

PHYSICAL EXERCISE CLUBS

552.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Contract price*" means the total price paid or to be paid, including service charges or membership fees, which entitles the buyer either directly or indirectly to membership in a physical exercise club or to the use of the services or facilities of a physical exercise club.
2. "*Finance charge*" means "*finance charge*" as defined in section 537.1301, subsection 21.
3. "*Physical exercise club*" means a person offering services or facilities, or both, for the preservation, maintenance, encouragement, or development of physical fitness or well-being in return for the payment of a fee entitling the buyer to the use of the services or facilities. The term includes but is not limited to persons offering services and facilities known as "*health clubs*", "*health spas*", "*sports and health clubs*", "*tennis clubs*", "*racquetball courts*", "*golf clubs*", "*gymnasiums*", "*figure salons*", "*health studios*", "*weight control studios*", and persons operating establishments whose primary purpose is the teaching of a particular form of self-defense or martial arts, such as judo, karate, or kung fu. "*Physical exercise club*" does not include:
 - a. A person or establishment which does not charge a membership fee and from which a buyer may only purchase or become obligated to purchase the use of services or facilities to be rendered for a period of not more than thirty days, and which does not collect more than thirty days in advance for the rendering of the services.
 - b. Except for purposes of sections 552.4, 552.7, 552.13, 552.14, and 552.16 a nonprofit organization organized and operating as a nonprofit organization.
 - c. An entity primarily engaged in physical rehabilitation activities related to an individual's injury or disease.
 - d. A private club owned and operated by its members.
 - e. Except for purposes of sections 552.4, 552.7, 552.13, and 552.14, a facility operated by the state or any of its political subdivisions.
 - f. A facility owned and operated on a not-for-profit basis by a person or a contractor of a person that is operated solely for the purpose of serving employees of the person, whether currently employed or retired, and family members of employees.
4. "*Physical exercise club contract*" means an agreement by which a buyer is entitled to membership in a physical exercise club or use of the services or facilities of a physical exercise club.
5. "*Prepayment*" means any partial or full payment for services or the use of facilities made before the services are actually made available by the physical exercise club or the facility is fully opened for business as described in section 552.16, subsection 3.

88 Acts, ch 1221, §1; 98 Acts, ch 1044, §1

552.2 Purpose.

The purpose of this chapter is to safeguard the public against fraud, deceit, and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of physical exercise club operations and services by prohibiting or restricting practices by which the public has been injured in connection with

contracts for and the marketing of physical exercise club services.

88 Acts, ch 1221, §2

552.3 Unenforceable contracts.

A physical exercise club contract or assignment of a contract that does not comply with this chapter is unenforceable as contrary to public policy.

88 Acts, ch 1221, §3

552.4 Contracts for physical exercise club services right of cancellation.

A physical exercise club contract shall provide that the contract may be canceled within three business days after the date of receipt by the buyer of a copy of the signed contract. Cancellation shall be by written notice delivered to the seller at an address which shall be specified in the contract. Cancellation is complete upon mailing of the notice of cancellation. After receipt of the cancellation, the physical exercise club may request the return of contract forms, membership cards, and all other documents and evidence of membership previously delivered to the buyer. The buyer is entitled to a refund of the entire consideration paid for the contract, if any, less twenty dollars.

A physical exercise club contract shall in plain terms disclose whether the physical exercise club will allow the buyer to cancel the contract in the event of the death or disability of the buyer.

88 Acts, ch 1221, §4

552.5 Contract statement of buyer's rights form.

1. A physical exercise club contract shall be in writing and signed by the buyer. The contract shall state in at least ten point boldface type **"NOTICE TO BUYER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT. DO NOT SIGN THIS CONTRACT IF IT CONTAINS BLANK SPACES."** A copy of the physical exercise club contract shall be delivered to the buyer at the time the contract is signed.

2. A physical exercise club contract shall designate the date on which the buyer actually signs the contract and shall contain a statement of the buyer's rights which complies with this subsection. The statement shall appear in the contract under the conspicuous caption **"BUYER'S RIGHT TO CANCEL"**, and shall read as follows: B>..... enter date of transaction)

You may cancel this transaction within three business days from the above date.

If you cancel, any payments made by you under the contract, less twenty dollars, and any negotiable instrument executed by you will be returned within forty-five days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. After you cancel, the physical exercise club may request the return of all contracts, membership cards, and other documents or evidence of membership.

To cancel this transaction, send, or deliver a signed and dated copy of this cancellation notice or any other written notice by certified or registered mail to (name of seller), at (address of seller's place of business) not later than midnight of (date).

I hereby cancel this transaction. (Date) (Buyer's signature)

The full text of this statement shall be in ten point boldface type.

88 Acts, ch 1221, §5

552.6 Delivery of physical exercise club rules.

A physical exercise club contract shall include a complete statement of the rules of the physical exercise club, or an acknowledgment in a conspicuous form that the buyer has received a copy of the rules. Physical exercise club rules shall include, but are not limited to, the hours of operation.

88 Acts, ch 1221, §6

552.7 Buyer's cancellation.

If a buyer cancels a physical exercise club contract pursuant to the three-day cancellation provision, the physical exercise club shall send the buyer a written confirmation of cancellation, together with the buyer's refund and any negotiable instruments executed by the buyer, within forty- five days after receipt by the physical exercise club of the buyer's cancellation notice. If the physical exercise club fails to send the written confirmation to the buyer within forty-five days after receiving a timely cancellation, the physical exercise club is deemed to have accepted the cancellation.

88 Acts, ch 1221, §7

552.8 Duration of contract renewal.

A physical exercise club contract shall not have a duration longer than thirty-six months. If a physical exercise club offers a contract of more than twelve months duration, it shall also offer a twelve-month contract. A physical exercise club contract shall not contain an automatic renewal clause.

88 Acts, ch 1221, §8

552.9 Notice of membership plans, prices, and right of cancellation.

The physical exercise club shall orally inform the buyer prior to the buyer's entering into a physical exercise club contract of the three-day cancellation provision and provide the buyer with a written list of all membership plans and their respective prices.

88 Acts, ch 1221, §9

552.10 Statement regarding assignability of buyer's obligation.

If the buyer's obligation is in a form that may be assigned, the contract shall state in boldface type on the front page of the contract that the contract may be discounted and sold to third parties to whom the buyer will become obligated to make full payment.

88 Acts, ch 1221, §10

552.11 Buyer's rights upon assignment.

1. A physical exercise club contract is not assignable by the physical exercise club without written notice of the assignment mailed to the buyer at the buyer's address as stated in the contract. The notice shall identify the contract, state the name and address of the assignee, the amount payable by the buyer and the number, amounts, and due dates of any payments, and shall contain a conspicuous notice to the buyer of the provisions of subsection 2.

2. If the physical exercise club assigns the buyer's obligation, the buyer has thirty days from the date of the mailing of the notice of the assignment within which to notify the assignee in writing of any claims or defenses the buyer may have against the physical exercise club. If written notification of the claims or defenses is not received by the assignee within the thirty-day period, the assignee has the right to enforce the contract free of any claims or defenses the buyer may have against the physical exercise club.

88 Acts, ch 1221, §11

552.12 Listing of equipment and services.

A physical exercise club, which accepts prepayments as defined in section 552.1, subsection 5, shall compile a written list which shall be available to a buyer upon request showing:

1. The equipment by kind and quantity that is or will be made available.
2. Each service which the physical exercise club intends to have available for use by the buyers.

Subject to section 552.16, subsection 3, a physical exercise club that accepts prepayments shall not be considered fully open for business until all of the equipment and services so listed are actually available for use by the buyers.

88 Acts, ch 1221, §12

552.13 Remedies violations.

1. If a physical exercise club violates a provision of this chapter, the buyer may cancel the physical exercise club contract. The buyer also has a right of action against the physical exercise club for recovery of the amount the buyer paid to the physical exercise club under the contract. In addition to any judgment awarded to the buyer, the court may allow reasonable attorney's fees.

2. A violation of any of the provisions of this chapter shall be deemed an unlawful practice under section 714.16, subsection 2, paragraph "a".

3. Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter.

88 Acts, ch 1221, §13

552.14 Prohibited activities.

1. It is unlawful for a physical exercise club to make any misrepresentation to current members, prospective buyers, or buyers of physical exercise club contracts regarding:

- a.* Qualifications of staff.
- b.* Availability, quality, or extent of facilities or services.
- c.* Results obtained through exercise, dieting, or weight control programs.
- d.* Membership rights.
- e.* The period that a special offer or discount will be available.

2. It is unlawful for a physical exercise club to fail or refuse to establish the escrow account required by section 552.16.

3. It is unlawful for a physical exercise club to advertise, state, or represent that it is approved by the state or that it has complied with this chapter.

88 Acts, ch 1221, §14; 2000 Acts, ch 1021, §1

552.15 Registration. Repealed by 2000 Acts, ch 1021, § 4.

552.16 Escrow bond.

1. A physical exercise club or its assignee or agent that accepts prepayments shall deposit all of the funds received as prepayments in an escrow account established with a financial institution located in this state whose accounts are insured by the federal deposit insurance corporation, the national credit union administration, or the federal savings and loan insurance corporation, which shall hold the funds as escrow agent for the benefit of the buyers that prepay. The physical exercise club shall deposit all prepayments received at least biweekly and shall make the first deposit not later than the fourteenth day after the day on which the physical exercise club accepts the first prepayment. Not later than the fourteenth day after the day on which the first prepayment is received, the physical exercise club shall submit to the attorney general's consumer protection division a notarized statement that identifies the financial institution in which the prepayments are held in escrow and the name and account number in which the account is held. The prepayments shall be held in escrow until the thirtieth day after the date that the physical exercise club fully opens for business.

2. If the physical exercise club does not fully open for business before the two hundred eleventh day after the date it enters into the first physical exercise club contract or if the club does not remain fully open for thirty days, the buyers whose payments are held in escrow under this section shall receive a full refund, including the buyer's pro rata share of any interest earned thereon, from the escrow agent. Refunds pursuant to this section shall be made not later than the two hundred forty-first day after the date the first physical exercise club contract was signed. If the escrow agent fails to make a full refund as provided for in this section, the attorney general shall hold a hearing and determine whether the physical exercise club has fully opened and has remained open for thirty days, and if not, determine those persons who, as buyers, are entitled to a refund and, if appropriate, distribute the escrow proceeds. Notice shall be provided to the physical exercise club at the address specified in the contract pursuant to section 552.4 and to all buyers who have funds in the escrow account. All hearings held under this section shall be held in accordance with chapter 17A.

3. For the purposes of this section, the date on which a physical exercise club fully opens for business is the date on which all of the equipment and services of the physical exercise club that were advertised before the opening or promised to be made available, whether or not contained in the contract, are actually available for use by buyers. The attorney general may upon application certify that a physical exercise club is fully open for business if substantially all of the promised equipment and services are available for use, and the physical exercise club has made a diligent effort to provide the remaining equipment and services.

4. The buyer retains ownership of all moneys and interest held in escrow under this section.

5. In lieu of establishing the escrow account described in subsections 1 through 4, a physical exercise club may post a one hundred fifty thousand dollar bond with the office of the attorney general, in a form deemed acceptable by the attorney general to protect the interest of buyers. Notice of the existence of the bond must be disclosed to the buyer in the physical exercise club contract. Either the attorney general or a buyer shall be entitled to collect on the bond in the same manner and on the same terms as provided for an escrow account in subsections 1 through 4. The aggregate liability of the surety for all damages shall not exceed the amount of the bond.

88 Acts, ch 1221, §16; 2000 Acts, ch 1021, §2

552.17 Consumer credit sales.

A physical exercise club contract where a finance charge is made or where payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment, is a consumer credit sale within the meaning of section 537.1301, subsection 13, and is subject to chapter 537. If any periodic payment, other than the down payment under an agreement requiring or permitting two or more periodic payments, is more than twice the amount of any other periodic payment other than the down payment, a transaction is "payable in installments" within the meaning of section 537.1301, subsection 33.

The provisions of this chapter providing rights and protections to buyers are in addition to the provisions of chapter 537.

88 Acts, ch 1221, §17

552.18 Waiver of provisions.

A waiver by the buyer of any of the provisions of this chapter is void as contrary to public policy.

88 Acts, ch 1221, §18

552.19 Immunity.

Notwithstanding chapter 669, there is no liability on behalf of the state of Iowa, the attorney general, or the employees of the attorney general, for damages for failure to execute, or for negligently executing, the duties or authority conferred upon them by this chapter, or the rules adopted pursuant to this chapter.

88 Acts, ch 1221, §19

552.20 Rules.

The attorney general may adopt rules in accordance with chapter 17A to carry out the provisions of this chapter.

88 Acts, ch 1221, §20

552.21 Construction of chapter.

This chapter does not limit the power or authority of the attorney general to seek administrative, legal, or equitable relief as provided by other statutes or at common law.

88 Acts, ch 1221, §21

552.22 Applicability.

This chapter applies to all physical exercise club contracts entered into in this state on or after July 1, 1988, concerning physical exercise club facilities located, or services to be provided, in this state.

88 Acts, ch 1221, §22