

SENATE, No. 825

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Prohibits health club services contracts from limiting liability for injuries caused by negligence of health club.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning health club services contracts and amending
2 P.L.1987, c.238.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 4 of P.L.1987, c.238 (C.56:8-42) is amended to read
8 as follows:

9 4. a. Every contract for health club services shall be in writing.
10 A copy of the written contract shall be given to the buyer at the time
11 the buyer signs the contract.

12 b. A health club services contract shall specifically set forth in a
13 conspicuous manner on the first page of the contract the buyer's total
14 payment obligation for health club services to be received pursuant
15 to the contract.

16 c. A health club services contract of a health club facility which
17 maintains a bond, irrevocable letter of credit or securities, moneys or
18 other security pursuant to subsection a. of section 3 of this act shall
19 set forth that a bond, irrevocable letter of credit or securities, moneys
20 or other security is filed or deposited with the Director of the Division
21 of Consumer Affairs to protect buyers of these contracts who are
22 damaged or suffer any loss by reason of breach of contract or
23 bankruptcy by the seller.

24 d. Services to be rendered to the buyer under the contract shall
25 not obligate the buyer for more than three years from the date the
26 contract is signed by the buyer.

27 e. A contract for new or increased health club services may be
28 cancelled by the buyer for any reason at any time before midnight of
29 the third operating day after the buyer receives a copy of the contract.
30 In order to cancel a contract the buyer shall notify the health club of
31 cancellation in writing, by registered or certified mail, return receipt
32 requested, or personal delivery, to the address specified in the
33 contract. All moneys paid pursuant to the cancelled contract shall be
34 fully refunded within 30 days of receipt of the notice of cancellation.
35 If the customer has executed any credit or loan agreement through
36 the health club to pay all or part of health club services, the negotiable
37 instrument executed by the buyer shall also be returned within 30
38 days. The contract shall contain a conspicuous notice printed in at
39 least 10-point bold-faced type as follows:

40 "NOTICE TO CUSTOMER

41 You are entitled to a copy of this contract at the time you sign it.

42 You may cancel this contract at any time before midnight of the
43 third operating day after receiving a copy of this contract. If you
44 choose to cancel this contract, you must either:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 1. Send a signed and dated written notice of cancellation by
2 registered or certified mail, return receipt requested; or
- 3 2. Personally deliver a signed and dated written notice of
4 cancellation to: (Name of health club)
5 (Address of health club)
- 6 If you cancel this contract within the three-day period, you are
7 entitled to a full refund of your money. If the third operating day
8 falls on a Sunday or holiday, notice is timely given if it is mailed or
9 delivered as specified in this notice on the next operating day.
10 Refunds must be made within 30 days of receipt of the cancellation
11 notice to the health club.
- 12 'Operating day' means any calendar day on which patrons may
13 inspect and use the health club's facilities and services during a
14 period of at least eight hours, except holidays and Sundays."
- 15 f. A health club services contract shall provide that it is subject
16 to cancellation by notice sent by registered or certified mail, return
17 receipt requested, or personally delivered, to the address of the health
18 club specified in the contract upon the buyer's death or permanent
19 disability, if the permanent disability is fully described and
20 confirmed to the health club by a physician. In a cancellation under
21 this subsection, the health club may retain the portion of the total
22 contract price representing the services used plus reimbursement for
23 expenses incurred in an amount not to exceed 10% of the total
24 contract price.
- 25 g. A health club services contract shall provide that it is subject
26 to cancellation by notice sent by registered or certified mail, return
27 receipt requested, or personally delivered, to the address of the health
28 club specified in the contract upon the buyer's change of permanent
29 residence to a location more than 25 miles from the health club or an
30 affiliated health club offering the same or similar services and
31 facilities at no additional expense to the buyer. In a cancellation
32 under this subsection, the health club may require proof of the new
33 permanent residence and may retain a prorated share of the total
34 contract price based upon the date the notice was received plus
35 reimbursement for expenses incurred in an amount not to exceed 10%
36 of the total contract price.
- 37 h. A health club services contract shall provide that if a health
38 club facility is closed for a period longer than 30 days through no
39 fault of the buyer of the health club services contract, the buyer is
40 entitled to either extend the contract for a period equal to that during
41 which the facility is closed or to receive a prorated refund of the
42 amount paid by the buyer under the contract.
- 43 i. A health club services contract shall not obligate the buyer to
44 renew the contract.
- 45 j. If a health club facility is not in existence on the date the
46 contract is executed, the health club services contract shall provide
47 that a buyer of a contract may cancel the contract if the facility is not

1 open for business on a date which shall be set forth in the contract
2 and receive a full refund of any deposit or payment on the contract.

3 k. A health club services contract shall not limit the liability of
4 the health club to a buyer for injuries caused by or resulting from the
5 negligence of the owner or operator, or an agent or employee of the
6 owner or operator, of the health club.

7 (cf: P.L.1987, c.238, s.4)

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9 2. This act shall take effect immediately.

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12 STATEMENT

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14 This bill prohibits health club services contracts from limiting the
15 liability of the health club to a buyer for injuries caused by or
16 resulting from the negligence of the owner or operator, or an agent
17 or employee of the owner or operator, of the health club.

18 This bill is intended to codify Justice Albin's dissent in the case
19 of Pulice v. Green Brook Sports & Fitness, 236 N.J. 1 (2018); see
20 also Stelluti v. Casapenn, 203 N.J. 286 (2010) (Albin, J., dissenting)
21 (arguing that a contract limiting a health club's liability from its own
22 negligence is void as against public policy).

23 A violation of this bill would be an unlawful practice pursuant to
24 the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), and is
25 punishable by a monetary penalty of not more than \$10,000 for a first
26 offense and not more than \$20,000 for any subsequent offense. In
27 addition, violations can result in cease and desist orders issued by the
28 Attorney General, the assessment of punitive damages, and the
29 awarding of treble damages and costs to the injured party.