

ANNOTATED CODE OF MARYLAND
COMMERCIAL LAW - TITLE 14.
MISCELLANEOUS CONSUMER PROTECTION PROVISIONS
SUBTITLE 12B. HEALTH CLUB SERVICES

§ 14-12B-01. Definitions.

(a) *In general.*-

In this subtitle, the following words have the meanings indicated.

(b) *Health club services agreement; health club services.*-

(1) "Health club services agreement" means an agreement under which:

(i) The buyer of a health club service purchases, or becomes obligated to purchase, health club services to be rendered over a period longer than 3 months; and

(ii) The seller of a health club services agreement collects more than 3 months' payment in advance; and

(iii) The service to be rendered under the agreement is for personal, family or household use.

(2) "Health club services" includes health spa, figure salon, weight reduction center, self defense school, or other physical culture service enterprises offering facilities for the preservation, maintenance, encouragement, or development of physical fitness or physical well-being.

(3) "Health club services" does not include agreements for services rendered by:

(i) Any nonprofit public or private school, college, or university;

(ii) The State, or any of its political subdivisions; or

(iii) Any nonprofit religious, ethnic, community, or service organization.

(c) *Business day.*-

(1) "Business day" means Monday through Friday.

(2) "Business day" includes Saturday if:

(i) The seller of health club services is open to members on Saturday; and

(ii) The health club services contract specifically identifies Saturday as a business day for purposes of the cancellation provisions of this subtitle.

(3) "Business day" does not include legal holidays.

(d) *Division.*-

"Division" means the Consumer Protection Division of the Office of the Attorney General. [1982, ch. 892; 1986, chs. 837, 838; 1990, ch. 582; 1993, ch. 259.]

§ 14-12B-02. Registration requirements; surety of seller of health club services agreement.

(a) *Registration requirements.*- Each person who sells health club services in this in 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) *Registration and renewal fees.*-

(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 \$1200 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) *Resident agent.*- 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) *Compliance procedure.*- 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) *Surety bond requirement; alternative.*-

(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) Claims and actions by buyer of health club services.-

(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) Record of bond; inspection by Division; records.-

(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) *Registration and surety bond of persons selling health club services.-*

(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) *Certain fees deemed payment for services.-* 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) *Availability of information to public.-* 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. [1982, ch. 892; 1983, ch. 548, § 2; 1986, chs. 837, 838; 1990, ch. 582; 1993, ch. 259; 1998, ch. 581.]

§ 14-12B-03. Health Club Administration Fund.

(a) *Established; purpose.-* There is a Health Club Administration Fund which is established for the purpose of paying the expenses incurred in the administration and enforcement of the Health Club Services Act.

(b) *Administration.-* The Fund shall be administered by the Division. [1986, chs. 837, 838.]

§ 14-12B-04. Disability of buyer; closed health club facility.

(a) *Disability of buyer.*- If a buyer described in § 14-12B-01 (b) (1) (i) of this subtitle becomes disabled during the membership term, the buyer is entitled to extend the membership contract for a period equal to the duration of the disability.

(b) *Confirmation of disability.*- The provisions of subsection (a) of this section do not apply unless the disability is confirmed by a physician and is for a period longer than 3 months.

(c) *Closed health club facility.*- If a health club facility at which a buyer of health club services is provided with those services is closed for a period longer than 1 month through no fault of the buyer, the buyer is entitled to:

(1) Extend the membership contract for a period equal to the period during which the facility is closed; or

(2) A prorated refund of the amount paid by the buyer under the contract.

(d) *Remedy choices.*-

(1) If the health club facility is closed through no fault of the seller, the choice of remedy described in subsection (c) of this section shall be made by the seller.

(2) If the health club facility is closed through the fault of the seller, the choice of a remedy described in subsection (c) of this section shall be made by the buyer. [1982, ch. 892; 1986, chs. 837, 838.]

§ 14-12B-05. Cancellation right where facility fails to open for business by date specified.

(a) *Permitted.*- If a health club facility is not in existence on the date the health club services agreement is executed:

(1) The buyer may cancel the contract in the event the facility is not open for business on the date as provided by the agreement; and

(2) The buyer may cancel the contract within 3 business days after the opening of the facility, or after receiving notice of the opening of the facility, whichever comes later, in the event the services or facilities are not available substantially as described in the agreement.

(b) *Refunds.*- If the buyer cancels under this section, the health club facility shall refund any deposit, down payment, or payment on the agreement including any initiation, deposit, membership, or other fees. [1983, ch. 548, § 2; 1986, chs. 837, 838.]

§ 14-12B-06. Automatic renewal clauses; consumer rights; cancellation of agreement; sign characterizing fees and payments.

(a) *Automatic renewal clauses.*- 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) Cancellation of agreement.-

(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) The buyer's right to cancel as defined in this section;

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

(v) 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. Contractually obligate a buyer of health club services to pay in advance of the date the services are provided to the buyer; or

3. Collect from a buyer of health club services any payment in advance of the date the services are provided to the buyer.

(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 the specific services and facilities that will be available upon opening.

(c) Sign characterizing fees and payments.- 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) Contractually obligate a buyer of health club services to pay in advance of the date the services are provided to the buyer; or

(3) Collect from a buyer of health club services any payment in advance of the date the services are provided to the buyer. [1982, ch. 892; 1983, ch. 563; 1986, chs. 837, 838; 1988, ch. 6, § 1; 1998, ch. 581.]

§ 14-12B-07. Information required by seller upon permanent closing of facility or bankruptcy.

On the permanent closing of a facility or bankruptcy by the seller, the seller of the health club services shall provide the following information to the Division within 15 business days:

(1) A list of the names and addresses of all members of the health club;

(2) The original or a copy of all membership agreements; and

(3) A record of all payments received under the membership agreements.

[1986, chs. 837, 838.]

§ 14-12B-08. Cease and desist orders; violations deemed unfair or deceptive trade practices.

(a) Cease and desist orders; hearings.- In addition to any remedies otherwise available, if the Division determines that a person is selling health club services agreements in violation of § 14-12B-02 (e) of this subtitle, the Division may issue a cease and desist order without conducting a hearing under § 13-403 of this title. A cease and desist order shall grant the respondent an opportunity to request a hearing under § 13-403, and the hearing shall be held no later than 7 days after the request. If no request is made, any order entered under this section shall be final 30 days after entry.

(b) Sales violating provisions deemed unfair or deceptive trade practice.- Each sale of a health club services agreement that violates any provision of this subtitle, or a violation of § 14-12B-07 of this subtitle, is an unfair or deceptive trade practice under Title 13 of this article. [1982, ch. 892; 1983, ch. 548, § 1; 1986, chs. 837, 838; 1987, ch. 11, § 1.]