

HOUSE BILL No. 4027

February 1, 1989, Introduced by Rep. Ciaramitaro and referred to the Committee on Public Health.

A bill to regulate and provide for the registration of certain physical fitness services and physical fitness providers; to prescribe the powers and duties of certain state departments and agencies and certain county agencies and officials; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "physical fitness services act".

3 Sec. 3. As used in this act:

4 (a) "Customer" means a person who contracts for the use of
5 physical fitness services.

6 (b) "Department" means the department of licensing and
7 regulation.

1 (c) "Person" means an individual, organization, group,
2 association, partnership, corporation, trust, or other legal
3 entity.

4 (d) "Physical fitness services" means services or facilities
5 that are purported primarily to assist customers in physical
6 exercise, in weight control, or in body or figure development,
7 including, but not limited to, a fitness center, studio, salon,
8 spa class or club, and athletic or sports club.

9 (e) "Provider" means a person that provides physical fitness
10 services and enters into prepaid or credit contracts for physical
11 fitness services of more than 1 month's duration.

12 Sec. 5. (1) A provider shall not offer physical fitness
13 services in this state without first registering with the
14 department. The applicant for registration must submit to the
15 department all of the following information:

16 (a) An application for registration in the form prescribed
17 by the department.

18 (b) A certified copy of the charter or articles of incorpo-
19 ration and the bylaws of the provider, if any.

20 (c) If a corporation, a certified copy of the certificate of
21 authority or good standing certificate from the department of
22 commerce.

23 (d) A copy of the membership agreement of the provider.

24 (e) A copy of the consumer contract to be issued by the
25 provider.

26 (f) Any other relevant information required by the
27 department.

1 (2) The registration shall expire 1 year after the date of
2 issuance. A provider desiring renewal of its registration shall
3 file with the department a renewal application on forms pre-
4 scribed by the department and accompanied by the required renewal
5 fee prescribed in this section.

6 (3) A registration shall not be issued by the department
7 until the provider pays an original registration fee of \$150.00.
8 Registration may be renewed upon payment of an annual renewal fee
9 of \$100.00 upon application for reregistration.

10 (4) A provider that does not renew its registration on or
11 before the expiration date may renew registration during the fol-
12 lowing 30 days upon payment of the renewal fee and an additional
13 \$25.00 late fee.

14 (5) A registration not renewed on or before the renewal date
15 or during the late renewal period shall be revoked, unless the
16 department finds reasonable grounds to reinstate the
17 registration. If reasonable grounds for reinstatement are found,
18 the department may issue a registration if the provider files an
19 original application accompanied by the original registration fee
20 and meets all other requirements of this act and the rules
21 promulgated under this act.

22 (6) A transfer of ownership or location of a provider shall
23 operate as an automatic revocation of the registration. If a
24 revocation of registration under this subsection occurs, the
25 department may issue an original registration if the provider
26 files an original application accompanied by the original

1 registration fee and meets all the other requirements of this act
2 and the rules promulgated under this act.

3 (7) A provider shall notify the department within 30 days of
4 a change in the information required to be furnished under sub-
5 section (1).

6 (8) The department shall not accept an application for reg-
7 istration from a provider located in another state or country
8 unless the application designates a resident agent in this state
9 for the acceptance of process.

10 (9) A provider shall notify the department of a substantial
11 change of its financial status and submit an annual financial
12 report.

13 Sec. 7. (1) Upon application for registration, a provider
14 shall file with the department a surety or cash bond acceptable
15 to the department in the amount of \$50,000.00 for each of its
16 locations offering physical fitness services. The applicant
17 shall be the principal obligor. The aggregate limit of liability
18 of the surety to the state and to all the persons shall not
19 exceed the sum of the bond.

20 (2) A bond shall be in the name of the state for the benefit
21 of a customer suffering a loss as a result of a violation of this
22 act by the provider or a failure of the provider to comply with a
23 contract with a customer.

24 Sec. 9. The department shall review a completed
25 application. If the application and supporting material conform
26 to the requirements of this act and the rules promulgated under
27 this act, the department shall issue a registration to the

1 provider within 30 days after submission of the application to
2 the department, except where the provider has materially misrep-
3 resented or omitted information required or the provider has
4 acted or is acting in violation of this act or rules promulgated
5 under this act.

6 Sec. 11. A copy of the registration required by this act
7 shall be posted conspicuously at each location where money or
8 contracts are received by the provider or an authorized represen-
9 tative or agent of the provider.

10 Sec. 13. Documents required to be filed with the department
11 shall be open to public inspection. A person subject to this act
12 shall maintain accurate and detailed records of all business
13 transactions which shall be open to inspection at all reasonable
14 times by the department or an authorized representative or agent
15 of the department.

16 Sec. 15. The department may promulgate rules necessary for
17 the administration of this act pursuant to the administrative
18 procedures act of 1969, Act No. 306 of the Public Acts of 1969,
19 being sections 24.201 to 24.328 of the Michigan Compiled Laws.

20 Sec. 17. (1) Every prepaid or credit contract for physical
21 fitness services of more than 1 month's duration shall conform to
22 all of the following requirements:

23 (a) The contract shall be in writing and a copy shall be
24 given to the customer at the time of signing.

25 (b) The contract shall clearly state the street address of
26 the provider's location and any other location that the customer
27 may use at the time the contract is executed.

1 (c) A credit contract shall comply to the requirements set
2 forth in the retail installment sales act, Act No. 224 of the
3 Public Acts of 1966, being sections 445.851 to 445.873 of the
4 Michigan Compiled Laws.

5 (d) The contract for physical fitness services at a planned
6 location that is under construction or at an existing location
7 where additional services or facilities are planned or under con-
8 struction shall provide that if the facilities and services con-
9 tracted for are not available within 12 months from the date the
10 contract is entered into, or within 3 months of a date specified
11 in the contract, whichever is earlier, the contract may be
12 canceled at the option of the customer, and that all payments
13 shall be refunded by the provider within 30 days of receipt of
14 the written cancellation notice from the customer.

15 (e) If the customer executes a negotiable promissory note in
16 connection with the contract, the contract shall clearly indicate
17 that the promissory note is negotiable paper and that the promis-
18 sory note may be discounted and sold to third parties.
19 Negotiation of the promissory note does not affect the right of
20 the customer to cancel the contract or the method by which can-
21 cellation may be made. A right of action or defense that the
22 customer could raise based on the contract for physical fitness
23 services is preserved against an assignee or successor to the
24 contract for physical fitness services or to a credit contract
25 executed by the customer in connection with the contract for
26 physical fitness services.

1 (f) The contract shall contain a right to cancel provision
2 in the following language:

3 Right to Cancel of a Customer

4 The customer may cancel this contract by sending written
5 notice of cancellation to (name of provider) before midnight of
6 the third business day after the contract is signed by the
7 customer. This notice must be hand delivered or sent by regis-
8 tered mail to the provider.

9 Within 15 days of receipt of the written notice of cancella-
10 tion, (name of provider) shall return any payments made by the
11 customer in connection with the contract. If the customer used
12 (name of provider's) facilities or services, (name of provider)
13 may charge the customer a reasonable fee based on days of actual
14 use.

15 (g) The contract shall state that upon a transfer in owner-
16 ship, the provider shall insure that all customer contracts shall
17 be either honored in full by the new provider at no additional
18 cost to the customer or that the customer shall receive a
19 pro-rated refund of the original contract price. The new pro-
20 vider may charge customers for supplemental services and facili-
21 ties not offered by the original provider as part of the original
22 contract.

23 (h) The contract shall state that if a location closes
24 before the expiration of all customer contracts, the provider
25 shall offer and provide to the customers, at the option of the
26 customer, either a pro rated refund of the unused portion of the
27 tendered contract price, or a transfer to another conveniently

1 located provider offering similar services and facilities for the
2 remaining length of the contract of the customer at no additional
3 cost to the customer.

4 (2) A contractual provision allowing more liberal rights of
5 cancellation than set forth in this act may be substituted for
6 the notice required by this act.

7 (3) A provision of a contract for physical fitness services
8 that does not comply with this act and the rules promulgated
9 under this act is unenforceable against the customer.

10 Sec. 19. A provider shall not engage or attempt to engage
11 in a method, act, or practice that is unfair, unconscionable, or
12 deceptive as defined by the Michigan consumer protection act, Act
13 No. 331 of the Public Acts of 1976, being sections 445.901 to
14 445.922 of the Michigan Compiled Laws.

15 Sec. 21. (1) The department may investigate the operations
16 or conduct of providers that are subject to this act. The
17 department may require a provider, and the officers, members,
18 employees, or agents of a provider, to appear at a named time and
19 place in the county designated by the department or where the
20 provider resides or is found, to give information under oath and
21 to produce books, memoranda, papers, records, documents of title,
22 evidence of assets, liabilities, receipts, or disbursements in
23 the possession or control of the provider.

24 (2) If the department requires the attendance of a person,
25 the department shall request that the attorney general issue an
26 order setting forth the time and the place where attendance is
27 required and shall serve the person in the manner provided for

1 service of process in civil cases not less than 5 days before the
2 date set for attendance. The order shall have the same force and
3 effect as a subpoena and, upon application of the attorney gener-
4 al, the order may be enforced by a court having jurisdiction over
5 the person, the circuit court for the county of Ingham or for the
6 county where the person receiving it resides or is found, in the
7 same manner as though the notice were a subpoena. If the order
8 issued by the department is not obeyed, the court may issue an
9 order requiring the person to appear before the court or to
10 produce documentary evidence, or to show cause for refusal to
11 obey the order issued by the department. Failure to obey the
12 order of the court shall be punished by that court as a
13 contempt. The investigation may be made by the agency designated
14 in writing by the department to conduct the investigation. The
15 department may administer the necessary oath or affirmation to
16 witnesses.

17 Sec. 23. A prosecuting attorney may conduct an investiga-
18 tion pursuant to this act and may require attendance of a person
19 in the same manner as the attorney general.

20 Sec. 25. (1) A person who violates a provision of this act
21 or a rule promulgated under this act is guilty of a misdemeanor,
22 punishable by imprisonment for not more than 1 year, or by a fine
23 of not less than \$500.00 nor more than \$5,000.00, or both.

24 (2) This section shall not be construed to limit or restrict
25 prosecution under any other provision of law.

26 Sec. 27. (1) The attorney general or county prosecutor may
27 seek temporary or permanent injunctive relief against a provider

1 who engages in a method, act, or practice in violation of this
2 act or a rule promulgated under this act. It is not necessary
3 that actual damages to a person be alleged or proved.

4 (2) The action under this section may be brought in the cir-
5 cuit court of the county where the defendant is established or
6 conducts business, or in the circuit court for the county of
7 Ingham if the action is brought on behalf of all the citizens of
8 this state. The court may award costs to the prevailing party.
9 For continuing and knowing violation of this act, the court may
10 assess the defendant a civil penalty of not more than
11 \$10,000.00. A default in the payment of a civil fine or costs
12 ordered under this act or an installment of the fine or costs may
13 be remedied by any means authorized under the revised judicature
14 act of 1961, Act No. 236 of the Public Acts of 1961, being sec-
15 tions 600.101 to 600.9947 of the Michigan Compiled Laws. The
16 attorney general or county prosecutor may recover actual damages
17 on behalf of a customer.

18 (3) In addition to relief afforded under this section, the
19 department may order the suspension or revocation of registration
20 under this act for violations of this act.

21 (4) Unless waived by the court on good cause shown not less
22 than 10 days before the commencement of an action under this sec-
23 tion, the department shall notify the provider of the intended
24 action and give the provider an opportunity to cease and desist
25 from the alleged unlawful method, act, or practice or to confer
26 with the department in person, by counsel, or by other
27 representative as to the proposed action before the proposed

1 filing date. The notice may be given to the provider by mail,
2 postage prepaid, to the usual place of business or, if the pro-
3 vider does not have a usual place of business, to the last known
4 address, or, if a corporation, to a resident agent who is desig-
5 nated to receive service of process or to an officer of the
6 corporation.

7 Sec. 29. (1) Under circumstances where the department has
8 authority to institute an action or proceeding pursuant to this
9 act, the department may accept an assurance of discontinuance of
10 a method, act, or practice that is alleged to be unlawful under
11 this act from the provider who is alleged to have engaged, be
12 engaging, or be about to engage in the method, act, or practice.
13 The assurance shall not constitute an admission of guilt nor be
14 introduced as evidence in any other proceeding. The assurance
15 may include a stipulation for 1 or more of the following:

16 (a) The voluntary payment by the provider for the costs of
17 investigation.

18 (b) A sum of money to be held in escrow pending the outcome
19 of an action.

20 (c) A sum of money to be paid as restitution to an aggrieved
21 person.

22 (2) An assurance of discontinuance shall be in writing and
23 may be filed with the circuit court of Ingham county. The clerk
24 of the court shall maintain a record of the filings. Unless
25 rescinded by the parties or voided by a court for good cause, the
26 assurance may be enforced in the circuit court by the parties to

1 the assurance. The assurance may be modified by the parties or
2 by a court for good cause.

3 Sec. 31. In addition to the remedies otherwise provided by
4 law, a person injured by a violation of this act may bring a pri-
5 vate civil action for damages including costs, reasonable attor-
6 ney fees, equitable relief, and other relief as determined appro-
7 priate by the court.

8 Sec. 33. (1) If the attorney general or prosecuting attor-
9 ney commences an action, or files a pleading, obtains an order of
10 the court, or a voluntary assurance pursuant to this act, filing
11 fees shall not be required.

12 (2) The registration fees collected pursuant to this act
13 shall be forwarded to the state treasurer and credited to the
14 general fund of the state.

15 Sec. 35. This act shall not limit or restrict the exercise
16 of powers or the performance of the duties of the department, or
17 any other governmental agency, that is otherwise authorized under
18 any other provisions of law.