S T A T E O F N E W Y O R K

820

2009-2010 Regular Sessions

I N S E N A T E

January 18, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to extending the time for termination of membership in a private club

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 624 of the general business law, as added by chapter 630 of the laws of 1978, is amended to read as follows:

S 624. Rights of cancellation of contracts for services. 1. Every contract for services at a planned health club or a health club under construction shall, at the option of the buyer, be voidable in the event that the health club and the services to be provided pursuant to such contract are not available within one year from the date the contract is executed by the buyer.

2. Every contract for services shall provide that such contract may be cancelled within [three] FOURTEEN business days after the date of receipt by the buyer of a copy of the written contract. Notice of cancellation shall be delivered by certified or registered United States mail at the address specified in the contract. Such contract shall contain the following written notice in at least ten point bold type: [CONSUMERS] BUYER'S RIGHT TO CANCELLATION. YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR FURTHER OBLIGATION WITHIN [THREE (3)] FOURTEEN (14) DAYS FROM THIS DATE . . . . . Notice of cancellation shall be in writing subscribed by the buyer and mailed by registered or certified United States mail to the seller at the address specified in such form. Such notice shall be accompanied by the contract forms, membership cards and any other documents or evidence of membership previously delivered to the buyer. All moneys paid pursuant to such contract shall be refunded within fifteen business days of receipt of such notice of cancellation. If the buyer has executed any credit or loan agreement to

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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pay for all or part of health club services, any such negotiable instrument executed by the buyer shall also be returned within fifteen days.

2-A. IF AN AUTOMATIC RENEWAL CLAUSE IS INCLUDED IN ANY CONTRACT, THE BUYER OR HIS OR HER ESTATE MAY CANCEL SUCH AUTOMATIC RENEWAL BY GIVING NOTICE OF SUCH CANCELLATION IN WRITING SUBSCRIBED BY THE BUYER AND MAILED BY REGISTERED OR CERTIFIED UNITED STATES MAIL TO THE SELLER AT THE SELLER'S ADDRESS AT ANY TIME WITHIN THE SIXTY DAYS PRIOR TO THE TIME WHEN SUCH AUTOMATIC RENEWAL WOULD TAKE EFFECT.

3. Every contract for services shall provide that after such [three] FOURTEEN day period for cancellation as provided in subdivision two of this section, the buyer's estate may cancel a contract for services if the buyer dies. The buyer may also cancel, AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, after [three] FOURTEEN days if the buyer becomes significantly physically disabled for a period in excess of six months, or moves his OR HER residence to a location more than twenty-five miles from a health club operated by the seller, or after the services are no longer available or substantially available as provided in the contract because of the seller's permanent discontinuance of operation or substantial change in operation. Nothing contained herein shall restrict or prohibit the seller from offering or providing in such contract additional or broader reasons for cancellation. The seller may require reasonable evidence for a cancellation pursuant to this subdivision. Such contract shall contain the following notice captioned in at least ten point bold type:

ADDITIONAL RIGHTS TO CANCELLATION:

You may also cancel this contract for any of the following reasons:

If upon a doctor's order, you cannot physically receive the services because of significant physical disability for a period in excess of six months.

If you die, your estate shall be relieved of any further obligation for payment under the contract not then due and owing.

If you move your residence more than twenty-five miles from any health club operated by seller.

If the services cease to be offered as stated in the contract.

YOU MAY CANCEL AN AUTOMATIC RENEWAL PROVISION IN YOUR MEMBERSHIP BY GIVING NOTICE OF YOUR INTENT TO CANCEL THE AUTOMATIC RENEWAL IN WRITING AND SUBSCRIBED BY YOU AND MAILED BY REGISTERED OR CERTIFIED MAIL TO THE HEALTH CLUB AT THE ADDRESS SPECIFIED IN THE CONTRACT. SUCH WRITTEN NOTICE MUST BE RECEIVED BY THE HEALTH CLUB ON OR BEFORE THE AUTOMATIC RENEWAL DATE INDICATED IN YOUR CONTRACT.

All moneys paid pursuant to such contract cancelled for the reasons contained in this subdivision shall be refunded within fifteen days of receipt of such notice of cancellation; provided however that the seller may retain the expenses incurred and the portion of the total price representing the services used or completed, and further provided that the seller may demand the reasonable cost of goods and services which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller demand more than the full contract price from the buyer. If the buyer has executed any credit or loan agreement to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall also be returned within fifteen days.

S 2. Section 625 of the general business law, as added by chapter 630 of the laws of 1978, is amended to read as follows:

S 625. Assignment of contracts for services. 1. No assignee who takes a note or other obligation as consideration for a contract containing

the disclosure requirements of section six hundred twenty-four of this article shall fail to honor the [consumer's] BUYER'S right of cancellation as provided in this article.

2. No creditor holding a note or other obligation, to which a [consumer] BUYER has obligated himself OR HERSELF in order to purchase a contract shall fail to honor the [consumer's] BUYER'S right of cancellation under this article if:

(a) the creditor is a person related to the seller of services; or

(b) the seller prepares documents used in connection with the loan; or

(c) the creditor supplies forms to the seller used by the [consumer] BUYER in obtaining the loan; or

(d) the creditor makes twenty or more loans in any calendar year, the proceeds of which are used in transactions with the same seller or with a person related to the same seller; or

(e) the [consumer] BUYER is referred to the creditor by the seller; or

(f) the creditor, directly or indirectly, pays the seller any consideration whether or not it is in connection with the particular transactions; or

(g) the creditor participated in or was connected with the sale.

3. No assignee of a contract shall fail to give notice of the assignment to the [consumer] BUYER. A notice of assignment shall be in writing addressed to the [consumer] BUYER at the address shown on the contract and shall identify the contract.

S 3. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to contracts then in force and those entered into on or after such effective date.