

## Article - Commercial Law

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§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

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

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

(c) At least one member of the board of directors of each seller of health club services in this State shall be a resident of a county where a club of the seller is located and shall serve as a resident agent for receipt of service of process.

(d) The Division may bring an action for mandamus against a health club to require the club to register or to have and maintain the surety required by this section.

(e) (1) (i) Subject to the provisions of paragraph (3) of this subsection, a person who sells health club services agreements shall purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities to members, including all prepaid fees, membership fees, dues, deposits, initiation fees, and fees for health club services. For the purposes of this section, “liabilities” means the moneys actually received in advance from the members less the prorated value of services rendered by the health club facility. In the case of a lifetime contract, the liabilities shall be calculated on a prorated basis for not more than 36 months.

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

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

(2) (i) The amount of the bond shall be increased, or may be decreased, as necessary to take into account changes in the health club facility’s outstanding liabilities to members in the following cases, whichever comes first:

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

2. On a quarterly basis.

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

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

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

(f) (1) A buyer of health club services who suffers or sustains any loss or damage by reason of the closing of a facility or bankruptcy by the seller of the health club services agreement shall file a claim with the surety and, if the claim is not paid, may bring an action based on the bond and recover against the surety. In the case of a letter of credit or cash deposit that has been filed with the Division, the buyer may file a claim with the Division.

(2) Any claim under paragraph (1) of this subsection shall be filed no later than 1 year from the date on which the facility closed or bankruptcy was filed. The Division shall notify each known buyer described in paragraph (1) of this subsection about the procedure for filing a claim, unless the seller of the health club services agreements has provided sufficient notice to each known buyer.

(3) The Division may file a claim with the surety on behalf of any buyer in paragraph (1) of this subsection. The surety shall pay the amount of the claims to the Division for distribution to claimants entitled to restitution and shall be relieved of liability to that extent.

(4) The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed.

(5) If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Division for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(6) The Division may obtain reimbursement for postage and other reasonable nonsalary expenses incurred in notifying buyers and distributing claims by:

(i) Filing a priority claim for the expenses against the surety bond posted by the seller; or

(ii) Applying to the expenses on a priority basis the proceeds of the letter of credit or cash deposit posted by the seller with the Division.

(7) For any claim under paragraph (1), (3), or (5) of this subsection, the Division may not pay a claim of a buyer that is less than \$5.

(8) The provisions of this subsection do not apply where the buyer's membership agreement provides for the transfer of membership privileges to a comparable new or existing facility within a reasonable distance of the closed facility.

(g) (1) Any person or business bonded under this section shall maintain accurate records of the bond and of premium payments on it. These records shall be open to inspection by the Division at any time during normal business hours.

(2) Any person who sells health club services agreements shall maintain accurate records, updated as necessary, of the name, address, contract terms, and

payments of each buyer of health club services. These records shall be open to inspection by the Division, upon reasonable notice, at any time during normal business hours.

(3) In addition to any remedies otherwise available, the Division, after notice and a show cause hearing, may revoke the registration of any person who fails to maintain or produce the records described in paragraphs (1) and (2) of this subsection.

(h) (1) Each person who sells health club services to be offered at a planned facility or a facility under construction shall:

(i) Register under subsection (a) of this section before conducting any sales activities; and

(ii) Maintain a surety bond in an amount not less than \$50,000 until the value of obligations to consumers exceeds that amount.

(2) Until the time a person opens a health club services facility, the amount of the bond shall be increased as necessary to take into account increases in the person's outstanding liabilities to the members with a final adjustment to be made at the time of opening.

(3) Upon opening the facility, the person is subject to the provisions of subsections (a) through (e) of this section.

(i) For purposes of subsections (e) and (f) of this section, any initiation fee, or other fee, that exceeds \$200 and that is not identified as a payment for specific future services will be deemed to be a payment for services to be delivered during the initial 2 years of the buyer's membership term.

(j) Any information received by the Division in the course of administering the registration program under this subtitle shall be made available to the public subject to the provisions of the Maryland Public Information Act.

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