center" does not include any facility operated by a group or association of private individuals solely for the benefit or use of such individuals and not open to the public. (Source: P.A. 84-1308.)