

AMENDED IN SENATE JULY 21, 2001

AMENDED IN SENATE JULY 9, 2001

AMENDED IN ASSEMBLY APRIL 30, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001-02 REGULAR SESSION

ASSEMBLY BILL

No. 357

Introduced by Assembly Member Correa

February 16, 2001

An act to amend Section 1812.86 of, *and to add Section 1812.96 to*, the Civil Code, relating to health studio contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 357, as amended, Correa. Health studio contracts.

Existing law prohibits a contract for health studio services from requiring payment by the person receiving the services for the use of the facilities of a total amount in excess of \$1,000.

This bill would instead provide that a contract for health studio services may not require payment by the person receiving the services in an amount exceeding \$2,500. This bill would exclude from that limit the cost of subsequently purchased optional services. The bill would create exceptions to the \$2,500 limit when ~~consumers can cancel their contracts for health studio services and receive a refund for their unused portion~~ and the health studio maintains a bond issued by a surety company in a specified amount, depending on how long the health studio has been in business. This bill also would require health studios that do not exceed the \$2,500 limit, but have been in business less than

3 years, to establish a bond ~~and provide membership refunds~~, as specified. The bill would require a copy of the bond to be filed with the Secretary of State *and that all health studio services contracts requiring a bond contain notice of the bond and the address and telephone number of the Secretary of State. This bill would require all health studio services contracts to provide for the cancellation of that contract at will by the customer and for the return of fees paid, or payment of fees owed, in a specified pro rata manner.* This bill also would, in specified circumstances, require an owner of a health studio to provide a signed declaration regarding the health studio’s income and would make a willful misrepresentation in the declaration misdemeanor.

Because this bill would create a new crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1812.86 of the Civil Code is amended
 2 to read:
 3 1812.86. (a) Except as provided in subdivision (c), no
 4 contract for health studio services shall require payment by the
 5 person receiving the services for the use of the facilities of a total
 6 amount in excess of two thousand five hundred dollars (\$2,500),
 7 exclusive of interest or finance charges. This limitation may not
 8 include subsequent payments during the term of the contract for
 9 subsequently arranged optional services.
 10 (b) A health studio that has been doing business under the same
 11 management and control in this state for less than three years with
 12 contracts requiring payment within the limit specified in
 13 subdivision (a) shall ~~do both of the following:~~
 14 ~~(1) Maintain~~ maintain a bond of one hundred thousand dollars
 15 (\$100,000) for the first year, and in the remaining two years a bond
 16 in an amount equal to 25 percent of the health studio’s gross



1 income from the health studio's business in this state during the
2 health studio's last fiscal year.

3 ~~(2) Establish during the entire time it does business in this state,~~
4 ~~the right of the consumer to cancel the contract at any time during~~
5 ~~the term of the contract in which case the consumer shall be liable~~
6 ~~only for that portion of the total contract payment which has been~~
7 ~~used by the consumer. The used portion of the contract shall be~~
8 ~~calculated at the nondiscounted rate for that type of contract and~~
9 ~~shall exclude initiation fees. The payment for the portion of the~~
10 ~~contract that was not used by the consumer shall be returned to the~~
11 ~~consumer by the health studio. The right of cancellation set forth~~
12 ~~by this section is in addition to the cancellation rights set forth in~~
13 ~~Section 1812.85.~~

14 ~~(A) If the health studio, in good faith offers contracts for a~~
15 ~~period of one year or more and the percentage of term contracts~~
16 ~~sold by the health studio for that period exceeds 20 percent of all~~
17 ~~term contracts sold by the health studio within the previous~~
18 ~~one-year period, the charges for service, in determining the~~
19 ~~appropriate pro rata rebate for the longer contract shall be the~~
20 ~~periodic charge made for the shorter contract.~~

21 ~~(B) If the health studio charges an initiation fee, and that~~
22 ~~initiation fee is less than half of the consumer's obligation during~~
23 ~~the period of the contract, that initiation fee shall not be included~~
24 ~~in determining the pro rata refund.~~

25 ~~(c) A contract for health studio services may exceed the amount~~
26 ~~specified in subdivision (b) if both of the following conditions are~~
27 ~~satisfied:~~

28 ~~(1) The contract establishes the right of the consumer to cancel~~
29 ~~the contract at any time during the term of the contract, in which~~
30 ~~case the consumer shall be liable only for that portion of the total~~
31 ~~contract payment which has been used by the consumer. The used~~
32 ~~portion of the contract shall be calculated at the nondiscounted rate~~
33 ~~for that type of contract and shall exclude initiation fees. The~~
34 ~~payment for the portion of the contract that was not used by the~~
35 ~~consumer shall be returned to the consumer by the health studio.~~
36 ~~The right of cancellation set forth by this section is in addition to~~
37 ~~the cancellation rights set forth in Section 1812.85.~~

38 ~~(A) If the health studio, in good faith offers contracts for a~~
39 ~~period of one year or more and the percentage of term contracts~~
40 ~~sold by the health studio for that period exceeds 20 percent of all~~



1 ~~term contracts sold by the health studio within the previous~~
2 ~~one-year period, the charges for service, in determining the~~
3 ~~appropriate pro rata rebate for a longer contract shall be the~~
4 ~~periodic charge made for the shorter contract.~~

5 ~~(B) If the health studio charges an initiation fee, and that~~
6 ~~initiation fee is less than half of the consumer's obligation during~~
7 ~~the period of the contract, that initiation fee shall not be included~~
8 ~~in determining the pro rata refund.~~

9 ~~(2) The~~

10 ~~(c) A contract for health studio services may exceed the amount~~
11 ~~specified in subdivision (a) if the health studio establishes and~~
12 ~~maintains a bond issued by a surety company admitted to do~~
13 ~~business in this state.~~

14 ~~(A)~~

15 ~~(1) The principal sum of the bond for a health studio that has~~
16 ~~been doing business under the same management and control in~~
17 ~~this state for less than three years shall be 25 percent of the health~~
18 ~~studio's gross income from the health studio's business in this state~~
19 ~~during the health studio's last fiscal year, except that the principal~~
20 ~~sum of the bond shall not be less than four hundred thousand~~
21 ~~dollars (\$400,000) if the health studio has been in business for less~~
22 ~~than one fiscal year or its gross income in its last fiscal year was~~
23 ~~less than four hundred thousand dollars (\$400,000).~~

24 ~~(B)~~

25 ~~(2) The principal sum of a bond for a health studio that has been~~
26 ~~doing business under the same management and control in this~~
27 ~~state for three years or more shall be 20 percent of the value of~~
28 ~~contracts over two thousand five hundred dollars (\$2,500) the~~
29 ~~health studio has with its members in California, with a maximum~~
30 ~~bond requirement of three hundred thousand dollars (\$300,000).~~

31 ~~(d) A copy of any bond required by this section shall be filed~~
32 ~~with the Secretary of State. If the principal sum of the bond is less~~
33 ~~than five hundred thousand dollars (\$500,000), the health studio~~
34 ~~shall also file with the Secretary of State a declaration signed by~~
35 ~~the owner of the health studio stating the health studio's gross~~
36 ~~income from the health studio's business in this state during the last~~
37 ~~fiscal year. The information contained in the declaration shall not~~
38 ~~be subject to public inspection. This declaration shall not be~~
39 ~~required of the owner of the health studio for the first fiscal year~~
40 ~~of doing business in this state. An owner who declares as true any~~



1 material pursuant to this paragraph which he or she knows to be
2 false is guilty of a misdemeanor.

3 (1) The Secretary of State shall enforce the provisions of this
4 title that govern the filing and maintenance of bonds.

5 (2) The Secretary of State shall charge and collect a filing fee
6 not to exceed the cost of filing the bond.

7 (3) Every health studio that posts a bond pursuant to this section
8 shall include in every contract for health studio services a
9 statement that the health studio is bonded ~~and~~, that a copy of the
10 bond may be obtained by writing to the office of the Secretary of
11 State, *and the address and telephone number of the Secretary of*
12 *State.*

13 SEC. 2. *Section 1812.96 is added to the Civil Code, to read:*
14 *1812.96. All contracts for health studio services shall*
15 *establish the right of the consumer to cancel the contract at any*
16 *time during the term of the contract. This right shall be set out in*
17 *the contract itself. The consumer shall be liable only for that*
18 *portion of the total contract payment which has been used by the*
19 *consumer. The used portion of the contract shall be calculated at*
20 *the nondiscounted rate for that type of contract and shall exclude*
21 *initiation fees. The payment for the portion of the contract that was*
22 *not used by the consumer shall be returned to the consumer by the*
23 *health studio. The right of cancellation set forth by this section is*
24 *in addition to the cancellation rights set forth in Section 1812.85.*

25 (a) *If a health studio, in good faith, offers contracts for a period*
26 *of one year, and also offers longer term contracts, and the*
27 *percentage of term contracts sold within the last year by the health*
28 *studio for the shortest term that is for or exceeds one year is greater*
29 *than 20 percent, in determining the appropriate pro rata rebate for*
30 *the longer contract, the charges for service rendered prior to the*
31 *request for cancellation shall be the periodic charges made for the*
32 *shortest contract that is for or exceeds one year.*

33 (b) *If the health studio charges an initiation fee, and that*
34 *initiation fee is less than half of the consumer's obligation during*
35 *the period of the contract, that initiation fee shall not be included*
36 *in determining the pro rata refund.*

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or



1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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