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AB-2810 Health studio services: contracts: cancellation. (2015-2016)

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Assembly Bill No. 2810

CHAPTER 189

An act to amend Sections 1812.82, 1812.84, and 1812.85 of the Civil Code, relating to health studio services.

[Approved by Governor August 25, 2016. Filed with Secretary of State August 25, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2810, Eggman. Health studio services: contracts: cancellation.

Existing law requires every health studio services contract to be in writing and that a copy of the written contract be given to the customer at the time he or she signs the contract.

This bill would, in the alternative, require that the contract be delivered by email to the customer at the time he or she signs the contract.

Existing law requires the contract to include a statement that discloses the length of the term of the contract in at least 14-point type and requires the contract to contain on the first page the name and address of the health studio operator to which a notice of cancellation can be mailed and the date the buyer signed the contract.

This bill would, instead, require the contract to disclose the initial or minimum length of the term of the contract and would, in the alternative, require the contract to be presented in an electronic format that is as equally legible as the printed contract.

Existing law requires the contract to provide a description of the services, facilities, and hours of access that the consumer is entitled to and provides that any services, facilities, and hours of access that are not described in the contract are to be considered optional services and as separate contracts, as specified.

This bill would, in the alternative, require a contract to state where the description of services, facilities, and hours of access that the consumer is entitled to is available on the health studio operator's Internet Web site and would provide that any services, facilities, and hours of access that are not described in the contract or on the health studio operator's Internet Web site are to be considered optional services and as separate contracts, as specified.

Existing law authorizes a consumer to cancel a contract for health studio services within specified timeframes after the contract is executed, if the health studio fails to provide the specific facilities advertised or offered or if the health studio eliminates or reduces the scope of the facilities, as specified.

This bill would specify that a contract for health studio services may be canceled by the buyer in person, via email from an email address on file with the health studio, or via first-class mail, and would require that the email address to which a notice of cancellation email is to be sent be on the first page of the contract. The bill would make other conforming changes.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1812.82 of the Civil Code is amended to read:

1812.82. Every contract for health studio services shall be in writing and shall be subject to the provisions of this title. A copy of the written contract shall be physically given to or delivered by email to the customer at the time he or she signs the contract.

SEC. 2. Section 1812.84 of the Civil Code is amended to read:

1812.84. (a) A contract for health studio services may not require payments or financing by the buyer to exceed the term of the contract, nor may the term of the contract exceed three years. This subdivision does not apply to a member's obligation to pay valid, outstanding moneys due under the contract, including moneys to be paid pursuant to a termination notice period in the contract in which the termination notice period does not exceed 30 days.

(b) A contract for health studio services shall include a statement printed in a size at least 14-point type or presented in an equally legible electronic format that discloses the initial or minimum length of the term of the contract. This statement shall be placed above the space reserved for the signature of the buyer.

(c) At any time a cancellation is authorized by this title, a contract for health studio services may be canceled by the buyer in person, via email from an email address on file with the health studio, or via first-class mail.

SEC. 3. Section 1812.85 of the Civil Code is amended to read:

1812.85. (a) Every contract for health studio services shall provide that performance of the agreed-upon services will begin within six months after the date the contract is entered into. The consumer may cancel the contract and receive a pro rata refund if the health studio fails to provide the specific facilities advertised or offered in writing by the time indicated. If no time is indicated in the contract, the consumer may cancel the contract within six months after the execution of the contract and shall receive a pro rata refund. If a health studio fails to meet a timeline set forth in this section, the consumer may cancel the contract at any time after the expiration of the timeline. However, if following the expiration of the timeline, the health studio provides the advertised or agreed-upon services, the consumer may cancel the contract up to 10 days after those services are provided.

(b) (1) Every contract for health studio services shall, in addition, contain on its face, and in close proximity to the space reserved for the signature of the buyer, a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"You, the buyer, may choose to cancel this agreement at any time prior to midnight of the fifth business day of the health studio after the date of this agreement, excluding Sundays and holidays. To cancel this agreement, mail, email, or deliver a signed and dated notice that states that you, the buyer, are canceling this agreement, or words of similar effect. The notice shall be sent via first-class mail, via email from an email address on file with the health studio, or delivered in person to

_____ (Name of health studio operator) _____

at _____ (Address and email address of health studio operator)." _____

(2) The contract for health studio services shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (A) the name and mailing address of the health studio operator to which the notice of cancellation is to be mailed, (B) the email address of the health studio operator to which a notice of cancellation email is to be sent, and (C) the date the buyer signed the contract.

(3) The contract shall provide a description of the services, facilities, and hours of access to which the consumer is entitled or state where that information is available on the health studio operator's Internet Web site. Any services, facilities, and hours of access that are not described in the contract or on the health studio operator's Internet Web site shall be considered optional services, and these optional services shall be considered as separate contracts for the purposes of this title and Section 1812.83.

(4) Until the health studio operator has complied with this section, the buyer may cancel the contract for health studio services.

(5) All moneys paid pursuant to a contract for health studio services shall be refunded within 10 days after receipt of the notice of cancellation, except that payment shall be made for any health studio services received prior to cancellation.

(c) If at any time during the term of the contract, including a transfer of the contractual obligation, the health studio eliminates or substantially reduces the scope of the facilities, such as swimming pools or tennis courts, that were described in the contract, in an advertisement relating to the specific location, or in a written offer, and available to the consumer upon execution of the

contract, the consumer may cancel the contract and receive a pro rata refund. The consumer may not cancel the contract pursuant to this subdivision if the health studio, after giving reasonable notice to its members, temporarily takes facilities out of operation for reasonable repairs, modifications, substitutions, or improvements. This subdivision shall not be interpreted to give the consumer the right to cancel a contract because of changes to the type or quantity of classes or equipment offered, provided the consumer is informed in the contract that the health studio reserves the right to make changes to the type or quantity of classes or equipment offered and the changes to the type or quantity of classes or equipment offered are reasonable under the circumstances.

(d) (1) If a contract for health studio services requires payment of one thousand five hundred dollars (\$1,500) to two thousand dollars (\$2,000), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 20 days after the contract is executed.

(2) If a contract for health studio services requires payment of two thousand one dollars (\$2,001) to two thousand five hundred dollars (\$2,500), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 30 days after the contract is executed.

(3) If a contract for health studio services requires payment of two thousand five hundred one dollars (\$2,501) or more, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 45 days after the contract is executed.

(4) The right of cancellation provided in this subdivision shall be set out in the membership contract.

(5) The rights and remedies under this paragraph are cumulative to any rights and remedies under other law.

(6) A health studio entering into a contract for health studio services that requires a payment of less than one thousand five hundred dollars (\$1,500), including initiation or initial membership fees and exclusive of interest or finance charges, by the person receiving the services or the use of the facilities, is not required to comply with paragraph (1), (2), or (3).

(e) Upon cancellation, the consumer shall be liable only for that portion of the total contract payment, including initiation fees and other charges however denominated, that has been available for use by the consumer, based upon a pro rata calculation over the term of the contract. The remaining portion of the contract payment shall be returned to the consumer by the health studio.