



House of Representatives

File No. 295

General Assembly

January Session, 2005

(Reprint of File No. 42)

Substitute House Bill No. 6519
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 13, 2005

AN ACT CONCERNING HEALTH CLUBS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-216 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in this chapter:

4 (1) "Health club" means any corporation, partnership,
5 unincorporated association or other business enterprise offering
6 facilities for the preservation, maintenance, encouragement or
7 development of physical fitness or well-being in return for the
8 payment of a fee entitling the buyer to the use of such facilities. Such
9 term [shall include, but not be] includes, but is not limited to, "health
10 spas", "sports and health clubs", "tennis clubs", "racquet ball courts",
11 "golf clubs", "platform tennis clubs", "gymnasiums", "figure salons",
12 "health studios", "weight control studios", and any organization
13 primarily operated for the purpose of teaching a particular form of
14 self-defense or martial art, such as judo, karate or kung fu, but shall
15 not include any establishment from which a buyer may only purchase
16 or become obligated to purchase services to be rendered for a period of

17 not more than [thirty days] one month and which does not collect
18 more than [thirty days] one month's payment in advance of the
19 rendering of such services, nonprofit organizations, any massage
20 establishment, any private club owned and operated by its members or
21 any facility operated by the state or any of its political subdivisions.

22 (2) "Business day" means any day except a Sunday or a legal
23 holiday.

24 (3) "Health club contract" means an agreement by which a buyer is
25 entitled to membership in a health club or use of the facilities of a
26 health club. All health club contracts shall be in writing.

27 (4) "Buyer" means a person who enters into, or receives the benefit
28 of, a health club contract.

29 (5) "Services actually received" includes any period during which
30 the facilities of the health club are available to the buyer pursuant to
31 the health club contract whether or not the buyer makes use of the
32 facilities, except when the consideration paid for the health club
33 contract is determined by the number of times the buyer makes use of
34 the health club facilities. The facilities shall not be deemed to be
35 available to the buyer if the buyer fails to make use of the health club
36 facilities in reliance upon a statement or representation of an officer,
37 employee or agent of the health club which would reasonably lead the
38 buyer to conclude that his contract had been cancelled or that the
39 facilities were not actually available for use by the buyer.

40 (6) "Disabled" and "disability" mean a condition which has existed
41 or will exist for more than forty-five days which prevents a buyer from
42 utilizing the health club to the same extent he utilized it before
43 commencement of such condition.

44 (7) "Payment in advance" includes, but is not limited to, the
45 payment of all service fees, initiation fees, application fees,
46 maintenance fees or similar fees.

47 Sec. 2. Section 21a-217 of the general statutes is repealed and the
48 following is substituted in lieu thereof (*Effective from passage*):

49 Every contract for health club services shall provide that such
50 contract may be cancelled within three business days after the date of
51 receipt by the buyer of a copy of the contract, by written notice
52 delivered by certified or registered United States mail to the seller or
53 the seller's agent at an address which shall be specified in the contract.
54 After receipt of such cancellation, the health club may request the
55 return of contract forms, membership cards and any and all other
56 documents and evidence of membership previously delivered to the
57 buyer. Cancellation shall be without liability on the part of the buyer,
58 except for the fair market value of services actually received and the
59 buyer shall be entitled to a refund of the entire consideration paid for
60 the contract, if any, less the fair market value of the services or use of
61 facilities already actually received. Such right of cancellation shall not
62 be affected by the terms of the contract and may not be waived or
63 otherwise surrendered. Such contract for health club services shall also
64 contain a clause providing that if the person receiving the benefits of
65 such contract relocates further than twenty-five miles from a health
66 club facility operated by the seller or a substantially similar health club
67 facility which would accept the seller's obligation under the contract,
68 or dies during the membership term following the date of such
69 contract, or if the health club ceases operation at the location where the
70 buyer entered into the contract, the buyer or his estate shall be relieved
71 of any further obligation for payment under the contract not then due
72 and owing. The contract shall also provide that if the buyer becomes
73 disabled during the membership term, the buyer shall have the option
74 of (1) being relieved of liability for payment on that portion of the
75 contract term for which he is disabled, or (2) extending the duration of
76 the original contract at no cost to the buyer for a period equal to the
77 duration of the disability. The health club shall have the right to
78 require and verify reasonable evidence of relocation, disability or
79 death. In the case of disability, the health club may require that a
80 doctor's certificate be submitted as verification and may also require in

81 such contract that the buyer submit to a physical examination by a
82 doctor agreeable to the buyer and the health club, the cost of which
83 examination shall be borne by the health club.

84 Sec. 3. Subsection (a) of section 21a-218 of the general statutes is
85 repealed and the following is substituted in lieu thereof (*Effective from*
86 *passage*):

87 (a) A copy of the health club contract shall be delivered to the buyer
88 at the time the contract is signed. All health club contracts shall be in
89 writing and signed by the buyer, shall designate the date on which the
90 buyer actually signs the contract, shall identify the address of the
91 location at which the buyer entered the contract and shall contain a
92 statement of the buyer's rights which complies with this section. The
93 statement must: (1) Appear in the contract under the conspicuous
94 caption: "BUYER'S RIGHT TO CANCEL", and (2) read as follows:

95 "If you wish to cancel this contract, you may cancel by mailing a
96 written notice by certified or registered mail to the [health club]
97 address specified below. The notice must say that you do not wish to
98 be bound by this contract and must be delivered or mailed before
99 midnight of the third business day after you sign this contract. After
100 you cancel, the health club may request the return of all contracts,
101 membership cards and other documents of evidence of membership.
102 The notice must be delivered or mailed to:

103

104

105 (Insert name and mailing address [of health club] for cancellation
106 notice.)

107 You may also cancel this contract if you relocate your residence
108 further than twenty-five miles from any health club operated by the
109 seller or from any other substantially similar health club which would
110 accept the obligation of the seller. This contract may also be cancelled if

111 you die, or if the health club ceases operation at the location where you
112 entered into this contract. If you become disabled, you shall have the
113 option of (1) being relieved of liability for payment on that portion of
114 the contract term for which you are disabled, or (2) extending the
115 duration of the original contract at no cost to you for a period equal to
116 the duration of the disability. You must prove such disability by a
117 doctor's certificate, which certificate shall be enclosed with the written
118 notice of disability sent to the health club. The health club may require
119 that you be examined by another physician agreeable to you and the
120 health club at its expense. If you cancel, the health club may keep or
121 collect an amount equal to the fair market value of the services or use
122 of facilities you have already received."

123 The full text of this statement shall be in ten-point bold type.

124 Sec. 4. Section 21a-219 of the general statutes is repealed and the
125 following is substituted in lieu thereof (*Effective from passage*):

126 (a) No health club contract shall have a [duration] term for a period
127 longer than twenty-four months. If a health club offers a contract of
128 more than twelve months' [duration] term, it shall offer a twelve-
129 month contract. If a health club sells a membership contract of more
130 than twelve months' [duration] term, the health club shall not collect
131 [no] payment, in cash or its equivalent of more than fifty per cent of
132 the entire consideration for the contract in advance of rendering
133 services. The remainder of the cost of the contract shall be collected by
134 the health club on a pro rata monthly basis during the term of the
135 health club contract. Each contract shall have the prices for all contracts
136 printed thereon.

137 (b) No contract shall contain an automatic renewal clause [but may
138 provide a] except for a renewal for a period not to exceed one month. If
139 such contract contains such a one month automatic renewal clause,
140 such renewal shall become effective only upon payment of the renewal
141 price and such contract shall permit the buyer to cancel any further
142 renewal upon no more than one month's notice. The price of any such

143 renewal shall not increase or decrease unless the contract: (1) Discloses
144 the amount of such increase or decrease or the method of calculating
145 such increase or decrease in the price of such renewal, or (2) such
146 information is otherwise provided to the buyer, in writing, no less than
147 one month prior to such renewal. Any renewal option for continued
148 membership [, which option] must be accepted by the buyer in writing,
149 by electronic mail or facsimile and [may] shall become effective only
150 upon payment of the renewal price.

151 (c) Each health club shall post the prices and the three-day
152 cancellation provisions, the disability provisions and the twenty-five
153 mile moving provisions of all contracts in a conspicuous place where
154 the contract is entered into.

155 Sec. 5. Section 21a-220 of the general statutes is repealed and the
156 following is substituted in lieu thereof (*Effective from passage*):

157 If the buyer's obligation is in the form of a negotiable promissory
158 note, such contract shall state in boldface type on the face page of said
159 contract that the buyer's promissory note may be discounted and sold
160 to third parties to whom the buyer will become obligated to make full
161 payment. The selling or discounting of a negotiable promissory note
162 which represents the buyer's obligation under a health club service
163 contract shall not affect the right of the buyer to cancel the contract, the
164 method by which cancellation may be made, or the buyer's rights
165 under section 52-572g or Section 433.1 et seq. of Title 16 of the Code of
166 Federal Regulations, as they may from time to time be amended. When
167 a buyer's obligation is in the form of a promissory note, the time period
168 for payment of the note shall not exceed the [duration] term of the
169 health club contract.

170 Sec. 6. Section 21a-221 of the general statutes is repealed and the
171 following is substituted in lieu thereof (*Effective from passage*):

172 A health club which intends to commence the sale of health club
173 contracts, shall, prior to commencing sale, compile a written list of
174 [each piece of] the equipment and each service which it intends to have

175 available for use by buyers at the time of commencing such sale and
176 shall submit a copy of the list to the Commissioner of Consumer
177 Protection. Such list, as may be updated from time to time, shall be
178 included in any health club contract. No health club shall be
179 considered fully operative or established until substantially all of the
180 equipment and services so listed are actually available for use by
181 buyers. Each individual place of business of each health club shall be
182 fully operative or established prior to commencing the sale of health
183 club contracts.

184 Sec. 7. Section 21a-223 of the general statutes is repealed and the
185 following is substituted in lieu thereof (*Effective from passage*):

186 (a) Each individual place of business of each health club shall obtain
187 a license from the Department of Consumer Protection prior to the sale
188 of any health club contract. Application for such license shall be made
189 on forms provided by the Commissioner of Consumer Protection and
190 said commissioner shall require as a condition to the issuance and
191 renewal of any license obtained under this chapter (1) that the
192 applicant provide for and maintain on the premises of the health club
193 sanitary facilities; (2) that the application be accompanied by (A) a
194 license or renewal fee of two hundred dollars, (B) a list of [each piece
195 of] the equipment and each service which the applicant intends to have
196 available for use by buyers during the year of operations following
197 licensure or renewal, and (C) two copies of each health club contract
198 which the applicant is currently using or intends to use; and (3)
199 compliance with the requirements of section 21a-226. Such licenses
200 shall be renewed annually. The commissioner may impose a civil
201 penalty of not more than three hundred dollars against any health club
202 that continues to sell or offer for sale health club contracts for any
203 location but fails to submit a license renewal and license renewal fee
204 for such location not later than thirty days after such license's
205 expiration date.

206 (b) No health club shall (1) engage in any act or practice which is in
207 violation of or contrary to the provisions of this chapter or any

208 regulation adopted to carry out the provisions of this chapter,
 209 including the use of contracts which do not conform to the
 210 requirements of this chapter, or (2) engage in conduct of a character
 211 likely to mislead, deceive or defraud the buyer, the public or the
 212 commissioner. The Commissioner of Consumer Protection may refuse
 213 to grant or renew a license to, or may suspend or revoke the license of,
 214 any health club which engages in any conduct prohibited by this
 215 chapter.

216 (c) If the commissioner refuses to grant or renew a license of any
 217 health club, the commissioner shall notify the applicant or licensee of
 218 the refusal, and of his right to request a hearing within ten days from
 219 the date of receipt of the notice of refusal. If the applicant or licensee
 220 requests a hearing within ten days, the commissioner shall give notice
 221 of the grounds for his refusal and shall conduct a hearing concerning
 222 such refusal in accordance with the provisions of chapter 54
 223 concerning contested matters.

224 (d) The Attorney General at the request of the Commissioner of
 225 Consumer Protection is authorized to apply in the name of the state of
 226 Connecticut to the Superior Court for an order temporarily or
 227 permanently restraining and enjoining any health club from operating
 228 in violation of any provision of this chapter.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	21a-216
Sec. 2	<i>from passage</i>	21a-217
Sec. 3	<i>from passage</i>	21a-218(a)
Sec. 4	<i>from passage</i>	21a-219
Sec. 5	<i>from passage</i>	21a-220
Sec. 6	<i>from passage</i>	21a-221
Sec. 7	<i>from passage</i>	21a-223

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Consumer Protection, Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Attorney General	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill as amended allows the Department of Consumer Protection (DCP) to impose a civil fine of up to \$300 on a health club that sells contracts after failing to renew its license. There are currently 282 active health club licenses in the state. Therefore, this could result in a minimal revenue gain.

The bill as amended also exempts health clubs that do not offer services or collect advance payments for periods longer than 31 days, rather than 30 days, from obtaining a license and complying with health club law. The registration fee for a health club is \$500, the initial license fee and renewal fee are \$200 each. Assuming that the bill precludes a small amount of health clubs from this exemption, this could result in a minimal revenue gain to the state.

Under current law, the attorney general, upon request of the commissioner of DCP, may seek restraining orders against a club for any violation of the health club law. To the extent that the bill could result in additional violations of health club law, the Office of the Attorney General will be able to issue restraining orders within available resources.

House "A" makes minor changes, none of which have a fiscal

impact.

OLR Bill Analysis

sHB 6519 (as amended by House "A")*

AN ACT CONCERNING HEALTH CLUBS**SUMMARY:**

This bill allows health club contracts to renew automatically under certain conditions, gives the consumer protection commissioner the power to impose a \$300 civil penalty on a club that sells contracts after failing to renew its license, simplifies requirements for the equipment list that clubs must maintain and submit as part of their license application, and makes other minor changes.

*House Amendment "A" (1) eliminates a change in the file concerning negotiable promissory notes to pay for a health club contract, (2) creates an additional means by which clubs may notify buyers about fee changes when a contract is automatically renewed, (3) changes the maximum length from "31 days" to "one month" of an automatically renewed contract and of an exemption from health club licensure, (4) revises the limit on advance payments, and (5) revises the limit on the maximum length of a health club contract.

EFFECTIVE DATE: Upon passage

AUTOMATIC RENEWAL CLAUSES AND RENEWAL OPTIONS

The bill allows health club contracts to contain automatic renewal clauses if (1) the renewal period is not longer than one month at a time, (2) the renewal takes effect only after the renewal price is paid, (3) the contract allows the buyer to cancel further renewals with a maximum of one month's notice, and (4) the renewal price does not change unless the contract or another written document given to the buyer at least one month before renewal discloses the amount of the increase or decrease or method of calculating it.

The law permits health club contracts to include renewal options that must be accepted by the buyer in writing. The bill allows the acceptance to be sent by e-mail or fax. Under the bill, the renewal

option must, rather than may, take effect only after the renewal price is paid.

CIVIL PENALTY FOR FAILURE TO RENEW

The bill authorizes the consumer protection commissioner to impose a civil penalty of up to \$300 on a health club that sells, or offers to sell, contracts after failing to submit a license renewal application and renewal fee within 30 days after its license expired. The amount of any such civil fine must be deposited in the Consumer Protection Enforcement Account. The law authorizes the attorney general, on the commissioner's request, to seek restraining orders against a club for any violation of the health club law.

EQUIPMENT LIST

The law requires a health club, before it begins to sell health club contracts, to make a list of each piece of equipment and service it will have available. The bill eliminates the need to list each piece of equipment and instead requires a list of equipment. The law requires the list to be included in each health club contract and to accompany a club's application for a license. The bill allows an updated list to be included.

EXERCISING THE RIGHT TO CANCEL A HEALTH CLUB CONTRACT AND ADDRESSES

The law gives a buyer of a health club contract three days in which to exercise the right to cancel the contract—the "cooling-off period." The bill allows health club contracts to identify an agent to receive the buyer's cancellation notice. It requires the contracts to state an address to which the cancellation notice must be sent rather than requiring that the notice be sent to the health club. The bill also requires contracts to state the address of the location at which the buyer enters the contract.

EXEMPTION FROM LICENSURE AND OTHER HEALTH CLUB REGULATION

The bill exempts health clubs that do not offer services or collect advance payments for periods longer than one month, rather than 30 days, from the requirement that they obtain a DCP license and otherwise comply with the law regulating health clubs. The law,

among other things, requires health clubs to use contracts that meet certain requirements, gives buyers the right to sue for triple damages if a club materially violates the health club law, and requires clubs to participate in the Health Club Guaranty Fund.

CONTRACT LENGTH AND ADVANCE PAYMENTS

The law limits the “duration” of a health club contract to two years. The bill instead limits the “term” to two years. The law prohibits health clubs from collecting more than 50% of the entire consideration for the contract before providing services. The bill instead prohibits clubs from collecting a payment, in cash or its equivalent, of more than 50% of the entire consideration.

BACKGROUND

Consumer Protection Enforcement Account

The statutes establish the Consumer Protection Enforcement Account. It is funded with the revenue generated from imposing fines for licensing law violations and with up to \$400,000 per year from the Home Improvement Guaranty Fund. DCP must use the account “to fund positions and other related expenses” to enforce the licensing and registration laws it administers (CGS § 21a-8a).

Health Club Guaranty Fund

The fund is designed to prevent health club members from losing their investment when a club closes. It is funded with annual fees paid by health clubs and administered by DCP. If a club closes and does not reimburse its members for the unfulfilled portion of their contracts, members may seek reimbursement from the fund (CGS § 21a-226).

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 12 Nay 0