

HOUSE BILL 187

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3lr1545

By: **Delegate W. Miller**

Introduced and read first time: January 21, 2013

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 19, 2013

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Health Clubs – Surety Bond Requirements**

3 FOR the purpose of ~~altering a certain cap on the amount of a surety bond, letter of~~
4 ~~credit, or cash that persons who sell health club services agreements must file~~
5 ~~or maintain under the Maryland Health Club Services Act;~~ establishing
6 requirements for certain surety bonds that a person who sells health club
7 services agreements must purchase under the Maryland Health Club Services
8 Act; ~~altering the circumstances under which the amount of certain surety bonds~~
9 ~~must be increased or may be decreased by persons who sell health club services~~
10 ~~agreements;~~ specifying the manner in which the amount of certain surety bonds
11 must be increased or may be decreased; ~~repealing a certain prohibition on the~~
12 ~~sale of health club services agreements by certain registrants under certain~~
13 ~~circumstances;~~ and generally relating to the Maryland Health Club Services Act
14 and surety bond requirements.

15 BY repealing and reenacting, without amendments,
16 Article – Commercial Law
17 Section 14–12B–02(a) and (b)
18 Annotated Code of Maryland
19 (2005 Replacement Volume and 2012 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Commercial Law
22 Section 14–12B–02(e)
23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2005 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

14–12B–02.

(a) Each person who sells health club services in this State shall register with the Division on forms the Division provides. The person shall furnish the full name and address of each business location where health club services are sold as well as any other registration information the Division deems appropriate.

(b) (1) Each person who registers under this subtitle shall pay a registration fee at the time of registration.

(2) On September 1 of each year following the initial registration, each registered person shall pay a renewal fee to the Division.

(3) The fees for registration and renewal required under this subsection shall be set by the Division:

(i) In an amount not exceeding \$1,200 for a person who is required to purchase a surety bond or file an irrevocable letter of credit or cash under subsection (e) of this section;

(ii) In an amount not exceeding \$300 for a person who:

1. Is exempt from the requirement to purchase a surety bond or file an irrevocable letter of credit or cash under subsection (e) of this section; and

2. Does not meet the requirements of item (iii) of this paragraph; and

(iii) In an amount not exceeding \$75 for a person who:

1. Is exempt from the requirement to purchase a surety bond or file an irrevocable letter of credit or cash under subsection (e) of this section;

2. Does not charge an initiation fee or other fee that is not identified as a payment for specified future services;

3. Does not contractually obligate a buyer of health club services to pay in advance of the date the services are provided to the buyer; and

1 4. Does not collect from a buyer of health club services
2 any payment in advance of the date the services are provided to the buyer.

3 (4) The fees collected under this subsection may only be used for the
4 administration and enforcement of this subtitle.

5 (e) (1) (i) Subject to the provisions of paragraph (3) of this subsection,
6 a person who sells health club services agreements shall purchase a surety bond in an
7 amount not less than the aggregate value of outstanding liabilities to members,
8 including all prepaid fees, membership fees, dues, deposits, initiation fees, and fees for
9 health club services, ~~AND NOT MORE THAN \$200,000, REGARDLESS OF THE~~
10 ~~NUMBER OF FACILITIES OPERATED BY THE PERSON~~. For the purposes of this
11 section, "liabilities" means the moneys actually received in advance from the members
12 less the prorated value of services rendered by the health club facility. In the case of a
13 lifetime contract, the liabilities shall be calculated on a prorated basis for not more
14 than 36 months.

15 (ii) The amount of the bond shall be based upon a report
16 prepared by an independent certified public accountant describing the health club's
17 outstanding liabilities to the members using accepted standard accounting principles.
18 In this section "outstanding liabilities" includes all amounts that would be required to
19 be refunded to members if the health club facility ceases operations.

20 (iii) The report shall be submitted at the time of initial
21 registration and updated at each renewal under subsection (b) of this section.

22 **(IV) THE BOND SHALL:**

23 1. **BE WRITTEN BY A SURETY AUTHORIZED TO WRITE**
24 **SURETY INSURANCE IN THE STATE;**

25 2. **NAME THE DIVISION AS OBLIGEE FOR THE USE**
26 **AND BENEFIT OF ANY CONSUMER WHO CONTRACTS WITH THE PERSON TO**
27 **PURCHASE HEALTH CLUB SERVICES; AND**

28 3. **BE IN SUBSTANTIALLY THE FOLLOWING FORM:**

29 **"KNOW ALL PERSONS BY THESE PRESENTS, THAT (HEALTH**
30 **CLUB SERVICES PROVIDER) AS PRINCIPAL ("PRINCIPAL"), AND (SURETY) AS**
31 **SURETY ("SURETY"), WHICH IS AUTHORIZED TO TRANSACT THE BUSINESS OF**
32 **INSURANCE IN THE STATE OF MARYLAND, AND ARE HELD AND FIRMLY BOUND**
33 **UNTO THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE**
34 **ATTORNEY GENERAL ("DIVISION") FOR THE USE AND BENEFIT OF ANY**
35 **CONSUMER WHO CONTRACTS WITH THE PRINCIPAL TO PURCHASE HEALTH**
36 **CLUB SERVICES IN THE PENAL SUM OF _____ AND /100 DOLLARS (\$**

1 _____) IN LAWFUL MONEY OF THE UNITED STATES OF
 2 AMERICA, FOR WHICH PAYMENT PRINCIPAL AND SURETY BIND THEMSELVES,
 3 THEIR SUCCESSORS AND ASSIGNS, JOINTLY AND SEVERALLY.

4 **NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**
 5 **THAT THE PRINCIPAL SHALL FAITHFULLY AND TRULY FULFILL ITS HEALTH**
 6 **CLUB SERVICES CONTRACTS ENTERED INTO WHILE THIS BOND IS IN EFFECT. IF**
 7 **THIS CONDITION IS MET, THEN THIS OBLIGATION SHALL BE VOID; OTHERWISE IT**
 8 **REMAINS IN FULL FORCE AND EFFECT AS SECURITY FOR THE USE OF ANY**
 9 **CONSUMER WHO, AFTER ENTERING THE HEALTH CLUB SERVICES CONTRACT**
 10 **WITH THE PRINCIPAL IS DAMAGED OR SUFFERS A LOSS BY REASON OF BREACH**
 11 **OF CONTRACT CAUSED BY THE CLOSING OF A FACILITY OWNED BY THE**
 12 **PRINCIPAL OR THE BANKRUPTCY OF THE PRINCIPAL.**

13 **IN ADDITION TO THE ABOVE, PRINCIPAL AND SURETY COVENANT, AGREE**
 14 **AND REPRESENT THAT:**

15 **1. ANY CLAIM FILED HEREUNDER SHALL BE FILED**
 16 **NO LATER THAN 1 YEAR FROM THE DATE ON WHICH THE FACILITY CLOSED OR**
 17 **BANKRUPTCY WAS FILED.**

18 **2. THE DIVISION MAY FILE A CLAIM ON BEHALF OF A**
 19 **CONSUMER.**

20 **3. THIS BOND SHALL CONTINUE IN FULL FORCE AND**
 21 **EFFECT AND SHALL RUN CONCURRENTLY WITH THE ENTIRE CURRENT LICENSE**
 22 **PERIOD AND FOR ANY RENEWALS THEREOF, SUBJECT, HOWEVER, TO**
 23 **CANCELLATION BY THE SURETY OR PRINCIPAL.**

24 **4. REGARDLESS OF THE NUMBER OF YEARS THIS**
 25 **BOND REMAINS IN EFFECT, THE NUMBER OF CLAIMS OR CLAIMANTS, OR THE**
 26 **NUMBER OR AMOUNT OF PREMIUMS PAID, IN NO EVENT SHALL THE SURETY'S**
 27 **AGGREGATE LIABILITY EXCEED THE PENAL AMOUNT OF THIS BOND.**

28 **5. THE SURETY OR PRINCIPAL MAY CANCEL THIS**
 29 **BOND BY PROVIDING 30 DAYS' WRITTEN NOTICE TO THE DIVISION, BUT THE**
 30 **SURETY SHALL REMAIN LIABLE FOR ALL OBLIGATIONS COVERED BY THIS BOND**
 31 **ARISING FROM CONTRACTS ENTERED INTO ON OR AFTER THE EFFECTIVE DATE**
 32 **OF THIS BOND AND UP TO AND INCLUDING THE EXPIRATION OF SAID 30-DAY**
 33 **PERIOD."**

34 (2) ~~{(i)}~~ ~~ON EACH RENEWAL UNDER SUBSECTION (B) OF THIS~~
 35 ~~SECTION, {The} THE~~ amount of the bond, **BY RIDER**, shall be increased, or may be
 36 decreased, as necessary to take into account changes in the health club facility's

1 outstanding liabilities to members ~~WHEN, BASED ON THE REPORT SUBMITTED AT~~
2 ~~RENEWAL UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION,~~ in the following
3 cases, whichever comes first:

4 1. When the health club facility's outstanding liabilities
5 to members increase or decrease by \$10,000; or

6 2. On a quarterly basis.

7 (ii) If a registrant's outstanding liabilities to the members
8 exceed the amount of the bond, and the registrant has failed to increase the bond, then
9 the registrant shall immediately stop selling health club services agreements and shall
10 refrain from selling health club services agreements until the requirements of this
11 subsection have been satisfied.

12 (3) (i) An irrevocable letter of credit in a form acceptable to the
13 Division, or cash, may be filed with the Division instead of a surety bond.

14 (ii) Notwithstanding any other provision of this subtitle, a seller
15 of health club services agreements does not have to file or maintain a bond, letter of
16 credit, or cash in excess of \$200,000 per health club services facility. The bonding
17 requirement of this subsection applies to each location at which health club services
18 are sold in any case where a person operates or plans to operate more than one facility
19 within the State.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.