

1977 Assembly Bill 610

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## CHAPTER 276, Laws of 1977

AN ACT to create 134.70 of the statutes, relating to regulating fitness center contracts, granting rule-making authority and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 134.70 of the statutes is created to read:

**134.70 Fitness center contracts.** (1) In this section:

(a) "Conspicuous" has the meaning designated under s. 421.301 (8).

(b) "Contract for fitness center services" or "contract" means a contract for membership in any fitness center or a contract for instruction, training, assistance or use of facilities primarily for physical exercise, in weight control, or in figure development.

(c) "Fitness center" means an establishment which, for profit, provides as its primary purpose services or facilities which are purported to assist patrons in physical exercise, in weight control, or in figure development, including but not limited to a fitness center, studio, salon or club. This definition does not include an organization solely offering training or facilities in an individual sport.

(d) "Operating day" means any calendar day on which the buyer may inspect and use the facilities and services of the fitness center during a period of at least 8 hours.

(2) The seller shall give the buyer a copy of the written contract at the time the buyer signs the contract.

(3) Every contract for fitness center services shall clearly and conspicuously disclose the identity and location of the fitness center facilities available to the buyer. The contract shall disclose the general nature of each major facility and service which will be available including any conditions or restrictions on their use. The disclosures under this subsection may be made on a separate sheet provided to the buyer at the time the buyer signs the contract. If a facility or service is replaced by an equal or superior facility or service, the fitness center is deemed in compliance with this subsection.

(4) Every contract for fitness center services shall provide that performance of all of the agreed upon facilities and services will be available for the buyer's use on a specified date no later than 6 months after the date the contract is signed by the buyer.

(5) Every contract for fitness center services shall be for a specified length of time not exceeding 2 years and shall clearly disclose the full price of the buyer's contractual obligation including any interest or other charges.

(6) Every contract for fitness center service shall contain:

(a) A caption printed in boldface uppercase type of not less than 10-point size entitled "CANCELLATION AND REFUNDS".

(b) A provision under the caption stating: "Right to Cancel. You are permitted to cancel this contract until midnight of the 3rd operating day after the date on which you signed the contract. If the facilities or services that are described in the contract are not available at the time you sign the contract, you have until midnight of the 3rd operating day after the day on which you received notice of their availability, to cancel the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying .... (the seller) by any writing mailed or delivered to .... (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you, less a user fee of no more than \$3 per day of actual use, will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by .... (the seller) and arrangements will be made to relieve you of any further obligation to pay the same."

(7) If, at the time of execution of the fitness center services contract, the facilities and services described in the contract are available for the buyer's use, the contract may include the written notice that the facilities and services are available as required by sub. (6).

(8) No contract may require the buyer to pay more than \$25 or 10% of the total contract price, whichever is less, prior to the date on which the customer receives written notice that the facilities and services described in the contract are available for full use by the buyer.

(9) No contract may require a buyer who exercises the contractual right to cancel to pay more than a \$3 user fee per day of actual use of facilities and services by the buyer during the cancellation period.

(10) Any right of action or defense arising out of a contract for fitness center services which the buyer has against the seller is preserved against any assignee of or successor to the contract.

(11) (a) Every contract for fitness center services shall provide that if any of the facilities or services described in the contract become unavailable or are no longer fully operational, before full receipt of the services and use of facilities for which the buyer contracted, the buyer is liable for only that portion of the total consideration proportional to the elapsed time portion of the contract at the time of the unavailability. The buyer is entitled to a refund of any other funds already paid.

(b) A buyer has the option, in lieu of the proportional refund provided in par. (a), to choose to complete the unused portion of the contract including any renewal periods at the price disclosed in accordance with sub. (5) at another location which is owned, controlled, affiliated with or operated by the seller. Any such modification of the contract must be made in writing and may only modify the terms of the contract required under sub. (3) concerning the unavailable or no longer fully operational facilities or services.

(c) Nothing in this subsection shall restrict a fitness center's ability to:

I. Perform regular maintenance or make prompt equipment repairs.

2. Make improvements to the facilities or services.
3. Replace a facility or service with a superior facility or service.

(12) Every contract for fitness center services shall provide that if the buyer is unable to make use of or receive the fitness center services contracted for because of death or disability, the buyer is liable for only that portion of the total consideration proportional to the elapsed time portion of the contract at the time of the death or disability.

(14) Any contract for fitness center services is unenforceable against the buyer and is a violation of this section if:

- (a) The buyer entered into the contract in reliance upon any false, fraudulent, deceptive or misleading information, representation, notice or advertisement.
- (b) The contract does not comply with the requirements of this section.
- (c) The seller fails to perform in accordance with the contractual provisions under this section.
- (d) The contract contains a provision in which the buyer agrees to waive the requirements of this section.

(15) (a) The department of agriculture, trade and consumer protection and the department of justice shall cooperatively investigate violations of this section. The department of justice may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section. The court may in its discretion, upon entry of final judgment, award restitution to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

2. Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this section in an amount not less than \$100 nor more than \$10,000 for each violation.

(b) In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action for damages under s. 100.20 (5). Any person injured by a breach of a contract for fitness center services may bring a civil action to recover damages together with costs and disbursements, including reasonable attorney fees, and such other equitable relief as may be determined by the court.

**SECTION 2. Program responsibility citations.** (1) In the list of program responsibilities for the department of agriculture, trade and consumer protection under section 15.131 (intro.) of the statutes, reference to section "134.70 (15)" is inserted.

(2) In the list of program responsibilities for the department of justice under section 15.251 (intro.) of the statutes, reference to section "134.70 (15)" is inserted.

**SECTION 3. Applicability.** This act applies to contracts entered into on or after the effective date of this act.

**SECTION 4. Effective date.** This act takes effect on the first day of the 3rd month commencing after publication.

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