***Health Clubs—Regulation*—N.J. Stat. Ann. §§ 56:8-39 to -48 (West Supp. 1988).**

The New Jersey Legislature recently passed legislation providing for the regulation of health clubs in the state [hereinafter the Act].[1] This Act defines health clubs as any establishment devoting forty percent or more of its square footage to health club services. The Act, which limits the business practices of health clubs, remedies the ills created by these clubs in consumer transactions, and as such, derives its regulatory strength from the Consumer Fraud Act. The purpose of this Act is to protect the buyer of health club services from contracts of adhesion and unfair consumer practices.

The Act applies to any party offering health club services; however, nonprofit educational institutions, the state and its political subdivisions, and bona fide nonprofit organizations are specifically excluded. Also excluded is any health club which does not offer or accept service agreements that exceed a three month obligation. Such clubs must file a declaration, under penalty of perjury, stating that they are in compliance with this subsection, before January 15 of every even numbered year.

The Act is divided into three main components. The first involves the registration of health clubs with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety. This provision identifies the numerous health club facilities throughout the state, and ensures enforcement of this Act.

The second component requires the posting of a bond or some other financial security acceptable to the Director in order to satisfy any claim which may arise from either a breach of contract or the insolvency of the enterprise. The amount required to be held is specifically prescribed by the Act. The security must equal ten percent of the particular health club's income during the previous fiscal year; however, this amount can neither exceed $50,000 nor fall below $25,000. Aggregate liability of the club cannot exceed this secured amount. A separate and additional security provision concerns health clubs that solicit customers and make sales before opening their facilities. In such cases, se-

[1] The Health Club Regulation Act, N.J. STAT. ANN. §§ 56:8-39 to -48, supplements the Consumer Fraud Act, N.J. STAT. ANN. §§ 56:8-1 to -48.

curity must be posted in the amount of $50,000. However, this figure is subject to adjustment after the club opens.

The Act requires that health clubs file copies of all bonds as security with the Director. The club must also submit a certificate executed by the surety holding the instrument indicating that it will notify the Director ten days in advance of any material change in the bond.

The Act also addresses the problem of unequal bargaining positions between the parties and readjusts them for health club service contracts. When examining contracting practices, the legislature recognized the superior bargaining power held by health clubs. In order to protect the consumer from oppressive conduct, this Act requires health clubs to engage in and refrain from certain activities. All health club service contracts must be in writing and a copy of the contract must be provided to the buyer at the time of execution. Such writings must specifically set forth the services the buyer will receive and the total financial obligation of the buyer for the specified term. Also required to appear on the document is a statement pertaining to the existence of the security arrangement including the name of the bank or surety company involved.

Agreements for health club services cannot exceed an obligation period of three years, and the buyer has a three-day-period in which he may cancel such agreements. A form which details the buyer's right to cancel without cause and his right to a refund must be provided.

Buyers of health club service contracts may also cancel their contracts under certain circumstances. If the individual either suffers a certified permanent disability, or moves twenty-five miles from the health club or any of its affiliates, the buyer has the right to cancel the remaining obligation. If this occurs, however, the health club can retain a prorated portion of the total contract price plus an amount not exceeding ten percent of the total contract price. This additional amount is designated as reimbursement for expenses incurred.

If the health club is closed in excess of thirty days, thus being unable to provide services, the buyer may alter the terms of the agreement. In such situations, the buyer may cancel his remaining obligation, or extend the health club's obligation by a period

equal to that period which the club was closed, as long as the closing is not deemed to be the buyer's fault.

In addition, the Act precludes health clubs from including renewal requirements in service contracts. Likewise, the club cannot require the buyer to execute a note eliminating any right of action or defense to third parties that the buyer has against the health club. Health clubs may not accept a down payment on the service agreement exceeding twenty-five percent of the total contract price when facilities have not yet opened. A health club may not eliminate any right of action or defense by assignment of the contract, regardless of good faith and consideration requirements. Finally, the buyer can void any agreement entered into through fraud or substantial and willful false or misleading information. The Act prevents the buyer from waiving any of the required provisions. Therefore, any health club controlled by this Act cannot avoid regulation.

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