

1991 Senate Bill 443

Date of enactment: **April 27, 1992**  
Date of publication\*: **May 11, 1992**

## 1991 WISCONSIN ACT 247

**AN ACT** to renumber 134.70 (1) (a); to amend 134.70 (title), 134.70 (1) (b), 134.70 (1) (c), 134.70 (1) (d), 134.70 (3), 134.70 (7), (9) and (10), 134.70 (11) (a) and (c) (intro.), 134.70 (12), 134.70 (13) (a), 134.70 (13) (b) 1. (intro.), 134.70 (13) (b) 2, 134.70 (14) (intro.) and 134.70 (15) (am) and (b); and to create 134.70 (1) (ag), 134.70 (1) (b) 3, 134.70 (1) (bm), 134.70 (5m), 134.70 (6m) and 134.70 (13) (b) 3 of the statutes, **relating to:** regulating contracts for services and facilities provided by diet centers.

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

**SECTION 1.** 134.70 (title) of the statutes is amended to read:

**134.70 (title) Fitness center and diet center contracts.**

**SECTION 2.** 134.70 (1) (a) of the statutes is renumbered 134.70 (1) (am).

**SECTION 3.** 134.70 (1) (ag) of the statutes is created to read:

134.70 (1) (ag) “Center” means a fitness center or a diet center.

**SECTION 4.** 134.70 (1) (b) of the statutes is amended to read:

134.70 (1) (b) “Contract for fitness center services” or “contract” means a any of the following:

1. A contract for membership in any fitness center or a

2. A contract for instruction, training, assistance or use of facilities primarily for physical exercise, in weight control, or in figure development.

**SECTION 5.** 134.70 (1) (b) 3. of the statutes is created to read:

134.70 (1) (b) 3. A contract for instruction, supervision or counseling for diet or weight loss or maintenance.

**SECTION 6.** 134.70 (1) (bm) of the statutes is created to read:

134.70 (1) (bm) “Diet center” means an establishment that provides as its primary purpose instruction, supervision or counseling for diet or weight loss or maintenance, if physical exercise services are not provided on the premises.

**SECTION 7.** 134.70 (1) (c) of the statutes is amended to read:

134.70 (1) (c) “Fitness center” means an establishment ~~which that~~, for profit, provides as its primary purpose services or facilities ~~which that~~ 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 “Fitness center” does not include an organization solely offering training or facilities in an individual sport or an establishment which provides as its primary purpose instruction, supervision or counseling for diet or weight loss or maintenance, if physical exercise services are not provided on the premises or a diet center.~~

**SECTION 8.** 134.70 (1) (d) of the statutes is amended to read:

134.70 (1) (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.

**SECTION 9d.** 134.70 (3) of the statutes is amended to read:

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134.70 (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 that 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.

**SECTION 9m.** 134.70 (5m) of the statutes is created to read:

134.70 (5m) Every contract for diet center services shall be for a specified length of time not exceeding 2 years exclusive of any weight maintenance program. If the contract for diet center services includes a weight maintenance program, the contract for diet center services shall be for a specified length of time not exceeding 3 years. The contract for diet center services shall clearly disclose the full price of the buyer's contractual obligation including any interest or other charges.

**SECTION 10m.** 134.70 (6m) of the statutes is created to read:

134.70 (6m) Every contract for diet 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 the value of services already provided to you, 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."

**SECTION 11.** 134.70 (7), (9) and (10) of the statutes are amended to read:

134.70 (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.~~ subs. (6) and (6m).

(9) No contract for fitness center services 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. No contract for diet center services may require a buyer who exercises the contractual right to cancel to pay more than the value of services provided before cancellation.

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

**SECTION 12.** 134.70 (11) (a) and (c) (intro.) of the statutes are amended to read:

134.70 (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.

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

**SECTION 13.** 134.70 (12) of the statutes is amended to read:

134.70 (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.

**SECTION 14.** 134.70 (13) (a) of the statutes is amended to read:

134.70 (13) (a) Subject to sub. (8), no fitness center may collect or by contract require a buyer to pay more than \$75 for fitness center services before the buyer receives or has the opportunity to receive those services unless the fitness center establishes, for each fitness center location, proof of financial responsibility as described in par. (b).

**SECTION 15.** 134.70 (13) (b) 1. (intro.) of the statutes is amended to read:

134.70 (13) (b) 1. (intro.) ~~A fitness~~ Except as provided in subd. 3, a center may establish proof of financial responsibility required under par. (a) by maintaining any of the following commitments approved by the department of justice in an amount not less than \$25,000, subject to subd. 2:

**SECTION 16.** 134.70 (13) (b) 2. of the statutes is amended to read:

134.70 (13) (b) 2. The commitment described in subd. 1 shall be established in favor of or made payable to the state, for the benefit of any buyer who does not

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receive a refund under sub. (11) (a). The ~~fitness~~ center shall file with the department of justice any agreement, instrument or other document necessary to enforce the commitment against the ~~fitness~~ center or any relevant 3rd party, or both.

**SECTION 16m.** 134.70 (13) (b) 3. of the statutes is created to read:

134.70 (13) (b) 3. For 6 or more diet centers owned or operated under the same trade name, the amount of the financial commitment under par. (a) for those diet centers is not required to exceed a total of \$150,000.

**SECTION 17.** 134.70 (14) (intro.) of the statutes is amended to read:

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

**SECTION 18.** 134.70 (15) (am) and (b) of the statutes are amended to read:

134.70 (15) (am) The department of justice may bring an action in circuit court to recover on a financial commitment maintained under sub. (13) against a ~~fitness~~ center or relevant 3rd party, or both, on behalf of any buyer who does not receive a refund due under sub. (11) (a).

(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 19. Initial applicability.** This act first applies to contracts entered into, renewed, extended or modified on the effective date of this SECTION.

**SECTION 20. Effective date.** This act takes effect on the first day of the 4th month beginning after publication.

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