

CHAPTER 367—H.F.No. 949

An act relating to consumer protection; requiring registration for health, buying, and social referral clubs; providing bonding and alternative security requirements; regulating bond claims; appropriating money; amending Minnesota Statutes 1986, sections 325G.23, subdivisions 4, 8, and by adding a subdivision; and 325G.27.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 325G.23, subdivision 4, is amended to read:

Subd. 4. "Health club" means any corporation, partnership, unincorporated association or other business enterprise ~~organized for profit~~ having the primary purpose of ~~engaging in offering one or more facilities~~ for instruction, training, encouragement or assistance in physical fitness, ~~body building, exercising, reducing, figure development or any other such activities, or furnishing the use of facilities for such activities in return for the payment of a fee entitling the member to the use of the facilities.~~ The term does not include any nonprofit organizations, any private club owned and operated by its members, or any facility operated by the state or any of its political subdivisions.

Sec. 2. Minnesota Statutes 1986, section 325G.23, subdivision 8, is amended to read:

Subd. 8. "Prepayment" means any payment over ~~\$25~~ \$50 for service or merchandise made before the service is rendered or the merchandise is received. ~~It is not a prepayment if a payment for service is made on the same day the service is rendered.~~ The term "prepayment" includes, but is not limited to, the payment of any service fee, initiation fee, application fee, administrative fee, deposit fee, processing fee, enrollment fee, maintenance fee, or similar fee no matter how the fee is denominated. It is not a prepayment if a payment for service is made on the same day the service is rendered. Money received by a club from a financial institution upon assignment of a contract shall be considered prepayment when and to the extent the member is required to make prepayments to the financial institution pursuant to the contract.

Sec. 3. Minnesota Statutes 1986, section 325G.23, is amended by adding a subdivision to read:

Subd. 10. "Outstanding liabilities" means the amount of prepayment actually received from club members less the amount of the prepayment as prorated over the duration of any contract for services rendered by the club.

Sec. 4. Minnesota Statutes 1986, section 325G.27, is amended to read:

325G.27 REGISTRATION REQUIREMENTS, SURETY BOND REQUIREMENT, ALTERNATIVE SECURITY.

Subdivision 1. **REGISTRATION REQUIREMENT.** ~~Every buying club shall maintain a bond issued by a surety company admitted to do business in this~~

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state the principal sum of which shall at all times be at least as great as the sum of (a) the total amount of prepayment received for all contracts of membership entered into after May 31, 1974, and (b) the total of all deposits being held on merchandise ordered or purchased through the club, pursuant to contracts entered into after May 31, 1974. (a) Every buying, health, or social referral club doing business in this state shall register with the attorney general and provide all information requested on forms the attorney general provides. The person shall furnish the full name and address of each business location where the club's memberships are sold as well as any other registration information the attorney general considers appropriate.

(b) Each registrant under this section shall pay a registration fee of \$250 at the time of registration.

On September 1 of each year following the initial registration, each registrant shall pay a renewal fee of \$150 to the attorney general.

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

Subd. 2. **SURETY BOND REQUIREMENT; ALTERNATIVE SECURITY.** (a) Every health club or social referral club shall maintain a surety bond issued by a surety company admitted to do business in this state the principal sum of which shall be at all times at least as great as the total amount of prepayment received for all contracts of membership entered into after May 31, 1974 in an amount not less than the aggregate value of outstanding liabilities to members as defined in section 3. In the case of a renewed lifetime contract, the outstanding liabilities shall be calculated on a prorated basis for not more than 36 months. A copy of the bond shall be filed with the attorney general.

Subd. 3. In no event shall any bond required by this section be less than \$25,000.

Subd. 4. The bond required by this section shall be in favor of the state for the benefit of any member who suffers loss of prepayment made pursuant to a contract entered into after May 31, 1974, due to insolvency of the club or the cessation of business by the club. A copy of the bond shall be filed with the attorney general. Any person claiming against the bond may maintain an action at law against the club and the surety.

Subd. 5. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond.

Subd. 6. This section does not apply to any club which files a declaration, executed under penalty of perjury by the owner or manager of such club, with the attorney general stating that the club does not require or in the ordinary course of business receive prepayment for services or merchandise.

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(b) No club shall be required to file with the attorney general a bond, letter of credit, or cash in excess of \$200,000, regardless of the number of facilities.

(c) The amount of the bond shall be based upon a financial statement covering the immediately preceding 12-month period of the club, and shall be executed under the penalty of perjury by any two duly constituted officers of the corporation, describing the club's outstanding liabilities to the members using generally accepted accounting principles.

The financial statement shall be submitted at the time of initial registration and updated at each renewal under subdivision 1.

(d) If a club's outstanding liabilities to the members exceed the amount of the bond, and the club has failed to increase the bond, then the club shall immediately stop selling club memberships and shall refrain from selling club memberships until the requirements of this subdivision have been satisfied.

(e) An irrevocable letter of credit in a form acceptable to the attorney general, or a cash deposit, may be filed with the attorney general instead of a surety bond where evidence is presented that a surety bond cannot be obtained.

(f) This subdivision does not apply to any club which files a declaration with the attorney general, executed under penalty of perjury by the owner or manager of such club, stating that the club does not require or in the ordinary course of business does not receive prepayment for services or merchandise.

Subd. 3. CLAIMS. (a) A member of a club who suffers or sustains any loss of prepayments of membership fee by reason of the closing of a facility or bankruptcy by the seller of the club membership 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 attorney general, the member may file a claim with the attorney general.

(b) Any claim under paragraph (a) shall be filed no later than one year from the date on which the facility closed or bankruptcy was filed.

(c) The attorney general may file a claim with the surety on behalf of any member. The surety shall pay the amount of the claims to the attorney general for distribution to claimants entitled to restitution and shall be relieved of liability to that extent.

(d) 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.

(e) If the claims filed exceeds the amount of the surety bond, the surety shall pay the amount of the bond to the attorney general for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

Subd. 4. REGISTRATION AND SURETY BOND FOR PLANNED FACILITY OR FACILITY UNDER CONSTRUCTION. (a) Each club that sells club

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memberships to be offered at a planned facility or a facility under construction shall:

(1) register under subdivision 1 before conducting sales activities; and

(2) maintain a surety bond, irrevocable letter of credit, or cash deposit filed with the attorney general, in an amount not less than \$25,000 until the value of obligations to consumers exceeds that amount.

(b) Until the time a person opens a club facility, the amount of the surety 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.

(c) Upon opening the facility, the person is subject to subdivisions 1 to 3.

Sec. 5. APPROPRIATION.

\$36,000 is appropriated from the general fund to the attorney general for the purposes of sections 1 to 4. \$18,500 is for fiscal year 1988 and \$17,500 is for fiscal year 1989. The approved complement of the attorney general is increased by one position.

Approved June 2, 1987

CHAPTER 368—H.F.No. 1015

An act relating to motorboat and motor vehicle safety; providing for enforcement of sanctions for operation of snowmobiles, all-terrain vehicles, and motorboats while under the influence of alcohol or a controlled substance; providing for revocation of privilege to operate snowmobile or all-terrain vehicle as sanction for implied consent violation; amending Minnesota Statutes 1986, sections 84.87, subdivision 2, and by adding a subdivision; 84.928, subdivision 3; 169.121, by adding a subdivision; 361.121, subdivisions 2 and 3, and by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 84.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 84.87, subdivision 2, is amended to read:

Subd. 2. **OPERATION GENERALLY.** It shall be unlawful for any person to drive or operate any snowmobile in the following unsafe or harassing ways:

(a) At a rate of speed greater than reasonable or proper under all the surrounding circumstances;

(b) In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;

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