

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

November 6, 2015

Opinion No. 15-74

Applicability of the Health Club Bond Act to Group Exercise Classes

Question 1

Is a business that exclusively or primarily offers regular, frequently scheduled, specialized group instructional workout classes a “health club” as defined in Tenn. Code Ann. § 47-18-301(4)(A)?

Opinion 1

Yes. As a general matter, a business that exclusively or primarily offers regular, frequently scheduled, specialized group instructional workout classes pursuant to a health club agreement would meet the statutory definition of a “health club,” unless it otherwise falls under one of the statutory exceptions.

Question 2

If the business takes payment from its customers for the use of its services or facilities per session, per class, or per week(s), month(s), or year(s) for either a set number of visits or for unlimited visits, is there a “health club agreement” as defined in Tenn. Code Ann. § 47-18-301(5)(A)?

Opinion 2

Yes. The definition of “health club agreement” broadly applies to any agreement to purchase, or obligation to purchase, any right to use health club facilities or services, regardless of how the payment or visit package is structured.

Question 3

Are such agreements exempt from the Health Club Bond Act (Tenn. Code Ann. § 47-18-301 to -319) as “agreement[s] for personal training services,” Tenn. Code Ann. § 47-18-301(5)(B)(i), because the group services offered by the business may include some specialized instructional components?

Opinion 3

No. Providing some specialized instruction to individual members of a group working out together in an exercise class likely does not constitute “personal training services” within the meaning of Tenn. Code Ann. § 47-18-301(5)(B)(i).

ANALYSIS

Tennessee’s Health Club Bond Act¹ (“Act”), like the Tennessee Consumer Protection Act² of which it is part, is intended to protect consumers from unfair and deceptive business practices. See *Fayne v. Vincent*, 301 S.W.3d 162, 172 (Tenn. 2009). The Health Club Bond Act is specifically designed to make health clubs financially responsible to the health club members with whom they contract. *Floyd v. Club Sys. of Tenn.*, No. 01-A-01-9807-CV-00399, 1999 WL 820610, at *4 (Tenn. Ct. App. July 20, 1999). This specific regulation of health clubs was deemed necessary because “significant consumer loss results when a health club sells memberships, and then fails to open, or fails to continue in business.” *State v. S. Fitness & Health, Inc.*, 743 S.W.2d 160, 163 (Tenn. 1987).

You have asked, in effect, whether a business that exclusively or primarily offers regular, frequently scheduled, specialized group instructional workout classes and that takes payment per session, per class, or per week(s), month(s), or year(s) for either a set number of visits or for unlimited visits is a “health club” regulated by the Act, or whether it falls within the “personal training services” exception and is therefore not subject to the Act.

Generally, a statute is construed to carry out the legislative intent without broadening or restricting the statute beyond what was intended. *Harris v. Haynes*, 445 S.W.3d 143, 146 (Tenn. 2014). When the meaning of the statutory language is clear, that plain meaning is applied without complicating the task. *Id.* Words are given their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose. *Id.* Every word in a statute is presumed to have meaning and must be given effect. *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013). Specifically, as part of the Consumer Protection Act, the Health Club Bond Act is “deemed remedial legislation necessary for the protection of the consumers of the state of Tennessee and elsewhere,” and so “shall be construed to effectuate [its remedial] . . . purposes and intent.” Tenn. Code Ann. § 47-18-115.

The Act defines “health club” as: (1) any enterprise, however styled; (2) that offers services or facilities for the development or preservation of physical fitness through exercise, weight control, or athletics; (3) on a regular, fulltime basis; and (4) pursuant to a health club agreement. Tenn. Code Ann. § 47-18-301(4)(A).³

¹ Tenn. Code Ann. §§ 47-18-301 to -319.

² Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 to -5542.

³ There are three exceptions to this definition: (1) an “organization primarily operated for the purpose of teaching a particular form of martial arts such as judo or karate” is not a health club; (2) “weight loss or control services which do not provide physical exercise services, facilities, or equipment” are not health clubs; and (3) tax-exempt nonprofit health clubs or health clubs operated as part of a nonprofit hospital are not “health clubs” within the meaning of the

A “health club agreement” is defined as “an agreement whereby a buyer purchases, or is obligated to purchase, any right to use health club facilities or services; and such services or facilities are for personal, family, employee, or household use.” Tenn. Code Ann. § 47-18-301(5)(A). But an agreement for “personal training services” is not a “health club agreement.” Tenn. Code Ann. § 47-18-301(5)(B)(i).

A business that primarily or exclusively offers regular, frequently scheduled, specialized group instructional workout classes and that arranges with its customers for payment per session, per class, or per week(s), month(s), or year(s) for either a set number of visits or for unlimited visits meets the Act’s definition of a “health club.” *See* Tenn. Code Ann. § 47-18-301(4)(A). Such a business is an enterprise that, on a regular, fulltime basis, offers services or facilities for the development or preservation of physical fitness through exercise or athletics and does so pursuant to a “health club agreement.”

Any agreement or obligation to buy the use of the services or facilities of such a business would appear to fit the Act’s broad definition of a “health club agreement” regardless of how the payment/visit package is structured. Whether the business takes payment per session, per class, or per week(s), month(s), or year(s) for either a set number of visits or for unlimited visits, it is offering its services or facilities pursuant to a “health club agreement” because the customer is buying or is obligated to buy the right to use the services or facilities of a business that otherwise meets the definition of a “health club.”

An agreement for “personal training services” is not, on the other hand, a “health club agreement” and would not be subject to the Act. Tenn. Code Ann. § 47-18-301(5)(B)(i). You have asked, therefore, whether specialized group instructional workout classes might constitute “personal training services” since a member of a group or class may from time to time get some individualized instruction or assistance. If such group workout classes were to qualify as “personal training,” there would, by definition, be no “health club agreement,” and the business referred to in your inquiry would be excluded from the definition of “health club” for lack of the requisite “health club agreement.”

As commonly and customarily understood, “personal training services” are distinct from—and do not include—group instruction. The term “personal training services” is not defined in the Act, but the normal, customary understanding of the term encompasses physical conditioning services provided to one individual on a customized basis in a private setting. *See* New Oxford American Dictionary 1307, 1836 (3rd ed. 2010) (defining “personal” as “of, affecting, or belonging to a particular person rather than anyone else,” and defining “training” as “the action of undertaking a course of exercise and diet in preparation for a sporting event”).

Thus, in the context of the Act, “personal training” refers to the supervision of an individual in physical exercise in a private, one-on-one setting, as opposed to the supervision of individuals in a group setting. That the supervisor of an exercise group may occasionally provide targeted instruction or assistance to a particular member of the group is not in and of itself enough to convert

Act. Tenn. Code Ann. § 47-18-301(4)(B)(i)-(iii). We assume for purposes of this opinion that none of these exceptions applies to the kind of business that is the subject of your inquiry.

what is group activity to personal, private, individual training.⁴ Moreover, if “personal training services” were read to exclude group services from the Act simply because a health club member might occasionally interact individually with a trainer at the health club, the Act would be rendered generally inapplicable and meaningless. The exception so broadly construed would swallow the rule—a result that would defeat rather than carry out the legislative intent of the Act and would undermine rather than effectuate the Act’s remedial purposes. Accordingly, the group instructional classes do not constitute personal training services, and the “personal training services” exception to the definition of “health club agreement” would not apply to exclude from the Act the type of business entity you have described.

In sum, reading the plain language of the Health Club Bond Act in context and construing it liberally in light of its remedial purpose, as a general matter, a business that exclusively or primarily offers regular, frequently scheduled, specialized group instructional workout classes pursuant to a health club agreement would meet the statutory definition of a “health club” and would be subject to the Act.

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⁴ There may, of course, be specific facts in a given situation (as distinct from the very general situation about which you have asked) that could change the analysis so that services provided by the entity would in fact be “personal training services.”