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**SUBSTITUTE SENATE BILL 5553**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senator Hunt)

AN ACT Relating to safety and sanitation of fitness centers; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the state board of health.

(2) "Department" means the department of health.

(3)(a) "Fitness center" means any premises used for recreation, instruction, training, physical exercise, body building, weight loss, figure development, the martial arts, or other similar activity, including fitness centers, athletic clubs, and private gyms, that provide shower facilities and a swimming pool, hot tub, cold plunge pool, steam room, sauna, or similar water amenity.

(b) "Fitness center" does not include: (i) Public common schools, private schools approved under RCW 28A.195.010, and public or private institutions of higher education; (ii) facilities operated by bona fide nonprofit organizations which have been granted tax-exempt status by the internal revenue service, the functions of which as fitness centers are only incidental to their overall functions and purposes; (iii) facilities operated by bona fide nonprofit corporations organized under chapter 24.03 RCW which have members and whose members have meaningful voting rights to elect and remove a board of directors which is responsible for the operation of the health club and the corporation; and (iv) private facilities operated out of a home that do not offer memberships.

(4) "Local health officer" means the health officer of the city, county, or city-county department or district, or a representative authorized by the local health officer.

(5) "Person" means an individual, firm, partnership, copartnership, corporation, company, association, club, government entity, or organization of any kind operating a fitness center.

(6) "Secretary" means the secretary of health.

NEW SECTION. **Sec.**  ADOPTION OF RULES GOVERNING SAFETY AND SANITATION. The board must adopt rules under the administrative procedure act, chapter 34.05 RCW, governing safety and sanitation for fitness centers. The rules must include, but not be limited to, requirements for design; operation; injury and illness reporting; inspection; permit application and issuance; and enforcement procedures.

NEW SECTION. **Sec.**  ENFORCEMENT. (1) The secretary shall enforce the rules adopted under this chapter. The secretary may develop joint plans of responsibility with any local health jurisdiction to administer this chapter.

(2) Nothing in this chapter prohibits any local board of health from establishing and enforcing any provisions governing safety or sanitation for fitness centers in addition to those rules established by the state board of health under this chapter.

NEW SECTION. **Sec.**  FEES. (1) The department may establish and collect fees sufficient to cover the department's costs incurred in carrying out its duties under this chapter. The fees must be deposited in the state general fund.

(2) Local health officers may establish and collect fees sufficient to cover the costs incurred in carrying out their duties under this chapter and the rules adopted under this chapter.

(3) A person may not be required to submit fees at both the state and local levels.

NEW SECTION. **Sec.**  OPERATING PERMIT. An operating permit from the department or local health officer, as determined in rule, is required for each fitness center operated in this state. The permit must be renewed annually. The permit must be conspicuously displayed at the fitness center.

NEW SECTION. **Sec.**  STATE AND LOCAL HEALTH JURISDICTION LIABILITY. (1) Nothing in this chapter or the rules adopted under this chapter creates or forms the basis for any liability:

(a) On the part of the state and local health jurisdictions, or their officers, employees, or agents, for any injury or damage resulting from the failure of the owner or operator of fitness centers to comply with this chapter or the rules adopted under this chapter; or

(b) By reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter or the rules adopted under this chapter on the part of the state and local health jurisdictions, or by their officers, employees, or agents.

(2) All actions of local health officers and the secretary under this chapter or the rules adopted under this chapter must be deemed an exercise of the state's police power.

NEW SECTION. **Sec.**  REPORTING OF INJURY, DISEASE, OR DEATH. Any person operating a fitness center shall report to the local health officer or the department, as determined in rule, any serious injury, communicable disease, or death occurring at or caused by the fitness center.

NEW SECTION. **Sec.**  CIVIL PENALTIES. County, city, or town legislative authorities and the secretary, as applicable, may establish civil penalties for a violation of this chapter or the rules adopted under this chapter, not to exceed five hundred dollars. Each day upon which a violation occurs constitutes a separate violation. A person violating this chapter may be enjoined from continuing the violation.

NEW SECTION. **Sec.**  ADJUDICATIVE PROCEEDING—NOTICE. (1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. RCW 43.70.095 governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice must be provided by the local health jurisdiction consistent with its due process requirements.

NEW SECTION. **Sec.**  INSURANCE. (1) A fitness center owner or operator shall purchase insurance in an amount not less than one hundred thousand dollars against liability for bodily injury to or death of one or more persons in any one accident arising out of the use of the fitness center.

(2) The board may require a fitness center operator to purchase insurance in addition to the amount required in subsection (1) of this section.

NEW SECTION. **Sec.**  Any provision of a contract, agreement, or waiver that limits the liability of a fitness center owner or operator for physical injuries sustained at the owner or operator's fitness center resulting from the owner or operator failing to provide a reasonably safe facility violates public policy and is void and unenforceable.

NEW SECTION. **Sec.**  Sections 1 through 11 of this act constitute a new chapter in Title 70 RCW.

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