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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Tuesday, April 3, 2018
10:30 A.M.

TESTIMONY ON SENATE BILL NO. 2770, S.D. 1, H.D. 1, RELATING TO HEALTH CLUBS.

TO THE HONORABLE SYLVIA J. LUKE, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department” or “DCCA”) appreciates the opportunity to testify on S.B. 2770, S.D. 1, H.D. 1, Relating to Health Clubs. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection. The Department strongly supports this administration bill.

As currently written, Hawaii Revised Statutes (“HRS”) chapter 486N provides few protections for consumers when a health club ceases operations or becomes insolvent. Recently, Hawaii consumers experienced several health club closures. In those instances, consumers who paid for services had no recourse in recovering membership dues and initiation fees they paid in advance. H.D. 1 amends this measure by: allowing as an alternative to a surety bond, requiring health clubs to maintain a letter of credit or a guaranty agreement secured by a certificate of deposit of at least \$100,000; clarifying that a surety bond, irrevocable letter of credit, or certificate of deposit shall be issued by a surety authorized to do business in the State or from a Hawaii state or federally

chartered bank; removing the requirement that a health club pay its members who suffered loss of money due the health club's insolvency; and changing the effective date to July 1, 2050, to facilitate further discussion..

SECTION 1 of this bill adds a new section to HRS chapter 486N that requires health clubs to maintain a \$100,000 surety bond, irrevocable letter of credit, or certificate of deposit that names the Director of the DCCA ("Director") as the obligee. Health clubs that do not collect payment for more than one month of service from a buyer; do not collect annual, initiation, enrollment, or other fees that total more than \$200, and do not collect payments that are identified as payment for specific future monthly services are exempted from this requirement.

The surety bond, irrevocable letter of credit, and guaranty agreement secured by a certificate of deposit would help consumers recover dues and fees they paid in advance to the health club when it goes out of business. The new section also defines which buyers may receive payment from the surety bond; authorizes the Director to adjudicate surety claims; outlines the form of the surety bond; establishes notice requirements for the release of the surety bond; and lists the information a health club must provide to the Director fifteen days after it ceases operation or has become insolvent.

The Department submits the following clarifying language to subsection (b), paragraph (4) on page 2, lines 8-10: "Issued by a surety authorized to do business in the State or from a Hawaii state or federally chartered bank, trust company, savings bank, or savings and loan association qualified to do business in Hawaii and insured by the federal deposit insurance corporation." This amendment would expand the types of financial institutions, besides banks, from which a health club could obtain an irrevocable letter of credit or certificate of deposit to meet the requirements of this bill.

SECTION 2 of this bill amends HRS section 486N-10 by adding a requirement that health clubs subject to chapter 486N must provide the Director with a surety bond, irrevocable letter of credit, or guaranty agreement secured by a certificate of deposit before it may be considered fully operative.

Thank you for the opportunity to testify in strong support of this administration bill, and we ask for your favorable consideration.



**International
Health, Racquet &
Sportsclub Association**

Representative Sylvia Luke
Chair
House Committee on Finance
Hawaii State Capitol, Room 306
415 South Beretania St.
Honolulu, HI 96813

RE: Senate Bill 2770 Relating to Health Clubs

Dear Chairperson Luke,

My name is Joe Moore. I am the CEO of the International Health, Racquet & Sportsclub Association (IHRSA), the leader in education, research, and advocacy for the health and fitness industry, representing health clubs and fitness businesses worldwide, including in Hawaii. On behalf of our member health clubs located throughout Hawaii, I am writing to express a number of concerns with Senate Bill 2770 (SB 2770) as currently written.

We agree with the intent to consumers. However, IHRSA opposes SB 2770 as currently written because we believe that imposing a financial security requirement for health clubs of \$100,000, would create a significant barrier to businesses that wish to open new locations, create new jobs, and provide much-needed fitness services to an increasingly sedentary population.

Amount of Bond

The bond amount of \$100,000 per club is excess, to the point of seeming punitive. We suggest amending the bill to \$50,000 per club, with a cap of \$250,000 for organizations with five (5) or more clubs. Doing so would bring Hawaii in line with states which apply a bond of \$50,000 or less to health clubs.¹ This amount ensures that a closing club could refund any prepaid funds to consumers without stifling the health club industry in Hawaii.

¹ Alabama, Delaware, Florida, New Hampshire, Rhode Island, Louisiana, Wisconsin, and West Virginia

**International
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Exemptions for Well Established Clubs (5 years or more)

Finally, we suggest exempting clubs that have been in operation for five (5) years or more from the bonding requirement. Exempting well-established clubs from the bonding requirement is an approach adopted in several other states including:

- Florida (5 years of operation)
- Missouri (3 years)
- Ohio (2 years)
- South Carolina (5 years)

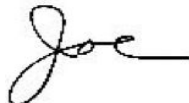
The purpose of the bonding requirement is to protect consumers from new and unproven business ventures. Clubs that have been in operation for five or more years have demonstrated stability and viability and should not be burdened with a bonding measure intended to protect against unproven ventures.

Today, Hawaii has 119 health clubs, employing almost 5,000 people, and offering an increasingly wide range of physical fitness services to over 264,000 Hawaii residents. The health club industry continues to mature, fueled by a growing set of consumers who seek effective ways to take a proactive, preventative approach to their health and well-being.

We appreciate and agree with the House Consumer Protection & Commerce committee's measured approach in allowing plenty of time for clubs to implement this provision and for further consideration of this matter. We urge you to consider amending SB 2770 to make the bonding requirements more reasonable, accessible, and equitable. Excessive bond requirements act as a barrier for small businesses and fitness professionals and reduce consumer choice.

Thank you for considering our letter. If you have questions or information requests, please do not hesitate to contact Jeff Perkins in our office at jdp@IHRSA.org or (617) 951-0055.

Sincerely,



Joe Moore
CEO, IHRSA