

ACT 161

H.B. NO. 1912-84

A Bill for an Act Relating to Health Clubs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Title 26, Hawaii Revised Statutes, is amended by the addition of a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
HEALTH CLUBS**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Business day” means any calendar day on which the health club is open for inspection and use by the buyer, except Saturdays, Sundays, and state or federal holidays.

“Buyer” means a natural person who enters into a health club contract.

“Health club” means any person operating a business organized for profit, offering facilities or services for the maintenance or development of

physical fitness or well being through physical exercise. Each location at which the facilities or services are offered shall be deemed a separate health club.

“Health club contract” means a contract for membership in a health club, or for services offered by a health club, or for use of facilities of a health club, for a period longer than seven days.

“Social and recreational facilities” means those portions of the facilities of a health club devoted primarily to dining and entertaining.

§ -2 **Exemptions.** This chapter shall not apply to:

- (1) Any nonprofit organization;
- (2) Any person operating a business primarily for the purpose of teaching a form of self-defense or dance as an art;
- (3) Any private club owned and operated by its members;
- (4) Any medically related service performed by a doctor legally authorized to practice medicine or osteopathy in the State, in a private office, clinic, or hospital; or
- (5) The State or any of its political subdivisions;
- (6) Any health club which began offering health club contracts or any other contracts in the state prior to December 31, 1969;
- (7) Any club whose function as a health club is only incidental to its overall function and purpose, and whose covered floor space devoted to the maintenance or development of physical fitness or well being through physical exercise comprises less than thirty-five per cent of the total covered floor space of the club available to members.

§ -3 **Written contract required.** Every health club contract shall be in writing.

§ -4 **Copy of contract to buyer.** A copy of the health club contract shall be issued to the buyer at the time the buyer signs the contract.

§ -5 **Contents of contracts.** In addition to all other requirements of this chapter, every health club contract shall include the following:

- (1) The name and address of the health club;
- (2) The name and address of the buyer; and
- (3) A list of the names and addresses of other clubs, if the contract is transferable for use at other facilities.

§ -6 **Right of cancellation.** (a) Every health club contract may be canceled by the buyer within five business days after the date on which the buyer signs the contract, by mailing or delivering written notice to the health club at an address which is specified in the contract.

(b) Every health club contract shall contain a statement notifying the buyer of the right of cancellation. This statement shall be in a bold face type of a minimum size of ten points, in close proximity to the space reserved for the signature of the buyer, and shall be in substantially the following form:

“You, the buyer, may cancel this contract by mailing or delivering a written notice to this health club. The notice must say that you are canceling this contract and must be postmarked or delivered by midnight of the fifth business day of this health club after signing this contract, excluding Saturdays, Sundays, and state or federal holidays. The notice must be delivered or mailed to:

\_\_\_\_\_”  
(Name and mailing address of health club)

(c) Mailing a written notice of cancellation by registered or certified mail within five business days after the date on which the buyer signs the contract shall be conclusive evidence that the notice was timely mailed to the health club.

Mailing a written notice of cancellation by regular mail and retaining a duplicate of the signed and dated notice of cancellation shall be prima facie evidence that the notice was mailed to the health club on the date as noted on the notice of cancellation.

(d) Within thirty days of receipt of the notice of cancellation, the health club shall refund to the buyer the entire consideration the buyer paid for the contract, less the fair market value of the services and facilities actually used by the buyer.

(e) The health clubs may condition the refund required by subsection (c) upon the return of membership cards and other similar evidence of membership from the buyer, at the request of the health clubs.

**§ -7 Cancellation for death or disability.** (a) Every health club contract may be canceled, if by reason of death or disability the buyer is unable to receive all services as contracted. If the inability to receive all services as contracted is due to disability, the buyer shall have the option of extending the duration of the original contract at no cost for a period equal to the duration of the disability.

(b) Every health club contract shall fully disclose the buyer’s right of cancellation in the event of death or disability, and the option to extend the duration of the health club contract in the event of disability.

(c) The health club shall have the right to require and verify reasonable evidence of disability or death.

(d) In the event of cancellation due to death or disability, the health club shall immediately refund to the buyer or the buyer’s estate, the entire consideration the buyer paid for the health club contract, less an amount computed by dividing the total contract price by the number of weeks in the term of the contract and multiplying the result by the number of weeks elapsed at the time of death or disability.

(e) “Disability,” as used in this section, means a condition which has existed for more than thirty days which precludes the buyer from using the

facilities or services of the health club, and the condition is verified by a doctor legally authorized to practice medicine or osteopathy in the State.

**§ -8 Duration of contracts.** (a) Every health club contract shall specify the duration of the contract. Health club contracts shall not have a duration longer than thirty-six months and shall not be measured by the life of the buyer or the life of the health club.

(b) A buyer may be given an option to renew the contract; provided that the buyer pays a reasonable consideration of not less than ten per cent of the cash price of the original contract.

**§ -9 List of equipment and services required.** Every health club shall provide to each buyer prior to the time the buyer signs the contract, a written list of equipment or services which are or will be available for use by the buyer at the health club, including any conditions or restrictions on the availability of the equipment or services.

**§ -10 Pre-operative requirements.** (a) No health club shall be considered fully operative until substantially all of the equipment and services listed in accordance with section -9 are actually available for use by buyers.

(b) Every health club contract shall provide that the health club will be fully operative on a specified date no later than one year after the contract is signed by the buyer.

(c) If the health club is not fully operative at the time that the buyer signs the health club contract, the buyer shall have until midnight of the fifth business day after the day on which the buyer receives notice by mail that the health club is fully operative to cancel the contract in accordance with section -6.

(d) All moneys received by a health club pursuant to a health club contract prior to the health club being fully operative shall be placed in an escrow account separate and apart from any account maintained by or for the health club's personal use or for use in the construction or operation of the health club or for the payment or benefit of employees of the health club.

The escrow account shall:

- (1) Be established in a bank, savings and loan association, or a trust company authorized to do business in the State under an escrow arrangement or corporation licensed as an escrow depository under chapter 449.
- (2) Provide that the purpose of the account is to protect the buyer in the event that the health club fails to be fully operative within one year following the advancement of any money by the buyer. Any buyer who has advanced moneys on deposit in the escrow account may maintain an action to recover all moneys advanced or may maintain a representative action to close the account and to release such moneys pro rata to all buyers similarly situated if such health

club facility is not fully operative within one year of the advancement of any money by the buyer.

- (3) Be closed and released by the escrow agent to the health club only upon the health club becoming fully operative.

Within fifteen business days of a request in the State, or thirty days for out-of-State requests, a statement of the escrow account shall be furnished to buyers who have advanced funds or obligations.

(e) In lieu of the escrow provisions required by this section, the health club may maintain a fidelity bond issued by a surety company authorized to do business in this State, the principal sum of which shall be at all times at least as great as the greater of the total amount of prepayment received for all health club contracts entered into prior to the health club being fully operative, or \$50,000.

The bond required by this section shall be in favor of the State for the benefit of any buyer who is damaged by the health club's violation of law, or the health club's failure to comply with its contractual obligations to its buyers. Any buyer claiming against the bond may maintain an action at law against the health club and the surety; provided that the aggregate liability of the surety to all buyers for breaches of the conditions of the bond shall in no event exceed the amount of the bond.

The bond shall be in effect from the date that the health club commences the sale of health club contracts and shall be continuously maintained until two years from the date that the health club is fully operative.

**§ -11 Violation; remedies.** (a) A violation or failure to comply with any of the requirements of this chapter shall constitute an unfair or deceptive act within the meaning of section 480-2.

(b) Any buyer damaged as a result of a violation or failure to comply with any of the requirements of this chapter may bring an action for recovery of damages.

(c) Any health club contract that fails to comply with the requirements of this chapter shall be unenforceable against the buyer."

**SECTION 2.** This Act shall take effect upon its approval.

(Approved May 25, 1984.)