

§ 622-a. Bond, letter of credit or certificate of deposit required. 1.

Every health club, except as provided in subdivision ten of this section, before it enters into any contract for services for use by a buyer of a health club, shall file and at all times maintain with the secretary, in form, amount as prescribed herein and substance satisfactory to him:

(a) A bond with a corporate surety, from a company authorized to do business in this state; or

(b) An irrevocable letter of credit or a certificate of deposit from a New York state or federally chartered bank, trust company, savings bank or savings and loan association qualified to do business in New York state and insured by the federal deposit insurance corporation.

2. The principal sum of the bond, letter of credit, or certificate of deposit shall be;

(a) Fifty thousand dollars if the health club sells contracts for services for a term not greater than twelve months; or

(b) Seventy-five thousand dollars if the health club sells contracts for services for a term more than twelve months and up to twenty-four months; or

(c) One hundred fifty thousand dollars if the health club sells contracts for services for a term more than twenty-four months and up to thirty-six months.

3. For health clubs with three or more locations, or for multiple franchises of a common franchisor, the following amounts shall be added to the sum required in subdivision two of this section for the bond, letter of credit, or certificate of deposit:

(a) For three to four locations an additional fifty thousand dollars,

(b) For five to six locations an additional one hundred thousand dollars,

(c) For seven to nine locations an additional one hundred fifty thousand dollars,

(d) For ten or more locations an additional two hundred thousand dollars.

4. The bond, letter of credit or certificate of deposit shall be

payable in favor of the people of the state of New York for the benefit of any buyer injured in the event that the seller goes out of business prior to the expiration of the buyer's contract for services, or otherwise fails to provide a refund to the buyer after cancellation of the buyer's contract for services as provided for in section six hundred twenty-four of this article.

5. The aggregate liability of the surety upon the bond or the banking organization upon the letter of credit or certificate of deposit to all persons for all breaches of the conditions of the bond shall in no event exceed the amount of the bond, letter of credit or certificate of deposit.

6. The bond, letter of credit or certificate of deposit filed and maintained pursuant to this section shall not be cancelled, revoked, or terminated except after notice to, and with the consent of, the secretary at least forty-five days in advance of such cancellation, revocation, or termination.

7. Any person claiming against the bond, letter of credit or certificate of deposit may bring and maintain an action against the seller and the surety or bank, trust company, savings bank or savings and loan association.

8. For the purposes of this section, a health club shall be considered to be a new health club subject to the requirements of a bond, letter of credit or certificate of deposit as provided herein, at the time the health club changes ownership, or, in the case of corporate ownership, at the time thirty percent or more of the stock changes or has changed ownership. A change in ownership of a health club shall not release, cancel or terminate liability under this section under any bond, letter of credit or certificate of deposit filed for a health club as to any buyer who purchases a health club contract while such bond, letter of credit or certificate of deposit is in effect unless the transferee, purchaser, successor, or assignee of such health club obtains a bond, letter of credit or certificate of deposit under this section for the benefit of such buyer.

9. No contract for services shall be enforceable against the buyer if the seller has failed to comply with any requirements of this section.

10. Health clubs shall be excluded from the requirement to file a bond, letter of credit, or certificate of deposit if all payments for which the buyer is obligated including, but not limited to down payments, initiation fees, enrollment fees, membership fees or any other direct payments to the health club do not exceed one hundred fifty dollars. A health club shall also be excluded from the requirement to file a bond, letter of credit or certificate of deposit, if it offers its buyers a monthly dues payment option for each dues payment plan it offers to customers, provided that: (a) both the annual and the monthly membership options are disclosed to customers prior to entering into any membership contract; (b) that the monthly dues, including any initiation fee or other charge, do not exceed one hundred fifty dollars; (c) that the paid in full fee is not discounted by more than ten percent of the sum of the initiation fee and the monthly dues payments; and (d) that the term of either option be no more than twelve months and that the membership contract not contain an automatic renewal provision. Additionally, any health club which owns five or more acres of real property which is used directly for the purpose for which the club is formed, and any health club the use of which is exclusively restricted to residents of a homeowners' association, cooperative or condominium and which is owned by and operated on the premises of such homeowners' association, cooperative or condominium, shall be excluded from the requirement to file a bond, letter of credit or certificate of deposit.

11. (a) Every health club shall post, in at least two conspicuous areas within the club, including, if applicable, an entrance area where buyers are required to register, a sign no smaller than nine inches by fourteen inches that sets forth the following notice clearly and conspicuously:

IMPORTANT NOTICE FOR HEALTH CLUB MEMBERS

New York State law requires certain health clubs to have a bond or other form of financial security to protect members in the event the

club closes.

This club (insert whichever term is applicable)

has posted the financial security required by law.

or

is exempt from this requirement.

YOU MAY ASK A REPRESENTATIVE OF THE CLUB FOR PROOF OF THE CLUB'S COMPLIANCE WITH THIS LAW. YOU MAY ALSO OBTAIN THIS INFORMATION FROM THE NEW YORK STATE DEPARTMENT OF STATE, DIVISION OF LICENSING SERVICES, 162 WASHINGTON AVENUE, ALBANY, N.Y. 12231.

(b) Health clubs that operate at two or more locations shall post notices in compliance with paragraph (a) of this subdivision at each such location.

12. The notice required by subdivision eleven of this section shall be incorporated into any contract for services executed by a health club in at least ten point bold type.

13. Every contract for services which offers the consumer the option to pay in installments shall contain the following notice, written in at least ten point bold type and placed directly above the space reserved for the signature of the buyer:

THIS NOTICE PROVIDES IMPORTANT INFORMATION ABOUT YOUR PAYMENT OPTIONS

You may make payments on an installment basis or in a single payment. Paying the full amount may be less expensive, but may involve financial risks to you. Read this notice carefully before making a decision.

New York State law requires certain health clubs to post a bond or other financial security to protect members in the event the club closes. This club is exempt from this requirement since it gives members the option of paying on an installment basis, therefore it need not post a bond or other form of financial security.

In deciding whether to make your payments on an installment basis, you should be aware that if the club closes, although the club will remain legally liable for a refund, you may risk losing your money if the club

is unable to meet its financial obligations to members.