

**6-1-704. Health clubs - deceptive trade practices.**

(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in one or more of the following activities in connection with the advertisement or sale of a membership in a **health** club:

(a) Fails to allow any buyer of a membership in a **health** club to rescind the membership contract within three business days after receipt by the buyer of a copy of the contract;

(b) Fails to provide conspicuous notice of the right of a purchaser of a **health** club membership to rescind the sale either by telegram, mail, or hand delivery. For purposes of this section, notice of rescission is considered given, if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business.

(c) Fails to allow the buyer, or the estate of the buyer, to cancel the membership contract when:

(I) The buyer dies;

(II) The buyer becomes totally physically disabled as determined by a licensed physician for the duration of the membership contract;

**Editor's note:** This version of subparagraph (II) is effective until January 1, 2009.

(II) The buyer becomes totally physically disabled as determined by a licensed physician or advanced practice nurse for the duration of the membership contract;

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(III) The **health** club is moved to a location that is more than five miles from the location of the establishment when the buyer entered into the membership contract;

(IV) The membership in the **health** club is transferred to a location of the same club or another club, which location is more than five miles from the location of the club when the buyer entered into the contract, and this transfer occurs because of cessation of **health** club services at the club location from which the membership is transferred;

(V) The seller permanently discontinues operation of the **health** club or sells the **health** club and the sale results in substantial alteration of the quality of **health** club services or facilities or the nature of benefits so that they no longer conform to the provisions of the membership contract, but there shall be a thirty-day "right to cure" during which the fees payable by the buyer under the membership contract shall be suspended and the **health** club may bring the services, facilities, and benefits into conformance with the provisions of the membership contract;

(d) Fails to refund all payments made pursuant to the membership contract, less a prorated fee for days of actual use of the **health** club by the buyer, within fifteen days after the seller receives the buyer's written notice of rescission;

(e) When a **health** club is planned or under construction, and the sale of the membership takes place before the **health** club is completed, fails to:

(I) Disclose clearly and conspicuously in the membership contract the date on which the **health** club will open for use;

(II) Escrow all preopening membership sales receipts in a separate account in a bank or trust company doing business in the state of Colorado or provide a cash bond, letter of credit, certificate of deposit, or other similar surety, in the amount of fifty thousand dollars, for the repayment of amounts actually paid under preopening membership agreements until the **health** club is open for business;

(III) Allow the buyer to cancel the membership contract and receive a full refund of all payments made pursuant to the membership contract if the date the **health** club will open for use is delayed more than sixty days from the date of opening specified in the membership contract;

(f) Sells any membership contract, the actual or financial duration of which, including any option to renew, is longer than twenty-four months; except that a person does not engage in a deceptive trade practice when such person sells any membership contract the actual or financial duration of which is not longer than thirty-six months with a buyer's option to renew annually thereafter if:

(I) The **health** club has been in operation in this state more than two years; and

(II) The **health** club maintains a bond with a corporate surety from a company authorized to do business in this state or other security acceptable to and approved by the attorney general; and

(III) The aggregate amount of the bond is one hundred thousand dollars for each club location; and

(IV) The bond is payable to the state for the benefit of any buyer injured in the event the **health** club goes out of business prior to the expiration of the buyer's membership contract; and

(V) The bond is maintained for so long as the **health** club has any membership contracts in place and outstanding, the specified term for which exceeds twenty-four months; and

(VI) The bond is not cancelled, revoked, or terminated except after notice to, and with the written consent of, the attorney general at least forty-five days in advance of such cancellation, revocation, or termination; and

(VII) The annual renewal option for continued membership contained in the membership contract is not automatic but requires that the buyer affirmatively accept the renewal option by notice in writing to the person selling the membership contract for reasonable consideration on or before the expiration of each contract term, but not more than six months prior to the expiration of any contract term; and

(VIII) In the event that the **health** club elects to cancel, revoke, or terminate the bond, it posts a notice of such action, in twenty-four-point bold-faced type, to its customers, on the front door of such **health** club; or

(g) Makes any representation, orally or in writing, in connection with the offer or sale of a membership in a **health** club that a membership contract is for a lifetime or is for a perpetual membership, or uses coercive sales tactics, or misrepresents the quality, benefits, or nature of the services.

**Source: L. 99:** Entire part added with relocations, p. 643, § 2, effective May 18. **L.**

**2008:** (1)(c)(II) amended, p. 123, § 1, effective January 1, 2009.

**Editor's note:** (1) This section was formerly numbered as 6-1-105 (1)(t).

(2) Subsection (1)(c)(II) was contained in a 2008 act that was passed without a safety clause. The act establishes an effective date of January 1, 2009, for this provision. For further explanation concerning the effective date, see page ix of this volume.