

HOUSE No. 4510

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 3, 2022.

The committee on Consumer Protection and Professional Licensure to whom was referred the petition (accompanied by bill, Senate, No. 213) of Edward J. Kennedy for legislation relative to the cancellation of gym memberships, the petition (accompanied by bill, House, No. 352) of Marjorie C. Decker and Timothy R. Whelan relative to the cancellation of physical fitness services, the petition (accompanied by bill, House, No. 352) of Marjorie C. Decker and Timothy R. Whelan relative to the cancellation of physical fitness services, the petition (accompanied by bill, House, No. 410) of Bradley H. Jones, Jr., and others relative to membership fees at health clubs for certain physically or medically disabled persons, the petition (accompanied by bill, House, No. 413) of Bradley H. Jones, Jr., and others relative to transparency in health club cancellation policies, and the petition (accompanied by bill, House, No. 420) of Jack Patrick Lewis relative to membership fees at health clubs for certain physically or medically disabled persons, reports recommending that the accompanying bill (House, No. 4510) ought to pass.

For the committee,

TACKEY CHAN.

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to health club memberships reform.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 78 of chapter 93 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting the following definitions:-

3 “Automatic renewal”, a plan or arrangement in which a contract for health club services
4 is automatically renewed at the end of a definite term for a subsequent term.

5 “Automatic renewal offer terms”, any of the following terms: (i) a requirement that the
6 consumer cancel or the contract for health club services will continue until the consumer cancels;
7 (ii) the cancellation policy that applies to the automatic renewal; (iii) the recurring charges that
8 will be charged to the consumer, and the amount the charge may change upon automatic
9 renewal, if that is the case, and the amount to which the charge will change, if known; (iv) the
10 length of the automatic renewal term or that the service is continuous, unless the length of the
11 term is chosen by the consumer; or (v) the minimum purchase obligation, if any.

12 SECTION 2. Said section 78 of chapter 93 of the General Laws, as so appearing, is
13 hereby further amended by inserting after the definition of “Buyer”, the following definition:-

14 "Continuous service", a plan or arrangement in which a contract for health club services
15 continues until the consumer cancels the service.

16 SECTION 3. Said chapter 93 of the General Laws, as so appearing, is hereby amended by
17 inserting after section 78A the following new section:-

18 Section 78B. A health club shall be required to have their membership categories clearly
19 posted for consumers to view. Such posting shall contain the cost per category. Such categories
20 shall include any discounts offered, e.g., second member discounts, new member fees, and any
21 other membership fee category that the health club offers to consumers.

22 SECTION 4. Section 79 of said chapter 93 of the General Laws, as so appearing, is
23 hereby amended by striking out the first paragraph and inserting in place thereof the following
24 paragraphs:-

25 Prior to the execution of any contract for health club services, every seller which sells
26 contracts for health club services, except weight loss and control services which do not provide
27 physical exercise facilities and classes, and which do not obligate the customer for more than
28 thirty days, and which do not require an initiation fee as a condition of said contract, shall, for
29 each individual health club location or facility, maintain a bond issued by a surety company
30 admitted to do business in the commonwealth.

31 The principal sum of the bond shall be either twenty five thousand dollars for each health
32 club location or facility that sells contracts with no more than one hundred fifty persons; fifty
33 thousand dollars for each health club location or facility that sells contracts with no more than
34 three hundred persons; seventy five thousand dollars for each health club location or facility that
35 sells contracts with no more than seven hundred fifty persons; or one hundred fifty thousand

36 dollars for each health club location or facility that sells contracts with greater than seven
37 hundred fifty persons.

38 The bond shall be in favor of the commonwealth for the benefit of any buyer or class of
39 buyers who suffers any loss or damage because a health club facility ceases operation, fails to
40 open or fails to honor a buyer's right to cancel a contract for health club services pursuant to
41 section eighty-one or section eighty-two. Any person, or the attorney general, may make a claim
42 for recovery against the bond for an act or omission on which the bond is conditioned if the act
43 or omission occurred during the term of the bond. Every bond shall also provide that no claim
44 may be made against the bond unless the claimant provides the bondholder notice of the claim
45 within 1 year after the act or omission giving rise to the claim. Said bond shall provide for the
46 surety to pay the amount of loss or damage either directly to said buyer or if the attorney general
47 makes a claim against the bond, to the attorney general for distribution to buyers who have
48 suffered loss or damage as a result of an act or omission on which the bond is conditioned.

49 Every seller required to maintain a bond shall file a copy of the bond(s) obtained with the
50 Office of Consumer Affairs and Business Regulation prior to the execution of any contract for
51 health club services and annually thereafter.

52 SECTION 5. Said chapter 93 of the General Laws, as so appearing, is hereby amended by
53 inserting after section 79 the following new section:-

54 Section 79A. At least 30 days prior to a health club offering for sale, advertising, or
55 executing or causing to be executed any contract for health club services in this Commonwealth,
56 in which services provided are to be rendered over a period of more than three months, each
57 location of the health club shall be properly registered with the Office of Consumer Affairs and

58 Business Regulation at the time of the offer, advertisement, sale, or execution of a health club
59 contract. If any health club required to register pursuant to the preceding sentence closes
60 permanently, it shall notify the Office of Consumer Affairs and Business Regulation of said
61 permanent closure within fourteen days of the date of the permanent closure. Within five
62 business days of receiving notice of a permanent closure, the Office of Consumer Affairs and
63 Business Regulation shall notify the Consumer Protection Division of the Attorney General's
64 Office that it has received notice of a permanent closure of a registered health club. Said notice
65 shall include the name and location of the health club that permanently closed, the date of the
66 permanent closure, and a copy of the most recent bond maintained by the health club.

67 SECTION 6. Section 80 of said chapter 93 of the General Laws, as so appearing, is
68 hereby amended by striking the third paragraph and inserting in place thereof the following two
69 paragraphs:-

70 No contract for health club services may contain any provisions whereby the buyer
71 agrees not to assert against the seller or any assignee or transferee of the health club services
72 contract any claim or defense arising out of the health club services contract or the buyer's
73 activities at the health club. No contract for services may require the buyer to execute a
74 promissory note or series of promissory notes which, when negotiated, cuts off as to third parties
75 a defense which the buyer may have against the seller. No contract may be assigned by one
76 health club to another health club without the prior, contemporaneous, and informed written
77 consent of the buyer. Consent to an assignment is contemporaneous if it was obtained within 30
78 days of the date of the assignment. Consent to an assignment is informed if the seller provided
79 the buyer with the proposed assignee's name, location, and information about services offered by
80 the proposed assignee. The seller must deliver a copy of every contract for health club services to

81 the buyer at the time the parties entire into the contract for health club services. The date of
82 delivery shall be reflected in the contract.

83 Any seller of a contract for health club services making an automatic renewal or
84 continuous service offer to a buyer shall: (a) present the automatic renewal offer terms or
85 continuous service offer terms in a clear and conspicuous manner before the subscription or
86 purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by
87 voice, in temporal proximity, to the request for consent to the offer. If the offer also includes a
88 free gift or trial, the offer shall include a clear and conspicuous explanation of the price that will
89 be charged after the trial ends or the manner in which the pricing will change upon conclusion of
90 the trial; (b) obtain the buyer's written consent to the agreement containing the automatic
91 renewal offer terms or continuous service offer terms, including the terms of an automatic
92 renewal offer or continuous service offer that is made at a promotional or discounted price for a
93 limited period of time, prior to charging the consumer; and (c) provide a written
94 acknowledgment that includes the automatic renewal or continuous service offer terms,
95 cancellation policy, and information regarding how to cancel in a manner that is capable of being
96 retained by the consumer. If the offer includes a free gift or trial, the business shall also disclose
97 in the acknowledgment how to cancel and allow the consumer to cancel before the consumer
98 pays for the goods or services.

99 SECTION 7. Chapter 93 of the General Laws, as so appearing, is hereby amended by
100 striking out the section 81, and inserting in place thereof the following section:-

101 Section 81. A buyer may cancel a contract for health club services without penalty within
102 five business days after the date of receipt by the buyer of a copy of the contract for health club

103 services and, upon notice to the health club of the buyer's intent to cancel, a buyer shall be
104 entitled to receive a refund of all monies paid under the contract.

105 Every contract for health club services shall provide clearly and conspicuously in writing
106 that such contract may be cancelled within five business days after the date of receipt by the
107 buyer of a copy of the contract for health club services. The contract for health club services
108 shall contain the following written notice in at least ten-point bold type:

109 "CONSUMER'S RIGHT TO CANCELLATION. YOU MAY CANCEL THIS
110 CONTRACT WITHOUT ANY PENALTY OR FURTHER OBLIGATION BY CAUSING A
111 NOTICE OF YOUR CANCELLATION TO BE DELIVERED BY PHONE NUMBER (...
112 health club shall insert a toll-free telephone number), OR BY ELECTRONIC MAIL (... health
113 club shall insert name and an electronic mail address that is used by the seller for customer
114 service), OR BY THE WEB PAGE (... health club shall insert website name that is used by the
115 seller) OR POSTMARKED BY CERTIFIED OR REGISTERED UNITED STATES MAIL
116 WITHIN FIVE(5) BUSINESS DAYS OF THE DATE YOU RECEIVED THIS CONTRACT
117 FOR HEALTH CLUB SERVICES.

118 IF THE HEALTH CLUB GOES OUT OF BUSINESS OR REFUSES TO GIVE YOU A
119 REFUND, THERE MAY BE A BOND OR LETTER OF CREDIT UNDER WHICH YOU ARE
120 ENTITLED TO COLLECT. THE ATTORNEY GENERAL OF THE COMMONWEALTH OF
121 MASSACHUSETTS MAY BE ABLE TO ASSIST YOU WITH MAKING A CLAIM AGAINST
122 THE BOND. YOU MAY ALSO BRING A PRIVATE RIGHT OF ACTION. IF YOUR
123 RIGHTS ARE VIOLATED, YOU MAY CONTACT THE OFFICE OF THE ATTORNEY
124 GENERAL."

125 Notice of the buyer's right to cancel and the method of cancellation under this section
126 shall also be posted clearly and conspicuously on the premises of the health club.

127 Every seller must provide all of the following methods of delivery of notice of the
128 buyer's intent to cancel a contract for health club services pursuant to either section eighty-one
129 or section eighty-two: (i) a toll-free telephone number, (ii) electronic mail to an electronic mail
130 address specified in the buyer's contract, or if there is not an electronic mail address specified, to
131 any electronic mail address that is used by the seller for customer services, (iii) the seller's
132 website, (iv) certified or registered United States mail to the address specified in the contract, or
133 if there is not an address specified, to any address where the seller conducts business, and (v) in-
134 hand delivery to any address where the seller conducts business. Such notice shall include
135 sufficient information for the seller to identify the buyer.

136 All monies paid pursuant to such contract shall be refunded within ten business days of
137 receipt of such notice of cancellation. If the buyer has executed any credit or loan agreement to
138 pay for all or part of the health club services, any such negotiable instrument shall be void upon
139 cancellation under this section and shall also be returned to the buyer within said ten business
140 days.

141 SECTION 8. Said chapter 93, as so appearing, is hereby amended by striking out section
142 82, and inserting in place thereof the following 2 new sections:-

143 Section 82. In the event of a buyer's death, the buyer's estate may cancel a contract for
144 health club services.

145 A contract for health club services may be cancelled by a buyer if the buyer becomes
146 significantly physically or medically disabled for a period in excess of three months, provided

147 that the buyer provides the health club a signed statement from the buyer's doctor, physician
148 assistant, or nurse practitioner verifying that the buyer is physically unable to use a substantial
149 portion of the health club services for a period in excess of three months. The buyer shall have
150 the option to be relieved of liability for payment on that portion of the contract term for which
151 the buyer is disabled.

152 A buyer may cancel a contract if the health club services facilities are not available to the
153 buyer because the seller fails to open a planned health club or location, or substantially changes
154 the operation of the health club or location, or if the buyer changes residence to a location more
155 than ten miles from a health club operated by the seller or a substantially similar health club
156 which will accept the seller's obligation under the contract.

157 Every contract for health club services shall provide clearly and conspicuously in writing
158 that after the expiration of the five-day period for cancellation as provided in section eighty-one,
159 in the event of the buyer's death, the buyer's estate may cancel the contract for health club
160 services. The contract shall also provide that the buyer may cancel if the buyer becomes
161 significantly physically or medically disabled for a period in excess of three months, or if the
162 health club services or facilities are not available to the buyer because the seller fails to open a
163 planned health club or location or substantially changes the operation of the health club or
164 location. The contract shall also provide that the buyer may also cancel if the buyer changes
165 residence to a location more than ten miles from a health club operated by the seller or a
166 substantially similar health club which will accept the seller's obligation under the contract.
167 Nothing contained herein shall restrict or prohibit the seller from offering or providing in such
168 contract additional or broader reasons for cancellation.

169 The seller may require reasonable evidence of the reason for cancellation by the buyer
170 pursuant to this section. The contract for health club services shall contain the following notice
171 captioned in at least ten-point bold type:

172 "ADDITIONAL RIGHTS TO CANCELLATION

173 You or your estate may also cancel this contract for any of the following reasons:

174 if upon a doctor's order, you cannot physically or medically receive the services because
175 of significant physical or medical disability for a period in excess of three months;

176 in case of your death;

177 if the health club services to be provided under this contract are not available because the
178 seller fails to open a planned health club or location or substantially changes the operation of a
179 health club or location; or

180 if you move either your residence or your place of employment more than ten miles from
181 any health club operated by the seller or a substantially similar health club which will accept the
182 seller's obligation under the contract."

183 All monies paid by the buyer pursuant to a contract for health club services which has
184 been cancelled for one of the reasons contained in this section shall be refunded to the buyer or
185 the estate within ten business days of the seller's receipt of such notice of cancellation; provided,
186 however, that the seller may retain the portion of the total contract price representing the amount
187 of time that the services or facilities were used by the buyer prior to cancellation; and provided,
188 further, that the seller may demand the reasonable cost of goods and services which the buyer
189 has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller

190 demand more than the full contract price from the buyer. If the buyer has executed any credit or
191 loan agreement to pay for all or part of the price of the contract for health club services, any such
192 negotiable instrument executed by the buyer shall also be returned and terminated within ten
193 business days. The buyer shall no longer be liable for any obligation under such credit or loan
194 agreement.

195 Section 82A. A contract for health club services shall be considered terminated
196 automatically if the designated facility closes permanently and the health club does not provide
197 the option of a substantially similar health club. A facility shall not be considered to have closed
198 permanently if it closes for a temporary, reasonable period of time for renovations to all or a
199 portion of the facility, or because of a fire, a flood, or another act of God not within the
200 reasonable control of the health club. If a facility closes temporarily, the seller shall
201 automatically freeze buyers' accounts and not collect membership fees for any period during
202 which the facility is closed.

203 If a temporary closure is planned, the seller shall conspicuously post a notice with
204 information about the temporary closure at each entrance to the impacted facility and on the
205 seller's website in advance of the closure. Further, the seller shall send each buyer associated
206 with the impacted facility information about the temporary closure, including the date the facility
207 temporarily closed and the date the facility expects to reopen in advance of the closure. And,
208 within fourteen days of the date of any temporary closure, the seller shall provide notice of the
209 date the impacted facility temporarily closed and the date it expects to reopen, which date shall
210 be within a reasonable period of time from the time the facility temporarily closed, to the Office
211 of Consumer Affairs and Business Regulation.

212 If a temporary closure is unplanned, within twenty-four hours of any temporary closure,
213 the seller shall conspicuously post a notice with information about the temporary closure at each
214 entrance to the impacted facility and on the seller’s website. Further, within forty-eight hours of
215 any temporary closure, the seller shall send each buyer associated with the impacted facility
216 information about the temporary closure, including the date the facility temporarily closed and
217 the date the facility expects to reopen. And, within fourteen days of the date of any temporary
218 closure, the seller shall provide notice of the date the impacted facility temporarily closed and the
219 date it expects to reopen, which date shall be within a reasonable period of time from the time
220 the facility temporarily closed, to the Office of Consumer Affairs and Business Regulation.

221 SECTION 9. Section 83 of said chapter 93, as so appearing, is hereby amended by
222 striking the figure “section eighty-one” and inserting in place thereof the following:- sections
223 eighty-one

224 SECTION 10. Said section 83 of said chapter 93, as so appearing, is hereby further
225 amended by striking the last sentence and inserting in place thereof the following sentence:- A
226 notice of assignment shall be in writing addressed to the consumer at the address shown on the
227 contract, shall identify the contract and shall be sent to the consumer at least seven days prior to
228 commencing billing.

229 SECTION 11. Section 84 of said chapter 93, as so appearing, is hereby amended by
230 striking out the word “his” and inserting in place thereof the following words:- the seller’s

231 SECTION 12. Section 86 of said chapter 93, as so appearing, is hereby amended by
232 striking out the word “his” and inserting in place thereof the following words:- the seller’s

233 SECTION 13. Section 87 of said chapter 93, as so appearing, is hereby amended by
234 striking out the word “his” and inserting in place thereof the following words:- the seller’s