

AMENDED IN SENATE SEPTEMBER 7, 2001

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**

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**Introduced by Assembly Member Correa**

February 16, 2001

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An act to amend ~~Section~~ *Sections 1812.81 and 1812.86* of, and to add ~~Section~~ *Sections 1812.96 and 1812.97* 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 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*

*define a health studio as an operator of one or more facilities that offer health studio services pursuant to a health studio services contract. This bill ~~also~~ would also require health studios that do not exceed the \$2,500 limit, but have been in business less than 3 years, to ~~establish~~ maintain a bond, 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, other than month-to-month contracts with total initial contract payments of more than \$750 per person, to provide for the cancellation of that contract at will by the customer after the first of the month of the term of the contract, and for the return of fees paid, ~~or payment of fees owed~~ upon cancellation, in a specified pro rata manner, provided the fees are more than \$750. This bill would also require customers with month-to-month contracts with initiation fees in excess of \$750 to cancel their contracts within the first 30 days in order to receive a full refund of their initiation fees. 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.*

*This bill would provide for the annual adjustment of the \$2,500 limit on contract payments and the \$750 initiation fee level to reflect changes in the California Price Consumer index.*

*This bill would provide that a health studio services contract may provide that services at a specific location may begin more than 6 months from the time of contract formation, but not more than 12 months from contract formation, if the health studio deposits all funds received under the contract with specified financial institutions and returns all money to the buyer upon written request in the event that services are not commenced within the allowable period.*

*This bill also would provide that a health studio operator may not be held liable for failure to commence services as a result of forces out of the health studio operator's control.*

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 1812.81 of the Civil Code is amended to*  
2 *read:*

3 1812.81. (a) As used in this title, “contract for health studio  
4 services” means a contract for instruction, training or assistance  
5 in physical culture, body building, exercising, reducing, figure  
6 development, or any other such physical skill, or for the use by an  
7 individual patron of the facilities of a health studio, gymnasium or  
8 other facility used for any of the above purposes, or for  
9 membership in any group, club, association or organization  
10 formed for any of the above purposes; but does not include (a)  
11 contracts for professional services rendered or furnished by a  
12 person licensed under the provisions of Division 2 (commencing  
13 with Section 500) of the Business and Professions Code, (b)  
14 contracts for instruction at schools operating pursuant to the  
15 provisions of the Education Code, or (c) contracts for instruction,  
16 training, or assistance relating to diet or control of eating habits not  
17 involving physical culture, body building, exercising, figure  
18 development, or any other such physical skill.

19 (b) *As used in this title, “health studio” means an operator of*  
20 *one or more facilities that offer health studio services, pursuant to*  
21 *a health studio services contract.*

22 SEC. 2. Section 1812.86 of the Civil Code is amended to read:

23 1812.86. (a) Except as provided in subdivision (c), no  
24 contract for health studio services shall require payment by the  
25 person receiving the services for the use of the facilities of a total  
26 amount in excess of two thousand five hundred dollars (\$2,500),  
27 exclusive of interest or finance charges. This limitation may not  
28 include subsequent payments during the term of the contract for  
29 subsequently arranged optional services.

30 (b) A health studio that has been doing business under the same  
31 management and control in this state for less than three years with  
32 contracts requiring payment within the limit specified in  
33 subdivision (a) shall maintain a bond of one hundred thousand



1 dollars (\$100,000) for the first year, and in the remaining two years  
2 a bond in an amount equal to 25 percent of the health studio's gross  
3 income from the health studio's business in this state during the  
4 health studio's last fiscal year.

5 (c) A contract for health studio services may exceed the amount  
6 specified in subdivision (a) if the health studio establishes and  
7 maintains a bond issued by a surety company admitted to do  
8 business in this state.

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

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

24 (d) A copy of any bond required by this section shall be filed  
25 with the Secretary of State. If the principal sum of the bond is less  
26 than five hundred thousand dollars (\$500,000), the health studio  
27 shall also file with the Secretary of State a declaration signed by  
28 the owner of the health studio stating the health studio's gross  
29 income from the health studio's business in this state during the last  
30 fiscal year. The information contained in the declaration shall not  
31 be subject to public inspection. This declaration shall not be  
32 required of the owner of the health studio for the first fiscal year  
33 of doing business in this state. An owner who declares as true any  
34 material pursuant to this paragraph which he or she knows to be  
35 false is guilty of a misdemeanor.

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

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



1 (3) Every health studio that posts a bond pursuant to this section  
2 shall include in every contract for health studio services a  
3 statement that the health studio is bonded, that a copy of the bond  
4 may be obtained by writing to the office of the Secretary of State,  
5 and the address and telephone number of the Secretary of State.

6 ~~SEC. 2.~~

7 SEC. 3. Section 1812.96 is added to the Civil Code, to read:

8 1812.96. All contracts for health studio services, *other than*  
9 *month-to-month contracts with total initial contract payments of*  
10 *more than seven hundred fifty dollars (\$750) per person*, shall  
11 establish the right of the consumer to cancel the contract at any  
12 time ~~during~~ *after the first of the month* of the term of the contract.  
13 This right shall be set out in the contract itself. The consumer shall  
14 be liable only for that portion of the total contract payment which  
15 has been used by the consumer. The used portion of the contract  
16 shall be calculated at the nondiscounted rate for that type of  
17 contract and shall exclude initiation fees. The payment for the  
18 portion of the contract that was not used by the consumer shall be  
19 returned to the consumer by the health studio. The right of  
20 cancellation set forth by this section is in addition to the  
21 cancellation rights set forth in Section 1812.85.

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

30 (b) If the health studio charges an initiation fee, and that  
31 initiation fee is less than half of the consumer's obligation during  
32 the period of the contract, that initiation fee shall not be included  
33 in determining the pro rata refund. *For the purposes of*  
34 *determining the pro rata refundability of an initiation fee, a*  
35 *month-to-month contract shall be considered to be for a period of*  
36 *36 months. However, any initiation fee when combined with the*  
37 *initial contract payment paid in connection with a month-to-month*  
38 *contract that exceeds seven hundred fifty dollars (\$750) may not*  
39 *be refunded in its entirety unless the contract is canceled within 30*  
40 *days of its formation.*

1 (c) Notwithstanding any other provision of this section, health  
2 studio services operators executing health studio services  
3 contracts, for which the initial total contract payment, including  
4 any initiation fees, but excluding any fees for optional services, is  
5 seven hundred fifty dollars (\$750) or less, are not required to  
6 provide the customer a refund upon cancellation of the contract by  
7 the customer.

8 (d) A contract for health studio services may provide that  
9 performance of the agreed upon services at a specific location will  
10 begin more than six months, but in no event more than 12 months,  
11 from the date the contract is entered into if the health studio  
12 promptly transfers all funds received under the contract for health  
13 studio services to a bank or an escrow agent, licensed under  
14 Division 6 (commencing with Section 17000) of the Financial  
15 Code, which has agreed in writing to hold all deposited funds in  
16 escrow and, if performance of the services at the specified location  
17 are not commenced within the time period specified in the health  
18 studio services contract, to return all amounts deposited with  
19 respect to the buyer upon the buyer's written request. All moneys  
20 deposited in escrow shall be deposited in a noninterest-bearing  
21 demand or checking account in a bank, a state or federal savings  
22 bank, or a state or federal savings and loan association, or in a  
23 noninterest-bearing account, subject to immediate withdrawal,  
24 maintained by an industrial loan company which is insured by the  
25 Federal Deposit Insurance Corporation and which has been  
26 approved to receive those moneys by the Commissioner of  
27 Corporations.

28 (e) A right of action shall not exist, and a health studio shall not  
29 be subject to any penalty for failure to commence services under  
30 a contract for health studio services within the time period  
31 specified in the contract for health studio services when  
32 commencement of those services is delayed by force majeure or any  
33 cause beyond the health studio's control, including, but not limited  
34 to, war, civil disturbance, fire, flood, earthquake, windstorm,  
35 unusually severe weather, strike or other labor trouble, lack of or  
36 inability to obtain materials, governmental acts, or other cause,  
37 contingency or circumstance not subject to the health studio  
38 operator's control, provided that in that event the health studio  
39 shall, upon written request of the buyer, return all amounts  
40 received under the contract for health studio services.



1 ~~SEC. 3.~~

2 SEC. 4. Section 1812.97 is added to the Civil Code, to read:  
3 1812.97. Commencing on January 1, 2003, the two thousand  
4 five hundred dollar (\$2,500) limit and the seven hundred fifty  
5 dollar (\$750) amount, specified in Sections 1812.86 and 1812.96  
6 respectively, shall be annually adjusted to reflect changes in the  
7 California Consumer Price Index for All Urban Consumers, as  
8 published by the California Department of Industrial Relations,  
9 based on the regional data from the United States Department of  
10 Labor, Bureau of Labor Statistics.

11 SEC. 5. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 the only costs that may be incurred by a local agency or school  
14 district will be incurred because this act creates a new crime or  
15 infraction, eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section 17556 of  
17 the Government Code, or changes the definition of a crime within  
18 the meaning of Section 6 of Article XIII B of the California  
19 Constitution.

