

A Bill for an Act Relating to Health Clubs.

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

SECTION 1. Chapter 486N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§486N- Payment of contract price. Every health club contract in excess of one year in duration shall provide that the contract price be paid by an installment plan, whereby no more than twenty per cent of the contract price can be paid as the initial payment, and the balance of the contract price shall be paid in equal monthly amounts over the remaining term of the contract. The health club shall be entitled to charge interest on the overdue unpaid balance of any monthly installment subsequent to the initial payment. The interest charged on the contract shall comply with chapter 478."

SECTION 2. Section 486N-1, Hawaii Revised Statutes, is amended to read as follows:

"[§486N-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.

"Contract price" means the price for the purchase of a membership in a health club or for services offered by a health club or for use of the facilities of a health club. Contract price does not include the cost of financing or late charges or penalties.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"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."

SECTION 3. Section 486N-8, Hawaii Revised Statutes, is amended to read as follows:

"[§486N-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] The unexpired, aggregate term of any health club contract or contracts and any extensions or renewals thereof shall at no time exceed thirty-six months per buyer. In no case shall a health club contract 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.]

(b) A health club contract may not contain an automatic renewal clause."

SECTION 4. Section 486N-10, Hawaii Revised Statutes, is amended to read as follows:

"[§486N-10] Preoperative requirements. (a) No health club shall be considered fully operative until substantially all of the equipment and services listed in accordance with section 486N-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 486N-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.]"

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SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 1989, but shall not affect any binding health club contract which existed prior to such effective date.

(Approved June 7, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.