

(D) A licensee or permit holder shall not employ or associate with in South Carolina, directly or indirectly, a person whose license is revoked or suspended by this Board or by the Board of Accountancy in any other jurisdiction. Employing or associating such a person in South Carolina as an accountant, investigator, tax preparer or in any other capacity connected with the practice of accounting subjects the license or permit holder to discipline by the Board.

Fiscal Impact Statement:

There will be no cost incurred by the State or any of its political subdivisions.

Statement of Rationale:

These regulations are updated in conformance with the Board of Accountancy Practice Act.

Document No. 4205
DEPARTMENT OF CONSUMER AFFAIRS
 CHAPTER 28
 Statutory Authority: 1976 Code Sections 44-79-10 et seq.,
 particularly Section 44-79-90

28-100. Physical Fitness Services Center—Certificates of Authority

Synopsis:

The Department proposes to amend and modify Regulation 28-100 addressing persons or organizations which, for profit, offer physical fitness services. R.28-100 was promulgated with an initial effective date of April 27, 1990 and was last amended February 23, 1994. The purposes of the amendments are to revise the title of the regulation and clarify recordkeeping requirements. Also addressed are the financial responsibility requirements for physical fitness services centers, to include bond and letter of credit amounts.

The statute, under 1976 Code Section 44-79-80, requires the Department to obtain a \$50 filing fee as well as submission of certain items by physical fitness centers before a certificate of authority may be issued. Section 44-79-80 also permits the Department to provide for financial responsibility requirements. Record keeping and reporting requirements are also addressed.

Section 44-79-90 allows the Department to promulgate regulations necessary to effectuate the purposes of the Chapter.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 26, 2011. Comments were solicited for consideration in drafting the proposed regulation.

Instructions:

Replace Regulation 28-100 as printed below.

Text:

28-100. Physical Fitness Services Center—Certificates of Authority and Financial Responsibility.
 (Statutory Authority: 1976 Code Sections 44-79-10, 44-79-80, 44-79-90, 44-79-100, and 44-79-120)

A. Definitions

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Definitions shall be those contained in the South Carolina Physical Fitness Services Act ("the Act"), S.C. Code Ann. Section 44-79-20 et seq. and the following:

Cash price --The price at which goods or services are offered for sale by the seller to cash buyers in the ordinary course of business, and may include applicable sales tax and the cash price of accessories or related services. The cash price stated by the seller to the buyer in the physical fitness agreement is presumed to be the cash price. The term does not include any finance charge.

Time price differential --The difference between the price paid in installments (time-price) and the cash price. Discounts for the purpose of inducing payment by a means other than the use of credit will be considered finance charge. For example, a physical fitness services provider offers contracts of \$1,000.00 each. If the buyer pays cash, the price is \$900.00, but if the buyer pays for the contract with the physical fitness provider in installments over time, the price is \$1,000.00. The \$100.00 difference is a finance charge for those who buy the agreement on credit. This definition does not apply to the use of a credit card.

B. Certificate of Authority and Financial Responsibility

(1) All organizations wishing to provide physical fitness services in this State must first obtain a Certificate of Authority from the Administrator of the Department of Consumer Affairs. Initial applications for the Certificate will be made on the form prescribed by the Administrator and accompanied by a fee of \$50 per outlet.

(2) Certificates of Authority expire on December 31. Renewal applications will be accepted November 1 through December 31 of each year. Renewal applications shall be made on a form prescribed by the Administrator and accompanied by a renewal fee of \$50 per outlet. If a complete renewal application is not postmarked on or before December 31, the center shall be required to submit an initial application per item (1) above.

(3) Issuance of a Certificate of Authority does not indicate approval or acceptance of the terms of any contract, agreement or other document submitted in support of the application. No organization providing physical fitness services shall in any way represent that its services, payment schedules or terms of membership are approved by the State or any state agency.

(4)(a) Physical fitness centers presenting a surety bond or other evidence of financial responsibility in accordance with Section 44-79-80 of the Act must do so in accordance with the following value schedule:

Members	Amount
1,500 or more	\$50,000
1,000 to 1,499	\$40,000
500 to 999	\$30,000
100 to 499	\$20,000
1 to 99	\$10,000

(b) Any variation from the value schedule must be approved by the Administrator or a designee.

(5) Within 45 days of a membership or outlet increase that puts the physical fitness center(s) into a new financial responsibility category, the physical fitness center(s) must present financial responsibility in the new

amount to the Administrator. Failure to provide amended evidence of financial responsibility as required by this subsection will be regarded as a violation of the Act.

(6) Each physical fitness center must notify the Administrator upon substantial change of its financial status within ten business days after the occurrence of any of the following events:

(a) the institution of a revocation, suspension, or other proceeding against the center by a governmental authority which is related to the center's physical fitness services in any state;

(b) the institution of a civil action against the center. The center shall advise the Administrator within thirty days of the action being dismissed, settled or otherwise resolved;

(c) the filing of bankruptcy, reorganization, or receivership proceedings by or against the center;

(d) the center's opening or closing of a new physical fitness center or outlet within the State; or

(e) felony indictments or convictions involving breach of trust, moral turpitude, fraud, or dishonest dealing.

C. Recordkeeping

(1) All books, membership contracts or agreements and records, and all other sources of information with regard to the business of providing physical fitness services must at all reasonable times be available for inspection by the Department of Consumer Affairs for the purpose of assuring that the business is being transacted in accordance with the law and applicable regulations. Failure to provide or allow access to all books, membership contracts or agreements and records and all other sources of information with regard to the business of providing physical fitness services will be regarded as a violation of the Act.

(2) All centers must maintain a copy of all agreements for physical fitness services for as long as such agreements are in effect and for a period of one (1) year thereafter. Agreements for each calendar year must be filed in alphabetical order by the consumer's last name. If the physical fitness provider uses numerically sequenced agreements, the agreements may be filed in numerical sequence instead of alphabetical order.

(3) Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by these regulations if they contain equivalent information and such information is accessible to the Department.

(4) On or before June 30 each year, physical fitness centers must submit to the Administrator an annual report. The report shall be made under oath and shall be on a form prescribed by the Administrator.

D. Agreements

(1) In the event an agreement includes a time-price differential, the cash price must be listed on the agreement separate from required Truth-in-Lending disclosures. A notice in substantially the following form complies with this regulation:

You have agreed to: (check one)

pay (name of physical fitness provider) the membership fee of \$ _____ now, which is the CASH PRICE, or

pay to (name of physical fitness provider) the CASH PRICE in installments plus a FINANCE CHARGE in accordance with the schedule in this agreement.

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(2) A contract for physical fitness services may include an automatic renewal option. A customer must select and initial the automatic renewal option at the time the initial contract is executed. Automatic renewal will be on a month-to-month basis. When the initial contract is near expiration, the center must send a written reminder to the customer of the automatic renewal. Prices under an automatic renewal may not change unless written notice is provided to the customer between 30 and 60 days prior to the change in price. Automatic renewal is an "opt-in" option. If the consumer fails to initial the opt-in provision, the contract shall not automatically renew.

E. Advertisements

(1) All advertisements by a physical fitness provider must contain the name and an office address of the entity, which must conform to a name and address on record with the Department of Consumer Affairs.

(2) All restrictions on use of special offers for memberships must clearly and conspicuously be disclosed in the advertisement. These restrictions include but are not limited to the time and day usage as well as equipment or area restrictions.

Fiscal Impact Statement:

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0. Certificate fees are intended to offset administrative costs to the State and are based on experience with similar industries.

Statement of Rationale:

The South Carolina Physical Fitness Services Act specifically provides for the Department to set the \$50 fee for certificates. The Act also permits and/or contemplates the drafting of reporting, recordkeeping and financial responsibility requirements. Such modifications and additions are necessary to effectuate the consumer protection purpose of the Act and to guide businesses with compliance.

Document No. 4206
STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60(1) (2004), 59-25-110 (2004), 59-26-10 et seq. (2004 and Supp. 2010), and 20 U.S.C. 6301 et seq. (2001)

43-53. Credential Classification

Synopsis:

This regulation needs to be amended to create a new advanced certification for educators employed in non-regulated school settings. The Notice of Drafting was published in the *State Register* on July 22, 2011.

Instructions: The following section of Regulation 43-53 is modified as provided below. All other items and sections remain unchanged.

Text:

I. Types of Credential Classification

A. Initial Certificate