

Senate Bill 228

By: Senators Jones of the 10th, Johnson of the 1st, Adelman of the 42nd, Davenport of the 44th, Thomas of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to provide for the licensure of personal fitness trainers; to provide for
3 definitions; to establish the Georgia Board of Fitness Trainers and provide for its
4 composition; to provide for qualifications, terms, and vacancies of members; to provide for
5 officers; to provide for records; to provide for reimbursement of members; to provide for
6 duties of the board; to provide that no person shall provide personal fitness training without
7 a license; to provide for qualifications for personal fitness trainers; to provide for applications
8 for licensure; to provide for denial, suspension, or revocation of licenses; to provide for
9 hearings; to provide for appeals; to provide for construction and application; to provide for
10 penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
14 is amended by inserting a new Chapter 5A as follows:

15 style="text-align:center">"CHAPTER 5A

16 43-5A-1.

17 As used in this chapter, the term:

18 (1) 'Board' means the Georgia Board of Fitness Trainers.

19 (2) 'Healthy individual' means a person without a known medical condition which
20 medical condition may be worsened or become life threatening by exercise or which
21 medical condition reasonably requires physician oversight of any exercise program. An
22 individual who has received approval from a physician to participate in a physical fitness
23 program conducted by a personal fitness trainer shall be presumed to be a healthy
24 individual for purposes of this chapter.

1 (3) 'Personal fitness trainer' means a person with specific qualifications, as set forth in
2 this chapter, who is a fitness professional that develops and implements an individualized
3 approach to exercise, including personal training and instruction in physical fitness and
4 conditioning for a healthy individual. 'Personal fitness trainer' shall include personal
5 trainers, professional fitness trainers, and persons performing similar physical fitness
6 training regardless of the designation used.

7 43-5A-2.

8 (a) The Georgia Board of Fitness Trainers is hereby established and shall be composed of
9 11 members. To be eligible to be a member, a person shall be a citizen of the United States
10 and a resident of this state for at least two years. Three members shall be appointed by the
11 Governor. Of the members appointed by the Governor at least one shall be: a personal
12 fitness trainer certified by a national certification organization that is accredited by the
13 National Commission for Certifying Agencies, a representative of a commercial health
14 club, and a professor from an academic institution who specializes in the area of
15 kinesiology and health. Four members shall be appointed by the President of the Senate.
16 Of the members appointed by the President of the Senate at least one shall be: a
17 representative of a community health and wellness center, a representative of a corporate
18 wellness program, and a consumer protection advocate. Four members shall be appointed
19 by the Speaker of the House. Of the members appointed by the Speaker of the House at
20 least one shall be: a member of the Committee on Accreditation for the Exercise Sciences
21 of the Commission on Accreditation of Allied Health Education Programs or similarly
22 nationally recognized program, a professor of exercise sciences from an academic
23 institution, and a physician who specializes in the area of sports medicine.

24 (b) Members shall serve for a term of office of four years. All terms shall expire on
25 January 31 of even-numbered years. In making the initial appointments, the Governor shall
26 appoint three members for a term expiring in 2009, and the President of the Senate shall
27 appoint four members for a term expiring in 2011. Incumbent members may be
28 reappointed for subsequent terms.

29 (c) Each appointee to the board shall qualify by taking an oath of office within 15 days
30 from the date of appointment. On presentation of the oath, the Secretary of State shall
31 issue commissions to appointees as evidence of their authority to act as members of the
32 board.

33 (d) In the event of death, resignation, or removal of any member, the vacancy of the
34 unexpired term shall be filled by the appointing authority in the same manner as other
35 appointments.

1 (e) Members may be removed from office for misfeasance or malfeasance in office. Any
2 member committing a felony shall be automatically removed. Members may be removed
3 for failure to attend three or more regularly scheduled meetings or other neglect of service,
4 unless for just cause the member is excused by the appointing authority.

5 (f) Membership on the board shall not constitute service of public office and no member
6 shall be disqualified from holding public office by reason of his or her membership.

7 43-5A-3.

8 (a) The board shall elect a chairperson and a vice chairperson from among its members for
9 a term of one year and may appoint such committees as it considers necessary to carry out
10 its duties.

11 (b) The board shall meet at least twice each year. Additional meetings may be held on the
12 call of the chairperson or at the written request of any three members of the board.

13 43-5A-4.

14 The board shall appoint a secretary to the board who shall keep a record of the board's
15 proceedings in a book maintained for that purpose.

16 43-5A-5.

17 Each member of the board shall be reimbursed as provided for in subsection (f) of Code
18 Section 43-1-2.

19 43-5A-6.

20 (a) The board is authorized to promulgate rules and regulations consistent with this chapter
21 which are necessary for the performance of its duties.

22 (b) The board shall prescribe application forms for license applications.

23 (c) The board shall establish guidelines for personal fitness trainers in this state and
24 prepare and conduct an examination for applicants for a license, which may include, but
25 not be limited to:

26 (1) Adequate knowledge of and skill in risk factor and health status identification, fitness
27 appraisal, and exercise preparation;

28 (2) Demonstrated ability to incorporate suitable and innovative activities that will
29 improve an individual's functional capacity; and

30 (3) Demonstrated ability to effectively educate and communicate with individuals
31 regarding lifestyle modification.

32 (d) The board shall adopt an official seal and the form of a license certificate of suitable
33 design.

1 43-5A-7.

2 No person shall hold himself or herself out as a personal fitness trainer or perform, for
3 compensation, any of the activities of a personal fitness trainer without first obtaining a
4 license under this chapter.

5 43-5A-8.

6 (a) An applicant for a personal fitness trainer's license shall meet minimum qualifications
7 and training requirements as established by the board.

8 (b) The board may grant a personal fitness trainer's license without examination to any
9 qualified applicant who holds a certification from a national certification organization that
10 is accredited by the National Commission for Certifying Agencies.

11 (c) An applicant must be a United States citizen or lawful resident of this country.

12 (d) An applicant must be at least 18 years of age and possess a valid Georgia driver's
13 license.

14 43-5A-9.

15 (a) An applicant for a personal fitness trainer's license shall submit an application to the
16 board on forms prescribed by the board and submit the examination fee and application fee
17 required by this chapter or the board. As a part of that application process, the applicant
18 shall be required to undergo a criminal history background check prescribed by and under
19 such terms and conditions set by the board.

20 (b) The applicant is entitled to a personal fitness trainer's license if he or she possesses the
21 qualifications enumerated in this chapter, pays the required license and application fee, and
22 has not committed an act which constitutes grounds for denial of a license under Code
23 Section 43-5A-10.

24 (c) Licenses issued by the board shall expire biennially. As a condition of license renewal,
25 the board shall be authorized to require licensees to complete continuing education courses
26 approved by the board.

27 43-5A-10.

28 The board may refuse to issue a license to an applicant or may suspend or revoke the
29 license of any licensee if he or she has:

30 (1) Committed a felony or misdemeanor involving moral turpitude, a record of
31 conviction being conclusive evidence of the commission of the offense;

32 (2) Secured the license by fraud or deceit;

33 (3) Is currently under warrant for arrest;

34 (4) Is in substantial violation of a valid court order for child support payments; or

1 (5) Violated or conspired to violate or failed to abide by the law, this chapter, or rules
2 and regulations adopted by the board as provided for in this chapter.

3 43-5A-11.

4 (a) Any person whose application for a license is denied or whose license is canceled,
5 suspended, or revoked is entitled to a hearing before the board upon submission of a
6 written request to the board. Those procedures set forth in the rules and regulations of the
7 board shall apply to the hearing before the board.

8 (b) Proceedings for the cancellation, revocation, or suspension of a license shall be
9 commenced by filing charges with the board in writing and under oath. The charges may
10 be made by any person or persons.

11 (c) The board shall fix a time and place for a hearing and shall cause a written copy of the
12 charges or reason for denial of a license, together with a notice of the time and place fixed
13 for the hearing, to be served on the applicant requesting the hearing or licensee against
14 whom the charges have been filed at least 20 days prior to the date set for the hearing.
15 Service of charges and notice of hearing may be given by certified mail or statutory
16 overnight delivery, return receipt requested, to the last known address of the applicant or
17 licensee.

18 (d) At the hearing, the applicant or licensee has the right to appear either personally or by
19 counsel, or both, to produce witnesses, to have subpoenas issued by the board, and to
20 cross-examine the opposing or adverse witnesses.

21 (e) The board is not bound by strict rules of procedure or by the laws of evidence in the
22 conduct of the proceedings, but the determination shall be founded upon sufficient legal
23 evidence to sustain it. Witnesses shall give testimony under oath and shall be subject to
24 punishment for false swearing by petition filed with the superior court of the county where
25 the hearing is held. A record of the proceedings and testimony shall be maintained.

26 (f) The board shall determine the charges on their merits and enter an order in a permanent
27 record setting forth the findings of fact and law and the action taken. A copy of the order
28 of the board shall be mailed to the applicant or licensee at his or her last known address by
29 certified mail or statutory overnight delivery, return receipt requested.

30 (g) On application, the board may reissue a license to a person whose license has been
31 canceled or revoked, but the application may not be made prior to the expiration of a period
32 of 12 months after the order of cancellation or revocation has become final; and the
33 application shall be made in the manner and form as the board may require.

1 43-5A-12.

2 (a) A person whose application for a license has been refused or whose license has been
3 canceled, revoked, or suspended by the board may take an appeal, within 30 days after the
4 order is entered, to any court of competent jurisdiction in the Superior Court of Fulton
5 County or in the applicant or licensee's county of residence.

6 (b) A case reviewed under this Code section shall be confined to a review of the
7 administrative record. The decision of the board shall be reversed only if it is found to be
8 clearly erroneous. Appeal from the judgment of the superior court lies as in other civil
9 cases.

10 43-5A-13.

11 (a) Nothing in this chapter shall be construed to authorize the practice of medicine by any
12 person not licensed by the Composite State Board of Medical Examiners.

13 (b) No provision of this chapter shall be construed so as to limit or prevent any person duly
14 licensed under the laws of this state to practice the profession for which he or she was
15 licensed.

16 43-5-14.

17 Any person who violates Code Section 43-5A-7 shall be guilty of practicing as a personal
18 fitness trainer without a license and shall be punished as for a misdemeanor of a high and
19 aggravated nature by the imposition of a fine not to exceed \$5,000.00, or confinement for
20 not more than 12 months, or both."

21 **SECTION 2.**

22 All laws and parts of laws in conflict with this Act are repealed.