



February 26, 2024

The Honorable Jeion Ward
Chair, House Committee on Labor and Commerce
House Committee Room A-008
General Assembly Building
Richmond, VA 23219

Favorable with Amendments to SB 388 - Virginia Consumer Protection Act; prohibited practices, mandatory fees disclosure

Dear Chair Ward,

I am writing on behalf of the health and fitness industry in Virginia to urge you to amend SB 388.

IHRSA—The Health & Fitness Association, is the leading trade association dedicated to enhancing mental and physical health through creating adequate access to physical activity. From health and fitness facilities, gyms, studios, sports and aquatic facilities, and industry partners—IHRSA works to promote and protect the Health & Fitness Industry to ensure there are diverse options to keep individuals moving. In Virginia, the health and fitness industry comprises more than 900 fitness facilities, allowing nearly 1.5 million to stay physically active in the way that is right for them.

We appreciate that the legislative process allows your office to collaborate with entrepreneurs, small business owners, and established employers to create guidelines that benefit consumers throughout the Commonwealth.

IHRSA and the industry understand the intent of the proposed legislation, but as currently written, it creates uncertainty in its application to health and fitness industry operators and membership agreements.

The proposed bill states, “Advertising, displaying, or offering any pricing information for goods or services without prominently displaying the total price, which shall include all mandatory fees or charges other than taxes imposed; and.” We are unclear about the intent or requirements of “total price” and find the term unnecessarily subjective.

Before signing an agreement, consumers receive a comprehensive briefing on the terms, conditions, and costs of their continuous service agreement. The final “total price” may differ from consumer to consumer, including initiation fees, annual charges, monthly fees, and

optional services impacting the final agreed-upon “total price.” Therefore, advertising a final total price excluding government fees is virtually impossible in general application.

Additionally, some industry members offer personal training, spa treatments, and other ancillary services as a la carte options. These options are not automatically included in a membership and come at an additional cost that could be applied to the continuous service transaction, unable to be included in disclosure prior to their purchase. The bill creates the perception that ancillary services need to be disclosed upfront and in advertisements, regardless of whether consumers request or utilize these services. It is unclear whether “total price” includes the total price for the length of a health club contract term, annual fees, or ancillary goods or services such as personal training, massage therapy, or spa treatments. We believe that the term “total price” does not provide sufficient clarity for industries such as ours that calculate charges based on increments of time and provide optional ancillary services.

Additionally, IHRSA is providing comments to the U.S. Federal Trade Commission’s proposed rulemaking on Unfair or Deceptive Fees¹, which includes clarification around total price disclosure at the federal level. We are hopeful that the Biden Administration will ultimately issue a practical rule that applies to health clubs nationwide, eliminating the need for a patchwork of state statutes.

Considering that the bill does not take into account practical applications in the health and fitness industry and would create an unworkable system of price declaration in implementation, we urge the committee to amend the bill. Our proposed amendments are included in this document below.

Thank you for the opportunity to share our concerns and echo our support for laws that protect health club consumers through practical legislation. Should you have any questions, please contact me at mike.goscinski@ihrsa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Goscinski", written in a cursive style.

Mike Goscinski

¹<https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees>

Vice President for Government Affairs
IHRSA–The Health & Fitness Association

CC: Members of the Committee on Labor and Commerce

Summary of Amendments:

Page 4

Lines 214: Strike 'displaying,' after 'advertising,'

Line 215: Strike 'prominently' before 'displaying' and insert 'clearly and conspicuously' before 'displaying' and insert 'before the consumer becomes initially obligated to pay,' before 'which'

Line 226: Insert ' Compliance by a person making automatic renewal or continuous service offers as provided by Va. Code. Ann. § 59.1-207.46 and The Virginia Health Club Act, Va.Code §§59.1-294 et seq. shall be deemed compliant with this subdivision.' after 'subdivision.'

Line 227: Strike 'displayed' after 'advertised,' and insert 'before the consumer becomes initially obligated to pay' after 'offered'

Line 227: Strike 'display' after 'advertise,'

Line 228: Insert 'before the consumer becomes initially obligated to pay' after 'services'

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214 78. Advertising, displaying, or offering any pricing information for goods or services without

215 ~~prominently~~ clearly and conspicuously displaying the total price before the consumer becomes initially obligated to pay, which shall include all mandatory fees or charges other than

216 taxes imposed. As used in this subdivision, "mandatory fees or charges" includes (i) any fee or

217 surcharge that must be paid in order to purchase the good or service being advertised, (ii) any fee or

218 surcharge that is not reasonably avoidable, and (iii) any fee or surcharge for any good or service that a

219 reasonable consumer would expect to be included with the purchase of the good or service being

220 advertised. "Mandatory fees or charges" does not include shipping fees or taxes or fees imposed on the

221 consumer by a government or government-approved entity or assessment fees of a government-created

222 special district or program paid to the government or government-approved entity. Compliance by a

223 person providing broadband Internet access service on its own or as part of a bundle, as defined in 47

224 C.F.R. § 8.1(b), with the broadband consumer label requirements adopted by the Federal

225 Communications Commission in FCC 22-86 on November 13, 2022, codified in 47 C.F.R. § 8.1(a), shall

226 be deemed compliant with this subdivision. Compliance by a person making automatic renewal or continuous service offers as provided by Va. Code. Ann. § 59.1-207.46 and The Virginia Health Club Act, Va. Code §§59.1-294 et seq. shall be deemed compliant with this subdivision. It shall not be a violation of this subdivision for any supplier

227 to (a) reduce the total price that was advertised, ~~displayed~~, or offered before the consumer becomes initially obligated to pay or (b) advertise ~~display~~, or offer

228 pricing information for goods and services before the consumer becomes initially obligated to pay in compliance with specific laws and regulations of the

229 Commonwealth applicable to such supplier; and