

Mr. Chairman, members of the Senate Judiciary Committee, my name is Lori Herf and I am here today to testify on behalf of The International Health, Racquet & Sportsclub Association (IHRSA).

The Association represents more than 1000 health clubs in Ohio with nearly 3 million members. The clubs employ nearly 49,000 Ohioans, generate more than \$800 million in revenue, pay nearly \$314 million in compensation and benefits for employees; and pay more than \$25 million in federal payroll taxes.

### **Prepaid Entertainment Contract Act (PECA)**

More than 40 years ago the Ohio General Assembly adopted PECA R.C. 1345.41-1345.50, to protect consumers against deceptive and unconscionable practices while also protecting small businesses from the devastating losses of a class action suit. PECA applies to prepaid contracts used by health spas or gyms, as well as dance and martial arts studios, dating services, and any other facility providing instruction, training, or assistance in physical or figure development.

PECA requires that businesses give consumers a 3-day period to sample their services and, if they wish, cancel the contract and receive a refund. Businesses must give notice of the 3-day right to cancel in a particular way—by filling out a verbatim notice of cancellation form, in duplicate, that is detachable from the contract. If the business does not provide the notice in this precise way, the consumer's 3-day cancellation period is extended, such that the consumer who

cancels—even after enjoying the service for years—may receive a refund of all payments (except \$10) made under the contract. If the business does not provide the refund within 10 days, the consumer may seek double the refund amount, plus attorney’s fees.

## **Problem**

No Ohio state court has ever certified a class of consumers in a class action to recover refunds, or double refunds, by consumers for a violation of PECA. Nor has any other court in states with nearly identical statutes. But in a pending federal court case, the judge certified a class of health club members who—because they did not receive notice of the 3-day right to cancel in the precise way PECA required—are seeking collectively to obtain refunds of *tens of millions of dollars* (i.e., retroactive free memberships) for club services they enjoyed, in some cases for almost two decades, under month-to-month memberships with a 14-day right to cancel.

## **Clarification of Existing Statute**

We request remedial language to clarify the intent of the legislature for more than forty years—that PECA’s remedies are available in individual actions, not class actions. The availability in an individual action of a full refund—let alone refunds that may be doubled, plus attorneys’ fees—preserves incentives for the business to comply and the consumer to challenge PECA violations. But full refunds for years of services rendered were never intended to be remedies in a class action under the current statute. To permit a named plaintiff to recover complete refunds, plus attorney fees, on behalf of an entire class of consumers can make a small technical violation

threaten the very existence of a business through windfall recoveries out of all proportion to the violation. Misuse of class actions in PECA matters poses grave threats to the continued operation of Ohio businesses, often small studios, clubs or other instructional or training facilities in every district in the state of Ohio.

Chairman Eklund, members of the committee, I appreciate your consideration of this amendment and am happy to entertain any questions that you may have.