

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 187
Economic Matters

(Delegate W. Miller)

Consumer Protection - Health Clubs - Surety Bond Requirements

This bill establishes requirements for the surety bond that must be purchased to sell health club service agreements in the State. The bill places a \$200,000 ceiling on the value of the surety bond, *regardless of the number of facilities operated by the seller*. The bill also alters the circumstances in which the bond amount must be increased and repeals the requirement that the seller of health club service agreements stop sales immediately upon outstanding liabilities exceeding the bond amount.

Fiscal Summary

State Effect: The bill's changes can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill requires that (1) the bond be written by a surety authorized to write surety insurance in the State and (2) the Consumer Protection Division of the Office of the Attorney General (division) be named as an obligee for the use and benefit of a health club consumer.

The bill provides a sample bond and requires that a bond be in substantially the same form. The sample bond indicates that the principal, meaning the seller of health club service agreements, and the surety agree that:

- any claim must be filed no later than one year from the date of the health club facility closing or filing of bankruptcy;
- the division may file a claim on behalf of a consumer;
- the bond has full force and effect and, unless the surety or principal cancel, runs concurrently with the entire license period and any subsequent renewal;
- the surety's aggregate liability must never exceed the bond's penal amount, regardless of the number of years the bond remains in effect, the number of claims or claimants, or the number or amount of premiums paid; and
- the surety or principal may cancel the bond by providing the division with 30-days notice, but the surety remains liable for all contracts entered into from the bond's effective date, including the 30-day notification period.

The bill requires that, upon each renewal of the bond, the amount of the bond must be increased, by rider, as necessary if the health club facility's outstanding liabilities to members increase by \$10,000. The bond amount may also be decreased if the outstanding liabilities to members decrease by \$10,000. The decision to increase or decrease the bond amount must be based on a report prepared by an independent certified public accountant and submitted upon each registration renewal.

Current Law: A seller of health club services in the State must register with the division on forms provided by the division. To register, the seller must provide the name and address of each business location where health club services are sold, specified registration fees, and any registration information deemed appropriate by the division. The seller must renew the registration on September 1 of year after the initial registration.

The seller must also purchase a surety bond in an amount at least equal to the outstanding liabilities to members. "Liabilities" is defined in statute as "the moneys actually received in advance from the members less the prorated value of services rendered by the health club facility." Outstanding liabilities include all amounts needed to be refunded to members if the facility closes. The amount of the bond is based upon the amount of outstanding liabilities described in a report prepared by an independent certified public accountant. The seller must submit the report upon the initial registration and at every renewal.

The amount of the bond must be increased to take into account changes in the health club facility's outstanding liabilities to members if the facility's outstanding liabilities to members increase by \$10,000 or on a quarterly basis, whichever comes first. The bond amount may also be decreased if the outstanding liabilities decrease by \$10,000. If outstanding liabilities to members exceed the bond amount, the selling of health club service agreements must stop until the bond amount is adjusted to cover the outstanding liabilities.

Instead of a surety bond, a seller may file an irrevocable letter of credit or cash with the division. A seller does not have to file a bond, letter of credit, or cash in excess of \$200,000 per health club services facility. The bonding requirement 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.

Background: According to the division's website, there are 298 registered sellers of health club services in Maryland, 49 of which are bonded.

Small Business Effect: The bill has a meaningful impact on a seller of health club service agreements and sureties, both of which may be a small business, for numerous reasons. Placing a cap on the amount of surety bond needed to operate may lower the amount of premiums paid by a seller to a surety; thus, decreasing revenues for the surety and expenditures for the seller.

Additionally, the bill repeals the requirement that the seller stop selling health care service agreements *immediately* if outstanding liabilities to members increase beyond the bond amount. Under the bill, the seller would have to increase the bond amount only at the time of renewal. This allows sellers to continue to sell agreements until the time of renewal, even if outstanding liabilities are greater than the bond amount at a point during the year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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mm/kdm

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