SENATE, No. 4006



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED JUNE 26, 2023

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Prohibits health club services contracts from limiting liability for injuries caused by negligence of health club.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning health club services contracts and amending P.L.1987, c.238.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1987, c.238 (C.56:8-42) is amended to read as follows:

4. a. Every contract for health club services shall be in writing. A copy of the written contract shall be given to the buyer at the time the buyer signs the contract.

b. A health club services contract shall specifically set forth in a conspicuous manner on the first page of the contract the buyer's total payment obligation for health club services to be received pursuant to the contract.

c. A health club services contract of a health club facility which maintains a bond, irrevocable letter of credit or securities, moneys or other security pursuant to subsection a. of section 3 of this act shall set forth that a bond, irrevocable letter of credit or securities, moneys or other security is filed or deposited with the Director of the Division of Consumer Affairs to protect buyers of these contracts who are damaged or suffer any loss by reason of breach of contract or bankruptcy by the seller.

d. Services to be rendered to the buyer under the contract shall not obligate the buyer for more than three years from the date the contract is signed by the buyer.

e. A contract for new or increased health club services may be cancelled by the buyer for any reason at any time before midnight of the third operating day after the buyer receives a copy of the contract. In order to cancel a contract the buyer shall notify the health club of cancellation in writing, by registered or certified mail, return receipt requested, or personal delivery, to the address specified in the contract. All moneys paid pursuant to the cancelled contract shall be fully refunded within 30 days of receipt of the notice of cancellation. If the customer has executed any credit or loan agreement through the health club to pay all or part of health club services, the negotiable instrument executed by the buyer shall also be returned within 30 days. The contract shall contain a conspicuous notice printed in at least 10-point bold-faced type as follows:

"NOTICE TO CUSTOMER"

You are entitled to a copy of this contract at the time you sign it.

You may cancel this contract at any time before midnight of the third operating day after receiving a copy of this contract. If you choose to cancel this contract, you must either:

1. Send a signed and dated written notice of cancellation by registered or certified mail, return receipt requested; or

2. Personally deliver a signed and dated written notice of cancellation to: ..................................... (Name of health club) ..................................... (Address of health club)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. If the third operating day falls on a Sunday or holiday, notice is timely given if it is mailed or delivered as specified in this notice on the next operating day. Refunds must be made within 30 days of receipt of the cancellation notice to the health club.

'Operating day' means any calendar day on which patrons may inspect and use the health club's facilities and services during a period of at least eight hours, except holidays and Sundays."

f. A health club services contract shall provide that it is subject to cancellation by notice sent by registered or certified mail, return receipt requested, or personally delivered, to the address of the health club specified in the contract upon the buyer's death or permanent disability, if the permanent disability is fully described and confirmed to the health club by a physician. In a cancellation under this subsection, the health club may retain the portion of the total contract price representing the services used plus reimbursement for expenses incurred in an amount not to exceed 10% of the total contract price.

g. A health club services contract shall provide that it is subject to cancellation by notice sent by registered or certified mail, return receipt requested, or personally delivered, to the address of the health club specified in the contract upon the buyer's change of permanent residence to a location more than 25 miles from the health club or an affiliated health club offering the same or similar services and facilities at no additional expense to the buyer. In a cancellation under this subsection, the health club may require proof of the new permanent residence and may retain a prorated share of the total contract price based upon the date the notice was received plus reimbursement for expenses incurred in an amount not to exceed 10% of the total contract price.

h. A health club services contract shall provide that if a health club facility is closed for a period longer than 30 days through no fault of the buyer of the health club services contract, the buyer is entitled to either extend the contract for a period equal to that during which the facility is closed or to receive a prorated refund of the amount paid by the buyer under the contract.

i. A health club services contract shall not obligate the buyer to renew the contract.

j. If a health club facility is not in existence on the date the contract is executed, the health club services contract shall provide that a buyer of a contract may cancel the contract if the facility is not open for business on a date which shall be set forth in the contract and receive a full refund of any deposit or payment on the contract.

k. A health club services contract shall not limit the liability of the health club to a buyer for injuries caused by or resulting from the negligence of the owner or operator, or an agent or employee of the owner or operator, of the health club.

(cf: P.L.1987, c.238, s.4)

2. This act shall take effect on the first day of the ninth month next following enactment.

STATEMENT

This bill prohibits health club services contracts from limiting the liability of the health club to a buyer for injuries caused by or resulting from the negligence of the owner or operator, or an agent or employee of the owner or operator, of the health club.

This bill is intended to codify Justice Albin’s dissent in the case of Pulice v. Green Brook Sports & Fitness, 236 N.J. 1 (2018); see also Stelluti v. Casapenn, 203 N.J. 286 (2010) (Albin, J., dissenting) (arguing that a contract limiting a health club’s liability from its own negligence is void as against public policy).

A violation of this bill would be an unlawful practice pursuant to the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), and is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. In addition, violations can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.