

HOUSE BILL 187

I3

3lr1545

By: **Delegate W. Miller**

Introduced and read first time: January 21, 2013

Assigned to: Economic Matters

A BILL ENTITLED

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; altering the circumstances under which
7 the amount of certain surety bonds must be increased or may be decreased by
8 persons who sell health club services agreements; specifying the manner in
9 which the amount of certain surety bonds must be increased or may be
10 decreased; repealing a certain prohibition on the sale of health club services
11 agreements by certain registrants under certain circumstances; and generally
12 relating to the Maryland Health Club Services Act and surety bond
13 requirements.

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

19 BY repealing and reenacting, with amendments,
20 Article – Commercial Law
21 Section 14–12B–02(e)
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2012 Supplement)

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

26 **Article – Commercial Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14-12B-02.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (ii) The amount of the bond shall be based upon a report
12 prepared by an independent certified public accountant describing the health club’s
13 outstanding liabilities to the members using accepted standard accounting principles.
14 In this section “outstanding liabilities” includes all amounts that would be required to
15 be refunded to members if the health club facility ceases operations.

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

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

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

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

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

25 **“KNOW ALL PERSONS BY THESE PRESENTS, THAT (HEALTH**
26 **CLUB SERVICES PROVIDER) AS PRINCIPAL (“PRINCIPAL”), AND (SURETY) AS**
27 **SURETY (“SURETY”), WHICH IS AUTHORIZED TO TRANSACT THE BUSINESS OF**
28 **INSURANCE IN THE STATE OF MARYLAND, AND ARE HELD AND FIRMLY BOUND**
29 **UNTO THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE**
30 **ATTORNEY GENERAL (“DIVISION”) FOR THE USE AND BENEFIT OF ANY**
31 **CONSUMER WHO CONTRACTS WITH THE PRINCIPAL TO PURCHASE HEALTH**
32 **CLUB SERVICES IN THE PENAL SUM OF _____ AND /100 DOLLARS (\$**
33 **_____._____) IN LAWFUL MONEY OF THE UNITED STATES OF**
34 **AMERICA, FOR WHICH PAYMENT PRINCIPAL AND SURETY BIND THEMSELVES,**
35 **THEIR SUCCESSORS AND ASSIGNS, JOINTLY AND SEVERALLY.**

36 **NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**
37 **THAT THE PRINCIPAL SHALL FAITHFULLY AND TRULY FULFILL ITS HEALTH**

1 CLUB SERVICES CONTRACTS ENTERED INTO WHILE THIS BOND IS IN EFFECT. IF
 2 THIS CONDITION IS MET, THEN THIS OBLIGATION SHALL BE VOID; OTHERWISE IT
 3 REMAINS IN FULL FORCE AND EFFECT AS SECURITY FOR THE USE OF ANY
 4 CONSUMER WHO, AFTER ENTERING THE HEALTH CLUB SERVICES CONTRACT
 5 WITH THE PRINCIPAL IS DAMAGED OR SUFFERS A LOSS BY REASON OF BREACH
 6 OF CONTRACT CAUSED BY THE CLOSING OF A FACILITY OWNED BY THE
 7 PRINCIPAL OR THE BANKRUPTCY OF THE PRINCIPAL.

8 IN ADDITION TO THE ABOVE, PRINCIPAL AND SURETY COVENANT, AGREE
 9 AND REPRESENT THAT:

10 1. ANY CLAIM FILED HEREUNDER SHALL BE FILED
 11 NO LATER THAN 1 YEAR FROM THE DATE ON WHICH THE FACILITY CLOSED OR
 12 BANKRUPTCY WAS FILED.

13 2. THE DIVISION MAY FILE A CLAIM ON BEHALF OF A
 14 CONSUMER.

15 3. THIS BOND SHALL CONTINUE IN FULL FORCE AND
 16 EFFECT AND SHALL RUN CONCURRENTLY WITH THE ENTIRE CURRENT LICENSE
 17 PERIOD AND FOR ANY RENEWALS THEREOF, SUBJECT, HOWEVER, TO
 18 CANCELLATION BY THE SURETY OR PRINCIPAL.

19 4. REGARDLESS OF THE NUMBER OF YEARS THIS
 20 BOND REMAINS IN EFFECT, THE NUMBER OF CLAIMS OR CLAIMANTS, OR THE
 21 NUMBER OR AMOUNT OF PREMIUMS PAID, IN NO EVENT SHALL THE SURETY'S
 22 AGGREGATE LIABILITY EXCEED THE PENAL AMOUNT OF THIS BOND.

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

29 (2) [(i)] ON EACH RENEWAL UNDER SUBSECTION (B) OF THIS
 30 SECTION, [The] THE amount of the bond, BY RIDER, shall be increased, or may be
 31 decreased, as necessary to take into account changes in the health club facility's
 32 outstanding liabilities to members WHEN, BASED ON THE REPORT SUBMITTED AT
 33 RENEWAL UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION, [in the following
 34 cases, whichever comes first:

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

1 2. On a quarterly basis.

2 (ii) If a registrant's outstanding liabilities to the members
3 exceed the amount of the bond, and the registrant has failed to increase the bond, then
4 the registrant shall immediately stop selling health club services agreements and shall
5 refrain from selling health club services agreements until the requirements of this
6 subsection have been satisfied].

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

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

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