

AMENDED IN SENATE SEPTEMBER 12, 2001

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

Introduced by Assembly Member Correa

February 16, 2001

An act to amend Sections 1812.81 and 1812.86 of, and to add 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 *for health studio services*. ~~This~~

This bill would also require health studios that do not exceed the \$2,500 limit, but have been in business less than 3 years, to 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~~

This bill would *additionally* 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, upon cancellation, in a specified pro rata manner, provided the fees are more than \$750 to provide the consumer with the right to cancel a contract at any time after the first month of the term of the contract, and to also provide, upon cancellation, for the return of fees paid for the portion of the contract that has not been used.~~ 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
2 to 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.~~ *a contract for health studio*
22 *services.*

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

24 1812.86. (a) Except as provided in subdivision (c), no
25 contract for health studio services shall require payment by the
26 person receiving the services for the use of the facilities of a total
27 amount in excess of two thousand five hundred dollars (\$2,500),



1 exclusive of interest or finance charges. This limitation may not
2 include subsequent payments during the term of the contract for
3 subsequently arranged optional services.

4 (b) A health studio that has been doing business under the same
5 management and control in this state for less than three years with
6 contracts requiring payment within the limit specified in
7 subdivision (a) shall maintain a bond of one hundred thousand
8 dollars (\$100,000) for the first year, and in the remaining two years
9 a bond in an amount equal to 25 percent of the health studio's gross
10 income from the health studio's business in this state during the
11 health studio's last fiscal year.

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

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

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~~ *an owner or other responsible party* of the health studio
36 stating the health studio's gross income from the health studio's
37 business in this state during the last fiscal year. The information
38 contained in the declaration shall not be subject to public
39 inspection. This declaration shall not be required of the owner of
40 the health studio for the first fiscal year of doing business in this



1 state. An owner who declares as true any material pursuant to this
2 paragraph which he or she knows to be false is guilty of a
3 misdemeanor.

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

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

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

13 *(e) Whenever this section requires a determination of the*
14 *amount of the bond based on the health studio's prior or most*
15 *recently completed fiscal year, a health studio shall obtain and file*
16 *the bond within 135 days after the end of the prior or most recently*
17 *completed fiscal year.*

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

19 ~~1812.96. All contracts for health studio services, other than~~
20 ~~month-to-month contracts with total initial contract payments of~~
21 ~~more than seven hundred fifty dollars (\$750) per person, shall~~

22 *1812.96. (a) All contracts for health studio services shall*
23 *establish the right of the consumer to cancel the contract at any*
24 *time after the first of the month of the term of the contract. This*
25 *right shall be set out in the contract itself. The Upon cancellation,*
26 *the consumer shall be liable only for that portion of the total*
27 *contract payment which has been used by the consumer. The used*
28 *portion of the contract shall be calculated at the nondiscounted rate*
29 *for that type of contract and shall exclude initiation fees. The*
30 *payment for the portion of the contract that was not used by the*
31 *consumer shall be returned to the consumer by the health studio.*
32 *The right of cancellation set forth by this section is in addition to*
33 *the cancellation rights set forth in Section 1812.85.*

34 ~~(a)~~

35 *(b) If a health studio, in good faith, offers contracts for a period*
36 *of one year, and also offers longer term contracts, and the*
37 *percentage of term contracts sold within the last year by the health*
38 *studio for the shortest term that is for or exceeds one year is greater*
39 *than 20 percent, in determining the appropriate pro rata rebate for*
40 *the longer contract, the charges for service rendered prior to the*



1 request for cancellation shall be the periodic charges made for the
 2 shortest contract that is for or exceeds one year.

3 ~~(b)~~

4 (c) If the health studio charges an initiation fee, and that
 5 initiation fee is less than half of the consumer’s obligation during
 6 the period of the contract, that initiation fee shall not be included
 7 in determining the pro rata refund. ~~For~~ *Solely for* the purposes of
 8 ~~determining the pro rata refundability of an initiation fee, a~~
 9 ~~determining the pro rata refund amount of an initiation fee~~
 10 ~~pursuant to subdivision (b), a month-to-month contract shall be~~
 11 ~~considered to be for a period of 36 months. However, any initiation~~
 12 ~~fee when combined with the initial contract payment paid in~~
 13 ~~connection with a month-to-month 36 months. However, a health~~
 14 ~~studio is not be required to refund the initiation fee in its entirety~~
 15 ~~for a month-to-month contract that exceeds seven hundred fifty~~
 16 ~~dollars (\$750) may not be refunded in its entirety per person,~~
 17 ~~unless the contract is canceled within 30 days of its formation the~~
 18 ~~health studio services becoming available.~~

19 ~~(c)~~

20 (d) Notwithstanding any other provision of this section, ~~health~~
 21 ~~studio services operators executing a health studio entering into~~
 22 ~~a contract for health studio services contracts, for which the initial~~
 23 ~~total contract payment, including any initiation fees, but excluding~~
 24 ~~any fees for optional services, is seven hundred fifty dollars (\$750)~~
 25 ~~or less, are per person, is not required to provide the customer a~~
 26 ~~refund upon cancellation of the contract by the customer.~~

27 ~~(d)~~

28 (e) A contract for health studio services may provide that
 29 performance of the agreed upon services at a specific location will
 30 begin more than six months, but in no event more than 12 months,
 31 from the date the contract is entered into if the health studio
 32 promptly transfers all funds received under the contract for health
 33 studio services to a bank or an escrow agent, licensed under
 34 Division 6 (commencing with Section 17000) of the Financial
 35 Code, which has agreed in writing to hold all deposited funds in
 36 escrow and, if performance of the services at the specified location
 37 are not commenced within the time period specified in the health
 38 studio services contract, to return all amounts deposited with
 39 respect to the buyer upon the buyer’s written request. All moneys
 40 deposited in escrow shall be deposited in a noninterest-bearing



1 demand or checking account in a bank, a state or federal savings
 2 bank, or a state or federal savings and loan association, or in a
 3 noninterest-bearing account, subject to immediate withdrawal,
 4 maintained by an industrial loan company which is insured by the
 5 Federal Deposit Insurance Corporation and which has been
 6 approved to receive those moneys by the Commissioner of
 7 Corporations.

8 ~~(e) A right of action shall not exist, and a health studio shall not~~
 9 ~~be~~

10 (f) *A right of action does not exist, and a health studio is not*
 11 *subject to any penalty for failure to commence services under a*
 12 *contract for health studio services within the time period specified*
 13 *in the contract for health studio services when commencement of*
 14 *those services is delayed by force majeure or any cause beyond the*
 15 *health studio’s control, including, but not limited to, war, civil*
 16 *disturbance, fire, flood, earthquake, windstorm, unusually severe*
 17 *weather, strike or other labor trouble, lack of or inability to obtain*
 18 *materials, governmental acts, or other cause, contingency or*
 19 *circumstance not subject to the health studio operator’s control,*
 20 *provided that in that event the health studio shall, upon written*
 21 *request of the buyer, return all amounts received under the contract*
 22 *for health studio services.*

23 (g) *All limitations on consumer rights set forth in this section*
 24 *shall also be contained in the contract for health studio services.*

25 SEC. 4. Section 1812.97 is added to the Civil Code, to read:
 26 1812.97. Commencing on January 1, 2003, the two thousand
 27 five hundred dollar (\$2,500) limit and the seven hundred fifty
 28 dollar (\$750) amount, specified in Sections 1812.86 and 1812.96
 29 respectively, shall be annually adjusted to reflect changes in the
 30 California Consumer Price Index for All Urban Consumers, as
 31 published by the California Department of Industrial Relations,
 32 based on the regional data from the United States Department of
 33 Labor, Bureau of Labor Statistics.

34 SEC. 5. No reimbursement is required by this act pursuant to
 35 Section 6 of Article XIII B of the California Constitution because
 36 the only costs that may be incurred by a local agency or school
 37 district will be incurred because this act creates a new crime or
 38 infraction, eliminates a crime or infraction, or changes the penalty
 39 for a crime or infraction, within the meaning of Section 17556 of
 40 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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