

SENATE BILL 2384

By Bell

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18 and Title 57, Chapter 4, relative to
health clubs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-301, is amended by deleting the text of subdivision (2).

SECTION 2. Tennessee Code Annotated, Section 47-18-301(4)(B), is amended by adding the following as a new subdivision:

(iv) Any enterprise, however styled, primarily operating on a scheduled lesson or hourly basis for the purpose of teaching or enjoying physical skills, physical activities, or sports, such as gymnastics, yoga, dance, aerobics, directed high intensity interval training, or other similar activities even though such activities may involve the use of free weights or exercise machines.

SECTION 3. Tennessee Code Annotated, Section 47-18-302, is amended by deleting the section.

SECTION 4. Tennessee Code Annotated, Section 47-18-304, is amended by deleting the section.

SECTION 5. Tennessee Code Annotated, Section 47-18-305(b), is amended by deleting the subsection, and substituting the following:

(b)

(1)

(A) A health club shall not enter into or offer to enter into a health club agreement unless the health club facility is fully operational and available for use by prospective buyers.

(B) Subdivision (b)(1)(A) shall not apply to a health club that discloses to the prospective buyer in writing on a form containing only the disclosure of prospective purchase that the health club agreement the prospective buyer is entering into is for the right to use a health club facility that is not yet operational and available for use.

(2) If the health club facility for which a prospective buyer entered into a health club agreement pursuant to subdivision (b)(1)(A) is not operational and available for use within thirty (30) days of entering into the health club agreement, then the prospective buyer shall have the right to cancel the health club agreement and receive all money paid to the health club under that health club agreement by providing the health club written notice of such cancellation. The right of cancellation shall expire on the date the health club facility is fully operational. The disclosure shall contain notice of the right of cancellation, be dated and signed by the prospective buyer, and made available to prospective buyers.

SECTION 6. Tennessee Code Annotated, Section 47-18-305(e), is amended by deleting the subsection.

SECTION 7. Tennessee Code Annotated, Section 47-18-309, is amended by deleting the section.

SECTION 8. Tennessee Code Annotated, Section 47-18-310, is amended by deleting the section.

SECTION 9. Tennessee Code Annotated, Section 47-18-311, is amended by deleting the section.

SECTION 10. Tennessee Code Annotated, Section 47-18-312, is amended by deleting the section and substituting instead the following:

In addition to any other penalty prescribed by this part, violation of any provision of this part, upon conviction, constitutes a Class A misdemeanor.

SECTION 11. Tennessee Code Annotated, Section 47-18-313, is amended by deleting the section and substituting instead the following:

Any individual, firm, corporation, association, or other legal entity that obtains an ownership interest in a health club or its assets shall be responsible for determining that the health club is in compliance with this part.

SECTION 12. Tennessee Code Annotated, Section 47-18-314, is amended by deleting the section and substituting instead the following:

(a) It is an offense to accept a down payment for a health club agreement in excess of thirty percent (30%) of the total cost of the agreement unless, as of January 1 of the year in which the health club agreement was entered into:

(1) The health club has a net worth in excess of two hundred fifty thousand dollars (\$250,000) per location where health club services or facilities are provided; and

(2) The health club has operated under substantially the same ownership and control for at least five (5) years.

(b) For the purpose of calculating net worth as provided in subsection (a), the following are excluded:

(1) Assets that represent prepayment for future services; and

(2) Accounts receivable due from health club members for future services.

(c) Any health club claiming the exemption pursuant to subsection (a) shall maintain written documentation establishing proof that the requirements of subsection (a) have been met as of January 1 of each year the exemption is claimed. Such proof shall be retained for a minimum of five (5) years from the end of the year in which the exemption is claimed. This documentation shall be made available for examination upon request of any law enforcement agency or the division of consumer affairs within the department of commerce and insurance. A refusal to provide such documentation shall constitute a violation of this part.

SECTION 13. Tennessee Code Annotated, Section 47-18-315, is amended by deleting the section.

SECTION 14. Tennessee Code Annotated, Section 47-18-316, is amended by deleting the section.

SECTION 15. Tennessee Code Annotated, Section 47-18-318, is amended by deleting the section and substituting instead the following:

(a) In order to provide a degree of protection to members of health clubs, each health club shall post a bond in an amount of twenty-five thousand dollars (\$25,000) for each location doing business in this state. The bond shall be made with a bond issued by a corporate surety authorized to do business in this state.

(b) The bond shall be maintained for two (2) years following the date on which the health club location ceases to conduct business in this state.

(c) In an action brought by the attorney general and reporter pursuant to part 1 of this chapter, the attorney general and reporter shall have the right to request that the total amount of the bond posted by the health club be awarded to the state for consumer restitution. Any person who has entered into a health club agreement that is not fulfilled by the operator may make a claim against the bond.

(d) This section shall not apply to any health club or health club operator that has, for at least seven (7) consecutive years, operated under substantially the same ownership and control. Any health club claiming the exemption pursuant to this subsection shall maintain documentation as of January 1 of each year in which the exemption is claimed demonstrating the required period of ownership. Such proof shall be retained for a period of at least five (5) years from the end of the year in which the exemption is claimed. This documentation shall be made available for examination upon request of any law enforcement agency or the division of consumer affairs of the department of commerce and insurance. A refusal to provide such documentation shall constitute a violation of this part.

(e)

(1) In lieu of the surety bond required in this section, a health club may maintain on file a current audited financial statement prepared by a certified public accountant licensed in this state that demonstrates to the department that either the health club or the health club operator has a financial net worth of at least ten million dollars (\$10,000,000) available to satisfy any claims.

(2) Any health club claiming the exemption pursuant to this subsection (e) shall maintain documentation as of January 1 of each year in which the exemption is claimed demonstrating at least ten million dollars (\$10,000,000) available to satisfy any claims. Such proof shall be retained for a period of at least five (5) years from the end of the year in which the exemption is claimed. This documentation shall be made available for examination upon request of any law enforcement agency or the division of consumer affairs of the department of commerce and insurance. A refusal to provide such documentation shall constitute a violation of this part.

SECTION 16. Tennessee Code Annotated, Section 47-18-319, is amended by deleting the section.

SECTION 17. Tennessee Code Annotated, Section 57-4-102(26)(P)(i), is amended by deleting the language "is licensed as a health club;" and substituting instead the language "was licensed as a health club on December 31, 2015;".

SECTION 18. This act shall take effect on July 1, 2016, the public welfare requiring it.