

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 91

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after "Fees" insert ", Bonding Liability, and Payment of Claims"; strike beginning with "exempting" in line 3 down through "Act." in line 5 and substitute "altering the annual registration renewal fee required under the Maryland Health Club Services Act for certain persons who provide health club services; excluding certain payments from the definition of "outstanding liabilities" for purposes of determining the amount of certain bonds required under the Maryland Health Club Services Act; requiring certain persons to provide certain notices and disclosures to consumers; prohibiting the Consumer Protection Division from paying certain claims filed by certain persons; providing for the application of this Act; and generally relating to altering certain registration renewal fees, bonding requirements, and requirements for payment of claims under the Maryland Health Club Services Act."; and in line 8, after "14-12B-02(b)" insert ", (e), and (f) and 14-12B-06".

AMENDMENT NO. 2

On page 1, in line 17, strike "(I)"; strike in their entirety lines 19 through 22, inclusive; and in line 27, strike "and".

On page 2, in line 1, after "who" insert ":

1.";

in line 3, after "section" insert "; AND

2. DOES NOT MEET THE REQUIREMENTS OF ITEM (III) OF THIS PARAGRAPH; AND

(III) IN AN AMOUNT NOT EXCEEDING \$50 FOR A PERSON WHO:

(Over)

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 FOR MORE THAN 1 MONTH OF SERVICE; AND

4. DOES NOT COLLECT MORE THAN 1 MONTH'S PAYMENT IN ADVANCE FROM A BUYER";

after line 5, insert:

“(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. FOR ANY MEMBERSHIP IN WHICH THE HEALTH CLUB FACILITY DOES NOT COLLECT EITHER AN INITIATION FEE OF MORE THAN \$200 OR AN ADVANCE PAYMENT FOR MORE THAN 1 MONTH'S SERVICE FROM THE MEMBER, “OUTSTANDING LIABILITIES” DOES NOT INCLUDE THE INITIATION FEE AND THE ADVANCE PAYMENT FOR 1 MONTH'S SERVICE.

(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

(Over)

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.

[(7)] (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.

(a) A health club services agreement may not contain an automatic renewal clause, unless the agreement provides for a renewal option for continued membership which must be accepted by the buyer.

(b) (1) A buyer described in § 14-12B-01(b)(1)(i) of this subtitle may cancel a health club services agreement within 3 business days after receipt of a copy of the agreement by notifying the health club in writing. Written notification shall be delivered in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, and if mailed shall be postmarked by midnight of the third business day.

(2) If the buyer cancels within 3 business days, the health club facility shall refund any deposit, down payment, or payment on the agreement including any initiation, deposit, membership, or other fees.

(3) Each contract for health club services shall conspicuously disclose under the heading "Notice of Consumer Rights":

(i) The seller's health club registration number with the Division;

(ii) A description of whether the seller is bonded and the amount of the bond or, if not bonded, an explanation of the basis for the seller's exemption from the bonding requirements;

(III) IF THE SELLER IS BONDED, THE FOLLOWING STATEMENT: "IF THIS FACILITY DOES NOT COLLECT EITHER AN INITIATION FEE OF MORE THAN \$200 OR AN ADVANCE PAYMENT OF MORE THAN 1 MONTH'S SERVICES FROM YOU, YOUR PAYMENT IS NOT PROTECTED BY THE FACILITY'S BOND. IF, AT ANY TIME, THIS FACILITY COLLECTS AN INITIATION FEE OF MORE THAN \$200 OR AN ADVANCE PAYMENT FOR MORE THAN 1 MONTH'S SERVICE FROM YOU, THE FACILITY MUST INCLUDE THOSE PAYMENTS IN DETERMINING THE AMOUNT OF THE BOND IT IS REQUIRED TO POST WITH THE CONSUMER PROTECTION DIVISION.";

[(iii)] (IV) The buyer's right to cancel as defined in this section; [and]

[(iv)] (V) The buyer's rights in the event of a disability or temporary closing under § 14-12B-04 of this subtitle; AND

(VI) FOR THOSE PERSONS WHO REGISTER IN ACCORDANCE WITH § 14-12B-02(B)(3)(III) OF THIS SUBTITLE, A STATEMENT THAT THE FACILITY DOES NOT:

1. CHARGE AN INITIATION FEE OR OTHER FEE THAT IS NOT IDENTIFIED AS A PAYMENT FOR SPECIFIC FUTURE SERVICES;

2. OBLIGATE THE BUYER TO PURCHASE MORE THAN 1 MONTH'S HEALTH CLUB SERVICES; OR

3. COLLECT MORE THAN 1 MONTH'S PAYMENT IN ADVANCE FOR SERVICES.

(4) Each contract for the sale of health club services shall contain in a form acceptable to the Division:

(i) A clear and conspicuous itemized description of any fees and charges; and

(ii) If the facility is not in operation, the expected date of opening and a description of the specific services and facilities that will be available upon opening.

(C) A PERSON WHO REGISTERS IN ACCORDANCE WITH § 14-12B-02(B)(3)(III) OF THIS SUBTITLE SHALL POST IN A CLEAR AND CONSPICUOUS MANNER A SIGN IN A PROMINENT LOCATION IN EACH HEALTH CLUB FACILITY THAT THE PERSON OPENS OR OPERATES THAT STATES THAT THE FACILITY DOES NOT:

(1) CHARGE AN INITIATION FEE OR OTHER FEE THAT IS NOT IDENTIFIED AS A PAYMENT FOR SPECIFIC FUTURE SERVICES;

(2) OBLIGATE THE BUYER TO PURCHASE MORE THAN 1 MONTH'S HEALTH CLUB SERVICES; OR

(3) COLLECT MORE THAN 1 MONTH'S PAYMENT IN ADVANCE FOR SERVICES.".

AMENDMENT NO. 3

On page 2, before line 6, insert:

"SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act do not apply to any initial registration or renewal of registration until September 1, 1997.";

and in line 6, strike "2." and substitute "3.".