



STATE OF SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS

INITIAL APPLICATION FOR A CERTIFICATE OF AUTHORITY PHYSICAL FITNESS SERVICES

S.C. Code Ann. §§ 44-79-10 *et seq.* (Supp. 1997)

www.consumer.sc.gov



Mailing Address

P.O. Box 5757
Columbia, SC 29250-5757

Street Address

2221 Devine Street, Ste 200
Columbia, SC 29205-2418

PLEASE READ APPLICATION* AND INSTRUCTIONS CAREFULLY

***Application requires a notarized signature.**

(INCOMPLETE OR ILLEGIBLE INFORMATION COULD RESULT IN THE DELAY OF YOUR APPLICATION)

PHYSICAL FITNESS SERVICES

"Physical fitness services" means facilities or services for the development of physical fitness through exercise or weight control. The term includes the facilities and services of health or exercise centers, clubs, studios, or classes; health spas, weight control centers, clinics, or studios; figure salons, tanning centers; and athletic or sports clubs which provide tennis, racquet or handball courts, gymnasiums, or swimming pools. It does not include rehabilitative therapy administered by a licensed physical therapist.

APPLICATION FOR CERTIFICATE OF AUTHORITY:

All organizations providing *physical fitness services* in this State must first obtain a Certificate of Authority from the Administrator of the S.C. Department of Consumer Affairs.

Initial filing applications must include the following:

- * Copy of the most recent membership agreement (if any);
- * Copy of contract(s) to be used (if any);
- * Surety bond or letter of credit (if financial responsibility required);
- * If a corporation or LLC, certified copy of Certificate of Existence from the Secretary of State of South Carolina *and* copy of Articles of Incorporation/Organization; (Copies may be obtained by contacting the Secretary of State's office at (803) 734-2158 or www.scsos.com.)
- * Copy of rate sheet/price schedule for all physical fitness services offered;
- * Certificate of Authority application fee - \$50 per location

CONTRACT REQUIREMENTS:

If you use a prepaid or credit contract, that contract must conform to the requirements set by state law (S.C. Code Ann. §44-79-30, §44-79-40, §44-79-50). Contracts not meeting these requirements will result in the return of your application. A copy of these requirements is enclosed for your reference (Page 5).

INITIAL FILING FEE:

This application must be accompanied by an initial Certificate of Authority fee in the amount of \$50.00 per location. Failure to remit the appropriate fee(s) will result in the return of your application. Make checks payable to South Carolina Department of Consumer Affairs.

QUESTIONS:

If you need assistance with completing this application form or have questions about the Physical Fitness Services Act (§44-79-10 *et seq.*), please contact the SC Department of Consumer Affairs.

Matalie L. Mickens, Program Coordinator: 803-734-4291, mmickens@scconsumer.gov

Martha S. Phillips, Staff Attorney: 803-734-4241, mphillips@scconsumer.gov

SEND COMPLETED APPLICATION AND PAYMENT TO:

South Carolina Department of Consumer Affairs - Physical Fitness Services
P.O. Box 5757, Columbia, S.C. 29250-5757



**STATE OF SOUTH CAROLINA
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INITIAL APPLICATION FOR A CERTIFICATE OF AUTHORITY
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P.O. Box 5757
Columbia, SC 29250-5757

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2221 Devine Street, Ste 200
Columbia, SC 29205-2418

Provide All Information Requested Below

For Department Use Only

Filing Year _____

A. GENERAL BUSINESS INFORMATION

1. Corporate Name _____

2. DBA _____

4. Physical Address _____
(Street Address)

(City) _____ (State) _____ (Zip) _____

5. Mailing Address _____
(Street Address)

(City) _____ (State) _____ (Zip) _____

6. Telephone No. () - _____

7. Website _____

8. Name of Contact Person at Business _____

9. E-Mail Address _____

10. List the names of all owners, partners, members, and directors of the applicant.

| Name | Title | Date of Birth (if sole proprietor or partnership) | Social Security Number (if sole proprietor or partnership) |
|------|-------|---|--|
| | | | |
| | | | |
| | | | |

11. List all South Carolina physical fitness center locations. (Attach Additional Page(s) as Necessary)

NOTE: The filing fee is \$50 per location.

| Address | Phone Number | Manager |
|---------|--------------|---------|
| | () - | |
| | () - | |
| | () - | |

12. List Types of Services and/or Facilities Offered:

(List as many as apply – exercise center, weight loss, tanning, martial arts, fitness center, athletic club, personal training, dance fitness classes, etc.)

- B. BACKGROUND QUESTIONS. Answer each question below.**
- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. Did you begin providing physical fitness services in South Carolina after June 24, 1980? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you use prepaid or credit contracts that run for more than three months? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do you use prepaid or credit contracts having a total cost of more than \$200? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. If you are a personal trainer, do you use prepaid or credit contracts having a total cost of more than three hundred (\$300) dollars? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. If you answered "yes" to Question 1, 2, or 3 above, will your gross business receipts exceed \$150,000 this calendar year? (Gross volume is the amount reported to the IRS) | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Do you assign, discount or sell contracts to third parties? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Enter the number of members that are currently enrolled (or are expected to enroll) at the location(s) listed above. | _____ | |
| 8. How many physical fitness services locations do you have in this State? (All locations must be listed in this application.) | _____ | |
| 9. Did you answer "yes" to Question 2 (contracts longer than 3 months), or Question 3 (contracts more than \$200)? (If your answer to this question is "yes" you are required by law to demonstrate financial responsibility. If you answered "no" proceed to Line 12.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Which method of demonstrating financial responsibility do you use? (check one) | Surety Bond | <input type="checkbox"/> |
| | Letter of Credit | <input type="checkbox"/> |
| 11. Place a checkmark next to the category below which describes your center and required amount of assurance (either surety bond or letter of credit). | | |

Financial Responsibility (Bond or Letter of Credit) Assurance Amounts

| <u>Number of Members</u> | <u>Assurance Amount</u> | <u>Check One</u> |
|---------------------------------|--------------------------------|--------------------------|
| 1,500 or more | \$50,000 | <input type="checkbox"/> |
| 1,000 to 1,499 Members | \$40,000 | <input type="checkbox"/> |
| 500 - 999 Members | \$30,000 | <input type="checkbox"/> |
| 100 - 499 Members | \$20,000 | <input type="checkbox"/> |
| 1 - 99 Members | \$10,000 | <input type="checkbox"/> |

12. **Multiply the number which appears on Line 8 by \$50.00. This is the filing fee you owe: (Make checks payable to SC Department of Consumer Affairs)** _____
13. Has the applicant or any owner, member, officer, or director of the applicant ever previously applied for a Physical Fitness Certificate of Authority as part of another business affiliation? If yes, attach details of the filing application.
14. Has the applicant or any owner, member, officer, or director of the applicant ever been refused a license to engage in any business or had any license suspended or revoked by any state or federal agency? If yes, attach complete details of the refusal, suspension, or revocation.
15. Has any state or federal agency ever initiated an administrative or regulatory proceeding or action or entered an order against the applicant or any owner, member, officer or director of the applicant? If yes, attach complete details of the event.

(SIGNATURE ON NEXT PAGE)

The undersigned swears or affirms and certifies that he/she has completed and/or reviewed all information in this application and that all information contained herein and in all addending and supplemental forms is true and accurate. The undersigned further certifies that giving false information constitutes cause for denial or revocation of the application or license and subjects him/her to criminal prosecution for perjury. **The undersigned acknowledges the duty and agrees to update and correct this information as it changes.** The undersigned warrants that his or her signature below is duly authorized and delivered by and for the entity for which s/he signs.

Signature of Owner, Partner, Member, Officer, or Director

Type or Print your name

SWORN TO AND SUBSCRIBED before me
this _____ day of _____, 20_____

Notary Public For _____

Notary Signature

My Commission Expires: _____

(REMANINDER OF PAGE INTENTIONALLY LEFT BLANK)

PHYSICAL FITNESS CONTRACT REQUIREMENTS

§44-79-30. Credit contract requirements

- (A) Every prepaid or credit contract for physical fitness services of over three month's duration or over two hundred dollars in amount must conform to the following requirements:
- (1) The contract must be in writing, and a copy must be given to the customer at the time he signs it;
 - (2) the contract shall state clearly the street address or location of the center and outlets which the member may use at the time the contract is executed and the major facilities or major services which each offers;
 - (3) The contract shall reveal the finance charge, if any, which the member agrees to pay;
 - (4) if the customer executes a promissory note in connection with the contract, the contract shall clearly indicate whether the promissory note is assignable paper and whether it may be discounted and sold to third parties. Assignment of the promissory note does not affect the right of the member to cancel the contract or the method by which the cancellation may be made;
 - (5) The contract must contain a right to cancel provision in the following language:

"CUSTOMER'S RIGHT TO CANCEL"

 - (a) You may cancel this contract by sending notice of your wish to cancel to the center before midnight of the third business day after you sign the contract. 'Business day' means Monday through Friday excluding state holidays and federal holidays. This notice must be sent certified mail to the following:

(Business name and address)

Within thirty days of receipt of this notice, the center shall return any payments made and any note or other evidence of indebtedness. If you use the seller's facilities or services, the center may charge you a reasonable fee based on days of actual use.
 - (b) In addition, you or your estate may also cancel the contract at any time by written notice to the center at the above address if the following circumstances occur:
 - (1) the customer's death;
 - (2) substantial physical disability, certified by a physician, which makes it permanently impossible for the customer to use the center's services.
 - (3) the customer's permanent relocation to a residence over fifty miles distant from an outlet operated by the center, if the center is unable to arrange for the customer's use of another center with equivalent major facilities and services.
- The center may require presentation of information to substantiate that one of these circumstances has occurred.
- If the contract is cancelled because of disability, death, or permanent change of residence, the center shall return any note or other evidence of indebtedness and unearned prepayments as follows: For each month that the contract was in effect, the center is entitled to the rate a month or a treatment which it would have charged if the contract had initially been one for the number of months or the number of treatments for which the contract was actually in effect. The rate is to be determined from a fee schedule in effect on the date of the contract.
- (c) The right of cancellation shall affect only the financial obligations under the contract and customer's right to use the center's physical fitness services.
- (6) Services such as personal training, personal fitness testing, and daily visitor fees that are not subject to being refunded must be clearly stated in the contract.
 - (7) Any contractual provision allowing more liberal rights of cancellation than set forth in this chapter may be substituted for the notice required in this chapter.
- (B) A contract is not required for personal training, private consultations, and fitness testing rendered on an hourly basis unless they are part of a package of over three hundred dollars.

§44-79-40. Prohibited contractual provisions.

No contract for physical fitness services may:

- (1) have a duration of longer than twenty-four months or be measured by the life of the buyer, the life of the center, or any similar indefinite term; provided, however, if a center demonstrates financial responsibility to the administrator of the Department of Consumer Affairs and has been in operation for five or more years in this State, it may offer contracts for physical fitness services for a period of up to thirty-six months if approved in writing by the administrator;
- (2) waive the required provisions of this chapter;
- (3) provide that a right of action or defense of the member may be cut off by assignment of the contract to a third person.

§44-79-50. Unenforceability of prohibited contractual provisions.

Any provision of any contract for physical fitness services which does not comply with this chapter is unenforceable against the member.

SPECIAL DEPOSIT BOND

State of _____,

KNOW ALL MEN BY THESE PRESENTS. That the undersigned _____ as principal of _____ and the undersigned _____ as surety, of _____ are firmly held and bound unto the Administrator of the Department of Consumer Affairs of the State of South Carolina in full and just sum of _____ dollars, to which payment we bind ourselves and our respective successors and assigns jointly and severally.

Sealed with our seals and dated at _____ this _____ day of _____ in the year of our Lord, two thousand and _____.

WHEREAS, Section 44-79-80 of the Code of Laws of South Carolina, 1976 as amended, requires that a physical fitness center deposit and thereafter continuously maintain a bond in an amount determined by the Administrator. The bond is to be executed by a surety company authorized by the laws of this State to transact business in South Carolina and must be for the use of the State as well as any member that may have a cause of action against the physical fitness services center.

AND WHEREAS, the undersigned principal _____ aforesaid, desires to transact business within the State of South Carolina in accordance with the terms of its laws and to deposit with the Administrator a good and solvent bond in the sum of _____ dollars, does by this instrument furnish that bond.

NOW, THEREFORE, the condition of this bond is such that if the above principal has failed to comply with the S.C. Physical Fitness Services Act, S.C. Code § 44-79-10, et seq. (LAW CO-OP 1986) or has failed to provide contracted for physical fitness services to customers as determined by the Administrator after notice and opportunity for hearing, then we the Beneficiary (South Carolina Department of Consumer Affairs) are entitled to the sum of _____.

PROVIDED, HOWEVER, that liability hereunder may be terminated either (a) by written notice, from the surety to the Administrator, that liability shall terminate upon the expiration of forty-five (45) days from the date of such notice, or (b) upon written authorization mailed to the surety by the Administrator.

IN, WITNESS where of the principal and surety have set their hand and affixed their seals in the manner and form following:

In presence of witness as to principal:

Name of principal:

By: _____
(President (Officer))

In the presence of witness as to Surety:

Name of Surety:

By: _____
(President (Officer))

EXECUTION BY PRINCIPAL AND SURETY MUST BE PROBATED ON REVERSE SIDE

WITNESS AS TO PRINCIPAL

STATE OF _____,
_____ COUNTY.

Before me, the subscribing Notary Public, personally appeared _____
Witness number one (see front of bond)
and made oath that he/she saw the within named _____
Company, represented by _____ sign, seal, and deliver the
within Bond, and that he/she with _____ subscribed their names as
Witness number two (see front of bond)
witness thereto.

To be signed by witness one or two (see front of bond)

Sworn to and subscribed before
me this _____ day of _____ A.D., 20_____.

_____(L.S.)

My Commission Expires: _____

WITNESS AS TO SURETY

STATE OF _____,
_____ COUNTY.

Before me, the subscribing Notary Public, personally appeared _____
Witness number two (see front of bond)
and made oath that he/she saw the within named _____
Company represented by _____ sign, seal, and deliver the within
Bond, and that he/she with _____ subscribed their names as witness thereto:
Witness number two (see front of bond)

To be signed by witness one or two (see front of bond)

Sworn to and subscribed before
me this _____ day of _____ A.D., 20_____.

_____(L.S.)

My Commission Expires: _____

**PHYSICAL FITNESS SERVICES
IRREVOCABLE DOCUMENTARY LETTER OF CREDIT
MODEL FORM**

(Bank Name and Address on Bank Letterhead)

Applicant: (Applicant Name)
(Applicant Address)

Beneficiary: South Carolina Department of
Consumer Affairs
2221 Devine Street, Suite 200
P.O. Box 5757
Columbia, SC 29250

Letter of Credit No. _____

Expiration Date: _____

Dear Sir:

We hereby issue this documentary letter of credit in your favor which is available against beneficiary's draft at sight drawn on _____ (bank name) _____, bearing the clause "drawn under documentary letter of credit number _____ accompanied by the following documents:

1. Beneficiary's signed statement addressed to the applicant, stating: _____ (applicant's name) has failed to comply with the S.C. Physical Fitness Services Act, S.C. Code § 44-79-10 et seq. (LAW CO-OP 1986) or has failed to provide contracted for physical fitness services to customers as determined by the Administrator after notice and opportunity for hearing. We are therefore entitled to the sum of \$ _____ drawn under letter of credit number _____, Or

2. Beneficiary's signed statement addressed to the applicants stating that _____ (applicant's name) has not replaced this letter of credit number _____ with another letter of credit or other evidence of financial responsibility acceptable to the Administrator within 45 days of the expiration date of the credit, and we are therefore entitled to the sum of \$ _____ drawn under letter of credit number _____."

(Signature of authorized bank officer)
(Title)