

Assembly Bill No. 357

Passed the Assembly September 14, 2001

Chief Clerk of the Assembly

Passed the Senate September 13, 2001

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

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, 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 contract for health studio services.

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 bill would additionally require all health studio services contracts 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.

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

SECTION 1. Section 1812.81 of the Civil Code is amended to read:

1812.81. (a) As used in this title, "contract for health studio services" means a contract for instruction, training or assistance in physical culture, body building, exercising, reducing, figure development, or any other physical skill, or for the use by an individual patron of the facilities of a health studio, gymnasium or other facility used for any of the above purposes, or for membership in any group, club, association or organization formed for any of the above purposes; but does not include (a) contracts for professional services rendered or furnished by a person licensed under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code, (b) contracts for instruction at schools operating pursuant to the provisions of the Education Code, or (c) contracts for instruction,



training, or assistance relating to diet or control of eating habits not involving physical culture, body building, exercising, figure development, or any other physical skill.

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

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

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

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

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

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

(2) The principal sum of a bond for a health studio that has been doing business under the same management and control in this state for three years or more shall be 20 percent of the value of contracts over two thousand five hundred dollars (\$2,500) the



health studio has with its members in California, with a maximum bond requirement of three hundred thousand dollars (\$300,000).

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

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

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

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

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

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

1812.96. (a) All contracts for health studio services shall establish the right of the consumer to cancel the contract at any time after the first month of the term of the contract. This right shall be set out in the contract itself. Upon cancellation, the consumer shall be liable only for that portion of the total contract payment which has been used by the consumer. The used portion of the contract shall be calculated at the nondiscounted rate for that type of contract and shall exclude initiation fees. The payment for the portion of the contract that was not used by the consumer shall be returned to the consumer by the health studio. The right of



cancellation set forth by this section is in addition to the cancellation rights set forth in Section 1812.85.

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

(c) If the health studio charges an initiation fee, and that initiation fee is less than half of the consumer's obligation during the period of the contract, that initiation fee shall not be included in determining the pro rata refund. Solely for the purposes of determining the pro rata refund amount of an initiation fee pursuant to subdivision (b), a month-to-month contract shall be considered to be for a period of 36 months. However, a health studio is not be required to refund the initiation fee in its entirety for a month-to-month contract that exceeds seven hundred fifty dollars (\$750) per person, unless the contract is canceled within 30 days of the health studio services becoming available.

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

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



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

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

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

SEC. 4. Section 1812.97 is added to the Civil Code, to read:

1812.97. Commencing on January 1, 2003, the two thousand five hundred dollar (\$2,500) limit and the seven hundred fifty dollar (\$750) amount, specified in Sections 1812.86 and 1812.96 respectively, shall be annually adjusted to reflect changes in the California Consumer Price Index for All Urban Consumers, as published by the California Department of Industrial Relations, based on the regional data from the United States Department of Labor, Bureau of Labor Statistics.

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



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



Approved _____, 2001

Governor

