

1987 Senate Bill 290

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## 1987 Wisconsin Act 385

AN ACT to amend 134.70 (1) (c) and 134.70 (15) (a); and to create 46.03 (37), 134.70 (13), 134.70 (15) (am) and 134.705 of the statutes, relating to proof of financial responsibility by fitness centers, employe staffing requirements for fitness centers, 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. 46.03 (37) of the statutes is created to read:

46.03 (37) FIRST AID INSTRUCTION. In connection with first aid and cardiopulmonary resuscitation instruction to fitness center employes required under s. 134.705, do all of the following:

(a) Promulgate rules establishing standards and procedures under s. 134.705 (5) (a) to (c).

(b) Approve individuals, organizations or institutions of higher education which teach fitness center employes basic first aid and basic cardiopulmonary resuscitation under s. 134.705 (2).

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

134.70 (1) (c) "Fitness center" means an establishment which, for profit, provides as its primary pur-

pose 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 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.

SECTION 2. 134.70 (13) of the statutes is created 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 fit-

ness center location, proof of financial responsibility as described in par. (b).

(b) 1. A fitness 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:

- a. A bond.
- b. A certificate of deposit.
- c. An established escrow account.
- d. An irrevocable letter of credit.

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 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 3. 134.70 (15) (a) of the statutes is amended to read:

134.70 (15) (a) The department of agriculture, trade and consumer protection and the department of justice shall cooperatively investigate violations of this section or s. 134.705 (2) or (4). 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 or s. 134.705 (2) or (4). The court may in its discretion, upon entry of final judgment, award restitution when appropriate 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 or s. 134.705 (2) or (4) in an amount not less than \$100 nor more than \$10,000 for each violation.

SECTION 4. 134.70 (15) (am) of the statutes is created 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).

SECTION 5. 134.705 of the statutes is created to read:

**134.705 Fitness center staff requirements.** (1) In this section:

(b) "Department" means the department of health and social services.

(c) "Fitness center" has the meaning given under s. 134.70 (1) (c).

(d) "Institution of higher education" has the meaning given under s. 39.32 (1) (a).

(2) A fitness center shall do any of the following:

(a) At all times during which the fitness center is open and its facilities and services are available for use, have at least one employe present on the premises of the fitness center who has satisfactorily completed a course or courses in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by the department.

(b) Ensure that each of its employes, within 90 days after hire, satisfactorily completes at least one course in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by the department.

(4) A fitness center shall post a notice or notices on its premises stating the requirements of sub. (2) and the penalty for a violation of sub. (2) under s. 134.70 (15) (a). The notice shall comply with the rules promulgated by the department under sub. (5) (d).

(5) The department shall promulgate rules establishing all of the following:

(a) The minimum standards for the qualifications and training of an individual, including an individual associated with an organization or institution of higher education, who teaches basic first aid or basic cardiopulmonary resuscitation to fitness center employes under sub. (2).

(b) The minimum hours of instruction and general content of the basic first aid and basic cardiopulmonary resuscitation courses taught to fitness center employes under sub. (2).

(c) Procedures governing the department's approval of individuals, organizations and institutions meeting the standards established under pars. (a) and (b).

(d) Specifications for the notice required under sub. (4) including:

1. Dimensions.

2. Print size or type.

3. The location or locations where the notice must be posted on the fitness center premises.

(7) A violation of sub. (2) or (4) is subject to s. 134.70 (15) (a). This subsection or s. 134.70 (15) (a) does not preclude a person injured as a result of a violation of this section from pursuing any other available equitable or legal relief.

**SECTION 7. Nonstatutory provisions; rule making.** The department of health and social services shall promulgate the rules required under section 134.705 (5) of the statutes, as created by this act, to be effective on the first day of the 10th month beginning after the effective date of this SECTION.

**SECTION 8. Effective date.** This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 134.70 (15) (a) and 134.705 (title), (1), (2), (4) and (7) of the statutes takes effect on the first day of the 10th month beginning after publication.