

Title 8 COMMERCIAL LAW AND CONSUMER PROTECTION
Chapter 23 HEALTH STUDIO SERVICES

Section 8-23-1

Legislative findings and declaration.

The Legislature finds and declares that there exist in connection with a substantial number of contracts for health studio services certain practices and business and financing methods which have worked undue financial hardship upon some of the citizens of our state, and that existing legal remedies are inadequate to correct existing problems in the industry. The Legislature finds and declares that the health studio industry has a significant impact upon the economy and well-being of the people of the state and that the provisions of this chapter regulating health studio contracts are necessary for the public welfare.

(Acts 1984, No. 84-297, p. 661, §1.)

Section 8-23-2

Definitions.

For purposes of this section, the following terms shall have the following meanings, unless the context requires otherwise:

(1) HEALTH STUDIO. Includes any person, firm, corporation, organization, club, or association engaged in the sale of instruction, training, or assistance in a program of physical exercise or weight reduction, which may include the use of a sauna, whirlpool bath, weight lifting room, massage, steam room, or other exercising or weight reduction machine or device. The term also includes any person, firm, corporation, organization, or association engaged in the sale of the right or privilege to use exercise or weight reduction equipment or facilities, such as a sauna, whirlpool bath, weight lifting room, massage, steam room, or other exercising or weight reduction machine or device. "Health studio" does not include bona fide nonprofit organizations which have been granted tax exempt status by the Internal Revenue Service, including but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or other similar organizations, whose functions as health studios are only incidental to their overall functions and purposes.

(2) HEALTH STUDIO SERVICES. Includes services, privileges, or rights offered for sale or provided by a "health studio."

(3) DIVISION. The Consumer Division of the office of Attorney General.

(Acts 1984, No. 84-297, p. 661, §2.)

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Section 8-23-3

Registration of health studio sales persons; resident agent; security bond.

(a) Each person who sells health studio services in this state shall register with the Attorney General's Consumer Protection Division on forms the division provides. The person shall furnish the full name and address of each business location where health studio services are sold as well as any other registration information the division deems appropriate.

(b) There shall be one registered agent representing each seller of health studio services in the county where a studio is located and shall serve as a resident agent for receipt of service of process.

(c) The division may bring an action for mandamus against a health studio to require the club to register or to have and maintain the surety required by this section.

(d) Every health studio which sells contracts for health studio services to be rendered at a planned health studio or a health studio under construction shall purchase a security bond in an amount not less than \$50,000, or shall file with the division an irrevocable letter of credit by a surety company or lending institution permitted to do business in the state.

(e) A buyer of health studio services who suffers or sustains any loss or damage by reason of breach of contract or bankruptcy by the seller of the health studio services contract may bring an action based on the bond and recover against the surety.

(f) The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number of amount of claims filed.

(g) If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the division for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(h) Any person or business bonded under this section shall maintain accurate records of the bond and of premium payments on it. These records shall be open to inspection by the division at any time during normal business hours.

(Acts 1984, No. 84-297, p. 661, §3.)

Section 8-23-4

Health studio services contracts - Composition.

Every contract for the sale of health studio services shall contain the following:

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(1) Provisions for the penalty-free cancellation of the contract within three days, exclusive of holidays and weekends, of its making, upon the mailing or delivery of written notice to the health studio, and refund upon such notice of all moneys paid under the contract, except that the health studio may retain an amount computed by dividing the number of complete days in the contract's term or, if appropriate, the number of occasions health studio services are to be rendered, into the total contract price and multiplying the result by the number of complete days that have passed since the contract's making or, if appropriate, by the number of occasions that health studio services have been rendered.

(2) Provision for the cancellation of the contract if the health studio goes out of business and fails to provide facilities within five miles or moves its facilities more than five miles from the location designated in such contract, upon written notice by the buyer, with refund upon such notice of funds paid or accepted in payment of the contract or in an amount computed by dividing the contract price by the number of weeks of the contract's term and multiplying the result by the number of weeks remaining in the contract's term.

(3) Provision for the cancellation of the contract if the buyer dies or becomes totally and permanently disabled during the membership term following the date of such contract, with refund of funds paid or accepted in payment of the contract in an amount computed by dividing the contract price by the number of weeks of the contract's term and multiplying the result by the number of weeks remaining in the contract's term. The contract may require a buyer or the buyer's estate seeking relief under this subsection to provide reasonable proof of total and permanent disability or death.

(4) Provision that period over which the contract is financed shall not be for a period in excess of 24 months.

(5) Buyer has the right to rescind this agreement within a 30-day period after the facility becomes fully operational if there has been any misrepresentation concerning the facilities that would be available to said buyer.

(6) Provision that in the event that buyer moves out of town and there exists no affiliated facility within a 15-mile radius of buyer's new location the contract or membership agreement may be cancelled at buyer's option. On an installment sales contract a pro rata refund must be available at buyer's option.

(Acts 1984, No. 84-297, p. 661, §4.)

Section 8-23-5

Health studio services contracts - Written contract required; rights of buyer.

Upon entering into a contract for health studio services, the buyer shall be provided with a written contract, which shall include the name, address, and primary place of business of the

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health studio. Prior to entering into any such contract, the health studio shall also provide the buyer with a current copy of any rules and regulations applicable to the buyer's use of the health studio.

(1) If a health studio facility is not in existence on the date the health studio contract is executed, the buyer may cancel the contract in the event the facility is not open for business on the date as provided by the contract.

(2) If the buyer cancels under this section, the health studio facility shall refund any deposit, down payment, or payment on the contract.

(Acts 1984, No. 84-297, p. 661, §5.)

Section 8-23-6

Applicability of chapter.

The provisions of this chapter shall not apply to any contracts for health studio services entered into before August 13, 1984, or to the subsequent renewals of said contracts.

(Acts 1984, No. 84-297, p. 661, §6.)

Section 8-23-7

Assignment of contract; notice.

No right of action or defense arising out of a contract for health studio services which the buyer has against the seller, and which would be cut off by assignment, shall be cut off by assignment of the contract to any third party whether or not he acquires the contract in good faith and for value unless the assignee gives notice of the assignment to the buyer as provided in this section and within 30 days of the mailing of notice receives no written notice of the facts giving rise to the claim or defense of the buyer. A notice of assignment shall be in writing addressed to the buyer at the address shown on the contract and shall identify the contract and inform the buyer that he must, within 30 days of the date of mailing of the notice, notify the assignee in writing of any facts giving rise to a claim or defense which he may have. The notice of assignment shall state the name of the seller and buyer, a description of the services, the contract balance and the number and amount of the installments.

(Acts 1984, No. 84-297, p. 661, §7.)

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Section 8-23-8

Restriction of right of action of buyer prohibited.

No contract for health studio services shall require or entail the execution of any note or series of notes by the buyer which when separately negotiated will cut off as to the parties any right of action or defense which the buyer may have against the seller.

(Acts 1984, No. 84-297, p. 661, §8.)

Section 8-23-9

Effect of noncompliance with chapter.

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

(Acts 1984, No. 84-297, p. 661, §9.)

Section 8-23-10

Supervision and enforcement of chapter.

Supervision and enforcement of the provisions of this chapter shall rest with the Attorney General and district attorneys of the several judicial circuits where such health studios are situated, respectively.

(Acts 1984, No. 84-297, p. 661, §10.)

Section 8-23-11

Penalty.

Violation of this chapter shall constitute a Class C felony.

(Acts 1984, No. 84-297, p. 661, §11.)

Section 8-23-12

Chapter not exclusive.

Provisions of this chapter are not exclusive and do not relieve the parties or contracts subject thereto from compliance with all other applicable laws.

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(Acts 1984, No. 84-297, p. 661, §12.)

Section 8-23-13

Noncompliance with chapter constitutes unfair trade practice.

Failure to comply with the provisions of this chapter is an unfair or deceptive trade practice.

(Acts 1984, No. 84-297, p. 661, §13.)