

# TITLE XXXI

## TRADE AND COMMERCE

### CHAPTER 358-I

#### HEALTH CLUBS

##### Section 358-I:1

**358-I:1 Definitions.** – As used in this chapter:

I. "Contract" means a monthly contract or a term contract:

(a) "Monthly contract" means any contract where services are paid on a monthly basis.

(b) "Term contract" means any contract where services are paid for in advance for a period of time greater than one month.

II. [Repealed.]

III. "Facilities" means equipment, physical structures, and other tangible property utilized by a health club to conduct its business. The term includes, but is not limited to, saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, and exercise equipment.

IV. "Health club" means an establishment which provides services or facilities which purport to improve or maintain the user's physical condition or appearance through weight control, exercise, dieting, or a combination of these. The term includes, but is not limited to, establishments referred to by such terms as reducing salon, spa, exercise club, exercise gym, health studio, health club, weight control center, or other similar term. As used in this chapter, the term "health club" shall not include, and this chapter shall not apply to services rendered by:

(a) Any nonprofit public or private school, college, or university;

(b) The state, or any of its political subdivisions;

(c) Any nonprofit religious, ethnic, community, or service organization; or

(d) Any establishment which does not have as one of its primary purposes or businesses the provision of health club services or facilities.

IV-a. "Initiation fee" means any sum of money received at the initiation of a membership for the incurred costs including but not limited to advertising, administration, commissions, and orientation.

V. "Member" or "buyer" means a natural person who enters into a health club contract or attains a status entitling him to the services or facilities of a health club.

VI. "Prepayment" means any payment for services or the use of facilities made before the services or facilities are made available by the health club. It is not a prepayment if a payment for services or the use of facilities is made on the same day the services or use of the facilities is provided. Money or other consideration received by a health club from a financial institution upon the assignment or sale of a contract shall be considered a prepayment to the extent the member is required to make prepayments to the financial institution pursuant to the contract.

VII. "Seller" means the person, corporation, partnership, association, or other entity engaged in the operation of a health club as defined in this section, and who offers for sale the right to use the facilities or the services of the health club.

VIII. "Services" means programs, plans, guidance, or instruction provided by a health club for health club members. The term includes, but is not limited to, diet planning, exercise instruction, exercise programs, and instructional classes.

IX. "Special offer or discount" means any offer of health club services or the use of health club facilities at a reduced price or without charge to the member or prospective member.

**Source.** 1983, 438:1. 1985, 300:29, IV. 1998, 305:1, 2, eff. Jan. 1, 1999. 2007, 281:2, eff. July 1, 2007.

##### Section 358-I:2

**358-I:2 Registration; Surety Bond; Escrow of Deposits. –**

I. Any person, corporation, partnership, association, or other entity operating or intending to open or operate a health club within this state shall file a registration statement with the attorney general. Such registration statement shall contain the name and address of the health club; the names and addresses of the officers, directors, and those stockholders who hold in excess of 20 percent of the health club and its parent corporation, if such an entity exists; the type of available facilities; a written list of each piece of equipment and each service which the club has available for use by buyers; approximate size of the health club measured in square feet; whether or not a shower area is provided; type of membership plans to be offered and their cost; and a full and complete disclosure of any completed or pending litigation initiated against the health club and any of its officers or directors within the last 3 years. A new registration statement shall be filed annually by the anniversary date of the filing of the original registration statement. Each registration statement shall be accompanied by a registration fee of \$100. Any person failing to file a registration statement within 90 days of the date due shall be subject to an administrative assessment of \$1,000.

II. Each health club registering pursuant to this chapter shall maintain in the files of the health club a copy of its registration statement filed pursuant to this section. A current registration certificate issued by the bureau of consumer protection and antitrust, department of justice, shall be posted or placed at all times in a conspicuous place and the registration statement shall be made available for inspection by current health club members or prospective purchasers of health club memberships; provided, however, that the addresses of employees need not be disclosed, nor shall the attorney general publicly disclose such addresses except in connection with the prosecution of legal proceedings instituted under this chapter or other provisions of the RSA.

III. Except as provided in paragraph IV, each health club registering pursuant to this chapter shall post a surety bond in the amount of \$50,000, or the equivalent in cash, marketable securities, letters of credit, or escrow accounts, with the attorney general. The type of bond shall be designated by the attorney general. No surety bond shall be accepted for filing unless it is with a surety company authorized to do business in this state. The surety may cancel the bond at any time upon giving 30 days' written notice to the attorney general. Any person who is damaged by any violation of this chapter, or by the seller's breach of contract for sale or any obligation arising therefrom, may bring an action against the bond or its equivalent to recover damages suffered and any other amounts allowable by law. The attorney general, in any action brought under this chapter or any other applicable provisions of law, may likewise proceed against the bond or its equivalent. In no event shall the aggregate liability of the surety for all claims exceed the bond amount. The attorney general may reduce the amount of the surety bond or its equivalent if a club's membership refund liability warrants such a reduction.

IV. The attorney general shall exempt from the bonding requirement set forth in paragraph III any health club that meets any of the following conditions:

- (a) Provides the attorney general with a statement that the club accepts membership fees on a monthly basis only.
- (b) Establishes to the satisfaction of the attorney general that its membership refund liability does not exceed \$5,000.

V. Any seller intending to open or operate a health club within this state and who solicits or accepts membership fees before a club begins operating shall place all such fees in an escrow account and shall identify the date the club is to begin operating. The seller shall provide each member a written receipt for the membership fee and shall provide each member a copy of the contract required under RSA 358-I:3 on or before the date the club begins operating. If the club does not begin operating within 10 days of the date originally identified by the seller, the seller shall notify, within 15 days of the date originally identified by the seller, each member of the new date that the club shall begin operating. If the new date for beginning operations is not within 45 days of the date originally identified by the seller, the seller shall refund the membership fees to the members plus interest. Under no circumstances may a seller hold membership fees in escrow for more than 60 days after the date originally identified by the seller as the date the club would begin operating. A seller may withdraw funds from the escrow account 10 days after the club begins operating. The escrow account required by this paragraph shall be separate from any escrow account required under RSA 358-I:2, III.

VI. Any initiation fee shall not exceed 100 percent of an annualized monthly fee.

**Source.** 1983, 438:1. 1985, 300:7, I(b). 1987, 397:1-3. 1998, 305:3-5. 2002, 134:1. 2003, 87:1, eff. July 29, 2003.

**Section 358-I:3****358-I:3 Contract Requirements; Disclosure of Cancellation Rights. –**

I. A fully completed copy of each prepaid contract shall be delivered to the buyer at the time the contract is signed. Every contract must constitute the entire agreement between the seller and the buyer, shall be in writing, shall be signed by the buyer, and shall designate the date on which the buyer signed the contract.

II. Each prepaid contract shall state in at least 10 point boldface type the following:

(a) **"NOTICE TO BUYER: DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ ALL OF IT. ALSO, DO NOT SIGN THIS CONTRACT IF IT CONTAINS ANY BLANK SPACES."**

(b) **"STATE LAW REQUIRES THAT THIS HEALTH CLUB REGISTER WITH THE BUREAU OF CONSUMER PROTECTION AND ANTITRUST OF THE DEPARTMENT OF JUSTICE AND MAY REQUIRE THAT THIS CLUB POST A BOND TO PROTECT CUSTOMERS WHO PAY IN ADVANCE FOR MEMBERSHIP OR SERVICES IN THE EVENT THIS CLUB CLOSES. YOU SHOULD ASK TO SEE EVIDENCE THAT THIS CLUB HAS EITHER POSTED A BOND IN COMPLIANCE WITH THE LAW OR HAS BEEN EXEMPTED FROM THIS REQUIREMENT BY THE ATTORNEY GENERAL BEFORE YOU SIGN THIS CONTRACT. IF THIS CLUB HAS NOT POSTED SUCH A BOND, AND YOU PAY THIS HEALTH CLUB FOR MORE THAN ONE MONTH'S MEMBERSHIP OR SERVICES IN ADVANCE, THEN YOU ARE PAYING FOR FUTURE SERVICES, AND YOU MAY BE RISKING THE LOSS OF YOUR MONEY IN THE EVENT THAT THE CLUB CEASES TO CONDUCT BUSINESS."**

III. Every purchaser of a prepaid membership shall be entitled to cancel his or her contract within 3 business days by notifying the health club in writing by midnight of the third business day following the date of purchase of the membership contract. Written notification is deemed given if mailed or delivered by midnight of the third business day. All money collected pursuant to the contract shall be refunded to the purchaser exercising the right to cancel.

IV. Each prepaid contract shall contain in at least 10 point boldface type a statement in substantially the following form:

**"YOU MAY CANCEL THIS TRANSACTION IN WRITING ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION."**

The buyer may cancel by written notice mailed to the seller, preferably by certified or registered letter; or he may cancel by delivering a notice in person within the cancellation period. If such notice is delivered, the buyer shall be entitled to a receipt.

V. Each prepaid contract shall further contain a statement notifying the buyer of each of his rights under RSA 358-I:6.

VI. Each club shall provide the attorney general with a copy of its membership contract.

**Source.** 1983, 438:1. 1987, 397:4. 1998, 305:6, eff. Jan. 1, 1999.

### **Section 358-I:4**

#### **358-I:4 List of Membership Plans. –**

I. Each health club operating in this state shall prepare a comprehensive list of all membership plans offered for sale by the health club and the respective price of each plan. The list shall be shown to each prospective purchaser of a membership plan.

II. A health club is prohibited from selling a membership plan not included in this list and in the registration statement required by RSA 358-I:2, I.

**Source.** 1983, 438:1, eff. June 24, 1983.

### **Section 358-I:5**

#### **358-I:5 Length of Membership Contract; Automatic Renewal Prohibited; Required Membership Options. –**

I. No term contract for health club services shall be for a term of more than one year, nor shall any health club term contract contain an automatic renewal clause for a period greater than one month. A contract may provide for a renewal option for continued membership, but any such renewal must be accepted in writing by a buyer and is effective only upon payment of the renewal price. Under no circumstances may a contract for health club services be renewed more than 90 days before the contract's expiration date. The annualized price of the buyer's first term contract or membership option with a seller may not exceed the annualized price of any subsequent term contract or other membership option with the seller by more than 25 percent.

II. Every seller shall offer a month-to-month membership option in addition to any other term contract the seller elects to offer. The availability of month-to-month memberships shall be stated in any written or broadcast advertisement or posting or marketing materials that describe any other membership option the seller offers. No seller shall limit the availability of month-to-month memberships in any manner in which the seller does not also limit the availability of any term contract; nor may a seller accept payment from a buyer or enter into a term contract unless and until the seller has informed the buyer both orally and in writing of the availability of the month-to-month membership. Month-to-month memberships shall offer the same access to health club facilities and services that term contracts offer. A buyer may cancel a month-to-month membership option with 30 days written notice to the seller, provided the original contract obligations have been met, for any reason, and have no further obligation to the seller. The provisions of this paragraph shall apply to a university, college, or educational institution to the extent that it offers health club services to the general public, but shall not apply to a university, college, or educational institution in its offer of health club services to its student body.

III. The annualized price of a month-to-month membership shall not exceed the annualized price of any term contract the seller offers by more than 25 percent.

**Source.** 1983, 438:1. 1987, 397:8. 1998, 305:7. 2003, 87:2, eff. July 29, 2003.

### Section 358-I:6

#### 358-I:6 Buyer's Rights. –

I. Every seller of a prepaid health club services contract shall:

(a) Refund to the buyer the pro rata cost of any unused services, within 15 days after request therefor, if:

(1) The buyer is unable to receive benefits from the seller's services by reason of death or disability. The health club may require that the disability be confirmed by an examination of a physician agreeable to the member and the health club; provided, however, that this subparagraph shall not operate to prevent the buyer from proving the disability in a judicial proceeding; or

(2) The seller relocates his facility more than 8 miles from its present location, or the services provided by the seller are materially impaired.

(b) Refund to the buyer the pro rata cost of any unused services under all contracts between the parties, within 15 days after request therefor, if the aggregate price of all contracts in force between the parties exceeds \$1,000. Provided, however, if the contract so provides, the seller may retain a cancellation fee of not more than 25 percent of the pro rata cost of unused services on all contracts, not to exceed \$250.

(c) Refund to the buyer the pro rata cost of any unused services within 15 days after the club ceases operation.

II. Upon the occurrence of any of the circumstances enumerated in subparagraphs I(a) or (b) or (c) of this section, the buyer or his estate shall be relieved of any further obligation for payment under the contract not then due and owing.

**Source.** 1983, 438:1. 1987, 397:5, 6, eff. July 25, 1987.

### Section 358-I:6-a

**358-I:6-a Rulemaking.** – The attorney general shall adopt rules, pursuant to RSA 541-A, relative to:

I. The information required on the registration statement required under RSA 358-I:2, I.

II. The financial documentation necessary to assure financial responsibility to make refunds under RSA 358-I:2.

III. Documentation evidencing qualification for exemption under RSA 358-I:2.

IV. Procedures for the escrow of deposits as required by RSA 358-I:2.

V. Procedures for providing membership plan information under RSA 358-I:4.

**Source.** 1987, 397:7, eff. July 25, 1987.

### Section 358-I:7

#### 358-I:7 Prohibited Activities. –

I. A health club shall be prohibited from offering specials or discounts unless such specials or discounts are made in

writing and are made available to all prospective members who have not previously been members of the health club; provided, however, that specials or discounts offered to groups need not be made available to all prospective members.

II. Health clubs shall be prohibited from making any misrepresentation to current members, prospective members or purchasers of membership 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.

**Source.** 1983, 438:1, eff. June 24, 1983.

### **Section 358-I:8**

#### **358-I:8 Remedies. –**

I. Any violation of the provisions of this chapter is an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right, remedy or power set forth in RSA 358-A, including those set forth in RSA 358-A:4, II, may be used to enforce the provisions of this chapter.

II. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided for by law or in equity.

**Source.** 1983, 438:1, eff. June 24, 1983.

### **Section 358-I:9**

**358-I:9 Waiver of Provisions. –** Any waiver of the member or buyer of any of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

**Source.** 1983, 438:1, eff. June 24, 1983.

### **Section 358-I:10**

#### **358-I:10 Applicability. –**

I. The provisions of RSA 358-I:2, 4, 6 and 7 shall apply to all health clubs operating or intending to operate in this state.

II. The provisions of RSA 358-I:3 and 5 shall apply to all health club contracts entered into on or after June 24, 1983.

**Source.** 1983, 438:1, eff. June 24, 1983.