

TITLE XXXI

TRADE AND COMMERCE

CHAPTER 358-S

MARTIAL ARTS SCHOOLS

Section 358-S:1

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

I. "Contract" means a month-to-month contract, monthly contract, or a term contract:

(a) "Month-to-month contract" means any contract for a new prospective student to pay membership fees on a monthly basis.

(b) "Monthly contract" means any contract where services are paid pro rata on a monthly basis for a predetermined period of time in excess of one month. No monthly contract shall be considered a "term contract."

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

II. "Facilities" means equipment, physical structures, and other tangible property utilized by a martial arts school to conduct its business.

III. "Initiation fee" means any sum of money received at the initiation of a membership for the incurred costs, including advertising, administration, commissions, and orientation.

IV. "Martial arts school" means any establishment primarily operated for the purpose of teaching a form or forms of self-defense, such as judo or karate. As used in this chapter, the term "martial arts school" shall not include, and this chapter shall not apply to, services rendered by:

(a) The state or any of its political subdivisions.

(b) Any nonprofit religious, ethnic, community, or service organization.

(c) Any establishment that does not have as one of its primary purposes or businesses the provision of martial arts school services or facilities.

V. "Member," "buyer," or "student" means a natural person who enters into a martial arts school contract or attains a status entitling him or her to the services or facilities of a martial arts school.

VI. "Prepayment" means any payment for services or the use of facilities made before the services or facilities are made available by the martial arts school. 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 martial arts school 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 martial arts school as defined in this section, and who offers for sale martial arts instruction at the martial arts school.

VIII. "Services" means programs, plans, guidance, or instruction provided by a martial arts school for martial arts school members.

IX. "Special offer or discount" means any offer of the martial arts school at a reduced price or without charge to the member or prospective member.

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:2

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

I. Any person operating or intending to open or operate a martial arts school within this state shall file a registration statement with the department of justice, bureau of consumer protection and antitrust. The registration statement shall contain the name and address of the martial arts school; the names and addresses of the officers, directors, and those

stockholders who hold in excess of 20 percent of the martial arts school 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 school has available for use by buyers; approximate size of the martial arts school 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 martial arts school 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 martial arts school registered under this chapter shall maintain in the files of the martial arts school a copy of its registration statement filed pursuant to this section. A current registration certificate issued by the department of justice, bureau of consumer protection and antitrust shall be posted or placed at all times in a conspicuous place and the registration statement shall be made available for inspection by current members or prospective purchasers of martial arts school memberships; provided, however, that the addresses of employees need not be disclosed, nor shall the department of justice publicly disclose such addresses except in connection with the prosecution of legal proceedings instituted under this chapter or another provision of law.

III. Except as provided in paragraph IV, each martial arts school registering pursuant to this chapter shall post a surety bond in an amount of \$50,000, or the equivalent in cash, marketable securities, letters of credit, or escrow accounts, with the department of justice. The type of bond shall be designated by the department of justice. 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 department of justice. 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 department of justice, 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 department of justice may reduce the amount of the surety bond or its equivalent if a martial arts school's membership refund liability warrants such a reduction.

IV. The department of justice shall exempt from the bonding requirement set forth in paragraph III any martial arts school that meets any of the following conditions:

(a) Provides the department of justice with a statement that the martial arts school accepts membership fees on a monthly basis only.

(b) Establishes to the satisfaction of the department of justice that its membership refund liability does not exceed \$5,000.

V. Any seller who intends to open or operate a martial arts school within this state and who solicits or accepts membership fees before a martial arts school begins operating shall place all such fees in an escrow account and shall identify the date the martial arts school 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-S:3 on or before the date the martial arts school begins operating. If the martial arts school 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 martial arts school 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 martial arts school would begin operating. A seller may withdraw funds from the escrow account 10 days after the martial arts school begins operating. The escrow account required by this paragraph shall be separate from any escrow account required under paragraph III.

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

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:3

358-S:3 Contract Requirements; Disclosure of Cancellation Rights. –

I. A fully completed copy of each contract shall be delivered to the buyer at the time the contract is signed. Every

contract shall 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 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 MARTIAL ARTS SCHOOL REGISTER WITH THE BUREAU OF CONSUMER PROTECTION AND ANTITRUST OF THE DEPARTMENT OF JUSTICE AND MAY REQUIRE THAT THIS MARTIAL ARTS SCHOOL POST A BOND TO PROTECT CUSTOMERS WHO PAY IN ADVANCE FOR MEMBERSHIP OR SERVICES IN THE EVENT THIS MARTIAL ARTS SCHOOL CLOSES. YOU SHOULD ASK TO SEE EVIDENCE THAT THIS MARTIAL ARTS SCHOOL 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 MARTIAL ARTS SCHOOL HAS NOT POSTED SUCH A BOND, AND YOU PAY THIS MARTIAL ARTS SCHOOL 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 MARTIAL ARTS SCHOOL CEASES TO CONDUCT BUSINESS."

III. Every buyer shall be entitled to cancel his or her contract within 3 business days by notifying the martial arts school in writing by midnight of the third business day following the date of the 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. (a) Each 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."

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

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

VI. Each martial arts school shall provide the department of justice with a copy of its membership contract.

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:4

358-S:4 List of Membership Plans. –

I. Each martial arts school operating in this state shall prepare a comprehensive list of the courses offered by the martial arts school and the respective price of each course. The list shall be shown to each prospective purchaser of a membership plan.

II. A martial arts school is prohibited from selling courses not included in the list and in the registration statement required by RSA 358-S:2, I.

III. This section shall not apply to scholarships given by martial arts schools.

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:5

358-S:5 Length of Membership Contract; Automatic Renewal; Required Membership Options. –

I. No term contract for martial arts school services shall be for a term of more than 3 years. The buyer has the option of purchasing a shorter term contract in accordance with the other courses offered by the martial arts school. The buyer has the option of entering into a contract up to 3 years provided they have been enrolled in the school for at least one year. A contract may provide for a renewal option for continued membership, but any such renewal shall be accepted in writing by a buyer and is effective only upon payment under the terms of the preceding agreement. Under no circumstances may a contract for martial arts school services be renewed more than 90 days before the contract's

expiration date. Buyers may upgrade their membership under new agreements at any time.

II. Every seller shall offer a month-to-month membership option and a monthly membership option to any new prospective student, 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 which apply to the skill level for the prospective students based upon the curriculum of each martial arts school as determined by the director of the martial arts school. No seller shall limit the availability of month-to-month or monthly memberships to any new prospective student 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 or monthly memberships to any new prospective student. Month-to-month memberships shall offer the same access to martial arts school facilities and services that term or monthly contracts offer.

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

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:6

358-S:6 Buyer's Rights. –

I. Every seller of a martial arts instruction term or monthly 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, disability, or extended illness beyond 3 months. The martial arts school may require that the disability or extended illness be confirmed by an examination of a physician agreeable to the member and the martial arts school, provided, however, that this subparagraph shall not operate to prevent the buyer from proving the disability in a judicial proceeding.

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

(3) The buyer moves more than 25 miles away from the martial arts school.

(b) Refund to the buyer the pro rata cost of any unused services within 15 days after the martial arts school ceases operation.

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

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:7

358-S:7 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-S:2, I.

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

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

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

V. Procedures for providing course information under RSA 358-S:4.

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:8

358-S:8 Prohibited Activities. –

I. A martial arts school 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 school; provided, however, that specials or discounts offered to groups need not be made available to all prospective members.

II. Martial arts schools 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 martial arts training.

Source. 2007, 281:1, eff. July 1, 2007.

Section 358-S:9

358-S:9 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. 2007, 281:1, eff. July 1, 2007.

Section 358-S:10

358-S:10 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. 2007, 281:1, eff. July 1, 2007.