

Approved 3-14-88 Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at
Chairperson

10:00 a.m./~~p.m.~~ on February 29, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research
Bill Wolff, Legislative Research
Norman Furse, Revisors Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

David Moses, District Attorney, Sedgwick County
Art Weiss, Consumer Protection, Office of the Attorney General
Dennis Moore, District Attorney, Johnson County
Tom Burgess, Affiliated Fitness Centers of Kansas
Kathleen Piper, President, Affiliated Fitness Centers of Kansas

David Moses, Sedgwick County District Attorney, appeared in support of SB-609. Mr. Moses stated that in his position he has an opportunity to see, first hand, problems both local and state consumers face in the area of health clubs. There appears to be a lack of specific regulation of health clubs in Kansas. Twenty-seven states now have such laws. Regulations should include registration, escrow of prepayments, bonding, certain contract provisions, right to cancel, disclosure of all membership plans and certain definitions of criminal acts as provided in SB-609. Attachment 1

Art Weiss from the Attorney General's Office stated that the Attorney General supports SB-609. Mr. Weiss stated that thousands of consumer dollars are lost as health spas fail to provide services and facilities as promised. Many clubs are undercapitalized. They file bankruptcy within months of their opening after collecting thousands of dollars for "lifetime" memberships. Sales representatives make claims for future improvements like racquetball courts or swimming pools. Those improvements never materialize. Mr. Weiss stated that reference to assignments and transfers of the contract in lines 0383 through 0387 are unclear. It was also stated that Attorney General Stephan requests enforcement power under the bill's criminal provisions rather than as stated in lines 0448 through 0450 which allow enforcement by the county and district attorneys only. Attachment 2

Dennis Moore, Johnson County District Attorney appeared in support of SB-609. Mr. Moore stated that he was interested in protecting the consumers of Johnson County. Mr. Moore stated two concerns regarding SB-609. The first concern, lines 150-179 deals with notarized statements, which Mr. Moore felt were of little value. Secondly, lines 326-356 dealing with fulfilling certain requirements should the spa go out of business should state that the services presently provided must be replaced with substantially equivalent services. Thirdly, new Section 17, line 396, would rule out special corporate memberships and could be corrected by using "prospective individual members." This would allow corporate members some leeway.

Tom Burgess appeared in opposition of SB-609, representing the Affiliated Fitness Centers of Kansas. Mr. Burgess stated that the bond requirement in this bill would pose an enormous problem with both cost and availability of bonds for Fitness Centers. The requirement of a written contract could pose problems as some clubs do not use written contracts. The requirement of the three day cancellation clause being in 10 point

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 29, 1988.

boldface type could encourage people to cancel when stiffness and soreness result after the first several days of workouts. Finally, the fact that SB-609 prohibits the use of finance companies would cause problems for new businesses. Attachment 3

Kathleen Piper, President, Affiliated Fitness Centers of Kansas told the committee the stated bond requirement for new businesses was not objectionable to her organization. Concerning the contract, Ms. Piper stated that some businesses do not use contracts, they use a month to month pay basis which would, in essence, protect the consumer. The limit on down payment clause, also, use of finance companies, would make it more difficult to conduct business. Ms. Piper stated she had no quarrel with the three day cancellation clause but did feel the presentation in point 10 bold face type was not needed.

The meeting adjourned at 10:59 a.m. and will convene at 10:00 a.m. in Room 526-S on March 1, 1988.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2/29/88

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

KAREN McCLEIN

KAR

KETH R LANDIS

CHRISTIAN SCIENCE COMMITTEE
ON PUBLICATION FOR KANSAS

Jim McBurn

Observer

Cherry Smith

observer.

Bob Allen

AD's office

John Murre

DA - Johnson County

Caroline Porey

DA's office - Sedg Co.

DAVID Moses

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TESTIMONY

TO: SENATE COMMITTEE FOR PUBLIC HEALTH & WELFARE

FR: DAVID H. MOSES, DIRECTOR, CONSUMER FRAUD & ECONOMIC
CRIME DIVISION OF THE SEDGWICK COUNTY DISTRICT ATTORNEY'S
OFFICE

RE: SENATE BILL 609 - AN ACT AMENDING AND SUPPLEMENTING
THE KANSAS CONSUMER PROTECTION ACT; PROVIDING FOR
THE REGULATION OF HEALTH SPAS; ESTABLISHING CERTAIN
REQUIREMENTS AND PROHIBITIONS; PRESCRIBING CERTAIN
PENALTIES;

DA: FEBRUARY 29, 1988 - STATE CAPITOL, TOPEKA, KANSAS

Thank you for the opportunity to address Senate Bill 609. As Director of the Sedgwick County District Attorney's Consumer Fraud Division, I have the opportunity to see first hand the problems both local and state consumers face in the marketplace. A very important area of concern in consumer circles is the lack of specific legislation regulating health clubs.

Health consciousness is strong and seems likely to continue. There is an emphasis on maintaining good health and part of the "health package" is looking fit and trim. It appears the health trend will continue, and the health spa industry will take full advantage of this development.

The consumer is initially subjected to what is called "hard sell" within the industry. The hard sell can take a number of forms. Consumers are often enticed into joining clubs by the offer of trial memberships. Other approaches are through advertisements that promise, but don't deliver, prices that aren't what they seem, misrepresentation of facilities and the expertise of instructors, and contracts that fail to disclose. After the hard sell, consumers change their minds, but are faced with contract terms that bind them to payments.

Assuming the consumers can avoid becoming the victims of "hard sell," they are still faced with avoiding health risks. Some exercise programs are ineffective or even hazardous. An instructor's incompetence usually shows up in unnecessary aches and pains by the consumer, possible stress fractures and other minor injuries. A good club will ask for a medical and exercise history. The club will make every effort to insure against consumer injury.

The health spa industry, on the national level, has received much attention for the last ten years. In 1980 the Consumer-Affairs Department for the Washington, D.C. suburbs reported a one-year jump of 600% in complaints about exercise centers. In the Chicago area six spa chains, serving a quarter of a million people either closed or were sued for alleged fraud. Nationwide, complaints to the Better Business Bureau about health clubs soared 66% in 1982. By 1983 abuses and a string of bankruptcies prompted at least seventeen states to pass legislation regulating the fitness industry.

In the spring of 1986, the Consumer Fraud Division of the Sedgwick County District Attorney's Office initiated a summary report on the nation's health spa laws. Of the fifty-one responses, twenty-seven (53%) have specific health spa legislation. These states are: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New York, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Virginia and Wisconsin. The Missouri legislature is also currently considering a bill, Missouri Senate Bill 486, to regulate health spas. A copy of this report is included for your review.

There are several key areas included within the legislation adopted by the twenty-seven states listed above. Every state requires that contracts have provisions for cancellation. The most common of these provisions is a "cooling off" period of three to ten days during which the buyer may cancel his contract without any penalties. Most refunds must be issued within a set period of time. Other common provisions are cancellation as a result of the death or disability of the buyer and cancellation if the spa or buyer moves.

Many states have found that regulation of spas that sell contracts prior to opening is necessary. Twenty-two states have included provisions that govern unopened spas in their laws.

Eighteen states require that the health spas maintain a bond to cover consumer claims against the spas. The amount of bonding ranges from a minimum of \$10,000 in Virginia to \$200,000 in Maryland. Some states require that the bond be kept only until opening, but most require a bond for the life of the spa.

Twenty states have required that there be a maximum duration for health spa contracts. In addition, eight states have indicated that contracts may not be measured by the life of the buyer. This is in the form of either a specific provision or the general requirement that there be no automatic renewals of health spa contracts. Fifteen states have some kind of provisions for renewal of contracts.

Finally, eleven states require that health spas must register with a governmental agency. Registration entails many things, from filling out an application form and paying a fee to establishing a bond or letter of credit. Alabama, Maryland and Nevada require that there be a registered agent. Connecticut has established the Health Club Guaranty Fund to cover claims that consumers have against spas that have closed.

It is evident that as more consumers are injured physically and financially, more states are adopting legislation to specifically regulate health spas. The most popular aspects of these laws, thus far, are cooling off periods after entering into contracts, required bonding, provisions for cancellation of contracts, and protection prior to a club opening. It is hoped that the establishment of these laws has helped to curb fraudulent activities by the health spas in the states which have established these laws.

A year does not go by without a large number of inquiries and complaints to this office. The graph attached to this testimony shows the increasing number of consumer complaints about health spas which have been filed with our office. The vast majority of these complaints pertain to health spas that have closed without notice, leaving their members financially affected. The problem is not limited to Sedgwick County alone; a recent health club closing in Kansas City affected over 1,500 consumers. Although Kansas has a good, strong and effective Consumer Protection Act, it falls short of providing the necessary protection for consumers falling prey to the continuous problems within the health club industry.

The honest businessman within the health club industry is also victimized by his "brethren." They satisfy the needs of their members without taking advantage of them but the industry suffers due to those who choose to violate the rights of consumers. It is clear that Kansas should join the majority of states which have seen the need to specifically legislate the health spa industry. Regulations included in Senate Bill 609 are registration, escrow of prepayments, bonding, certain contract provisions, right to cancel, disclosure of all membership plans and certain definitions of criminal acts.

Health spas are required to file a registration statement with the Secretary of State. This statement and the information contained therein will help the Secretary of State and enforcement agencies in enforcing the act.

The maintenance of escrow accounts by "new" clubs will protect consumers from paying for a service that they never receive. Existing clubs in "good standing" as defined in New Section 9(d) receive consideration for their status in the form of a reduced escrow account.

All clubs must also maintain a surety bond which shall be held for the benefit of any member of the club who suffers a financial loss due to the closing of a club. The amount of the bond varies between \$50,000 and \$200,000. Again, clubs in "good standing" receive consideration by only having to maintain a smaller bond, \$25,000.

Contract terms must be fully set out. Limitations on the term of the contract, amount of renewal fee and amount of down payment are included.

Consumers are provided a cooling off period which gives them the right to cancel the contract before the fourth business day. This is important due to the "hard sell" discussed earlier in this testimony.

It is also important that consumers be given all membership options available to all prospective members. This will insure the consumers' ability to make a fully informed decision. The provisions in New Section 17(b) will also protect consumers from misrepresentations during the "hard sell."

Finally, New Section 19 provides criminal sanctions which distinguishes between failures to register, escrow money or secure bonds and intentionally concealing, altering, destroying or falsifying records. The former is a Class A misdemeanor and the latter is a Class D felony.

These provisions are a must to ensure integrity within the marketplace. If Kansas is to pursue economic development it must be able to assure prospective residents and corporations that it can protect consumers from fraudulent practices.

In conclusion, I encourage you to join the majority of states nationwide in enacting Health Spa legislation by voting favorable for Senate Bill 609.

Respectfully submitted,



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Economic Crime Division

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SUMMARY REPORT: HEALTH SPA LAWS

I. INTRODUCTION

Fifty-three requests for health spa legislation were sent out to American Samoa, Guam, Puerto Rico, the Virgin Islands, and the various states, not including Kansas. To date, of those requested, only two have not yet replied (the Virgin Islands and West Virginia). Thus fifty-one or ninety-six percent have responded.

Of the fifty-one responses, twenty-seven (53%) have specific health spa legislation. These states are: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New York, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin.

It should be noted that Kansas has no specific laws which regulate health spas. Kansas utilizes the Kansas Consumer Protection Act.

Following this introduction, the Summary Report discusses registration procedures, required bond amounts, provisions that govern unopen spas, contract duration, renewal provisions, financing periods, provisions for cancellation of contracts, enforcement of the various laws, and miscellaneous notes on each law.

After a summary of each section, there is a description of each state's law in regard to that section. Following the report is a table which recapitulates the study and a summary of the health spa laws of the United States.

II. REGISTRATION PROCEDURES

Eleven states require that health spas must register with a governmental agency. Registration entails many things, from filling out an application form and paying a fee to establishing a bond or letter of credit. Alabama, Maryland, and Nevada required that there be a registered agent. Connecticut has established the Health Club Guaranty Fund to cover claims that consumers have against spas that have closed.

Alabama:

- register with the Attorney General's Consumer Protection Division and furnish name and address of each business location, as well as any other registration information the Division deems appropriate
- registered agent required representing each seller of health spa services
- bond or irrevocable letter of credit
- must keep records of bond and premium payments on it

Arizona:

- none

California:

- none

Connecticut:

- must be licensed by Department of Consumer Protection and provide a list of each piece of equipment and each service available and two copies of each contract the spa intends to use
- fee of \$100; renewal fee of \$200
- pay a \$300 fee annually to the Connecticut Health Club Guaranty Fund
- if refused a license, spa may request a hearing within ten days to hear grounds for refusal of license

Florida:

- register with Department of Agriculture and Consumer Services
- maintain a bond for three years after commencing business of a letter or credit or certificate of deposit
- fee of \$100 per location

Georgia:

- none

Hawaii:

- none

Illinois:

- none

Indiana:

- none

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Kentucky:

- register with the Attorney General's Division of Consumer Protection by providing name and address of health spa; names and addresses of the officers, directors, and stockholders; the type of available facilities; approximate size of health spa; whether or not a shower is provided; the names and addresses of employees and their respective qualifications for employment; type of membership plans to be offered and their costs; and a full and complete disclosure of any completed or pending litigation initiated against the health spa and any of its officers and directors within the last three years
- bond or proof of financial responsibility required with annual documentation

Louisiana:

- none

Maryland:

- must register with the Consumer Protection Division, giving full name and address of each spa location
- registered agent required
- bond required
- fee \$250

Massachusetts:

- none

Minnesota:

- none

Mississippi:

- file a statement with the Attorney General's Division of Consumer Protection which includes the name and address of the health spa; the names and addresses of the officers directors, and stockholders of the health spa and its parent corporation, if such an entity exists; the types of available facilities; approximate size of the spa; the type of membership plans to be offered and their costs; and a full and complete disclosure of any completed or pending litigation initiated against the spa and any of its officers and directors within the last three years
- \$25,000 bond filed with the Office of the State Treasurer or case deposit with the State Treasurer satisfied by certificate of deposit; investment certificates of share accounts; US bearer bonds; or cash deposit with the State Treasurer

Nevada:

- must register with the Consumer Affairs Division, providing full name and address of spa
- resident agent required

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New Hampshire:

- file a statement with the Attorney General's Consumer Protection and Anti-trust Division which includes name and address of spa; names and addresses of officers, directors, and stock holders of spa and parent corporation, if such an entity exists; type of available facilities; written list of each piece of equipment and service; size of the spa; whether or not shower facilities are provided; names and addresses of employees and their respective qualifications; type of membership plans and their costs; a full and complete disclosure of pending or completed litigation against the spa and any of its officers or directors within the last three years
- keep registration statement on premises
- must be updated semiannually
- \$50,000 bond or cash equivalent or marketable securities or provide financial statements

New York:

- none

North Carolina:

- none

Oregon:

- none

Rhode Island:

- none

South Carolina:

- must obtain a certificate of authority from the Department of Consumer Affairs and submit a certified copy of its charter or articles of incorporation and bylaws; if a corporation, a certified copy of the certificate of authority or good standing from the Secretary of State; a copy of the membership agreement; a copy of any contract to be issued; and a list of outlets at which physical fitness services will be offered
- fee of \$25 per outlet; renewal fee of \$50 per outlet
- certificate of authority must be posted

Tennessee:

- none

Texas:

- must register with the Department of Labor Standards and include name and address of the spa; name and address of any person who directly or indirectly controls 10% or more of the stock; the type of available or proposed facilities and services; the approximate size of the health spa; and either a complete disclosure of any litigation or complaint filed with a government authority relating to failure to open

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or the closing of a health spa brought against the owners, officers or directors that was completed within the past two years or is currently pending; or provide a notarized statement that shows that there has been no such litigation

- fee not to exceed \$100
- registration must be available on the grounds of the spa

Virginia:

- register with the Commissioner of Agriculture and Consumer Services and disclose the address, ownership, date of first sales, and date of first opening
- fee of \$125; renewal fee of \$125 annually
- each separate location is considered a separate health spa and must file a separate registration

Wisconsin:

- none

III. REQUIRED BOND AMOUNTS

Eighteen states require that the health spas maintain a bond to cover consumer claims against the spas. The amount of bonding ranges from a minimum of \$10,000 in Virginia to \$200,000 in Maryland. Some states only require that the bond be kept until opening, but most require a bond for the life of the spa.

Alabama:
-\$50,000

Arizona:
-none

California:
-none

Colorado:
-\$50,000 (unopened spa's)

Connecticut:
-none

Florida:
-\$50,000

Georgia:
-none

Hawaii:
-\$50,000

Illinois:
-none

Indiana:
-\$25,000 (unopened spa's)

Kentucky:
-\$50,000

Louisiana:
-\$25,000 or C. D.

Maryland:
-\$200,000

Massachussets:
-\$25,000

Minnesota:
-\$25,000 or prepayment of contracts + deposits held on
merchandise ordered through the spa

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Mississippi:
-\$25,000

Nevada:
-\$25,000

New Hampshire:
-\$50,000

New York:
-none

North Carolina:
-pre-opening receipts until opening of spa

Oregon:
-none

Rhode Island:
-none

South Carolina:
-at the discretion of the Administrator of Consumer Affairs,
not to exceed \$25,000

Tennessee:
-\$25,000

Texas:
-20% of pre-opening receipts, not less than \$20,000 or more
than \$50,000

Virginia:
-depends on the number of members; ranges from \$10,000 to
\$50,000

Wisconsin:
-none

IV. PROVISIONS THAT GOVERN UNOPEN SPAS

Many states have found that regulation of spas that sell contracts prior to opening is necessary. Twenty-one states have included provisions to govern unopen spas in their laws.

Alabama:

- down payment must not exceed 5% of contract
- contract may be cancelled if spa is not open by specified date

Arizona:

- none

California:

- services must begin within 6 months of contract

Colorado:

- must put date of opening on contract
- escrow all pre-opening sales or cash bond, letter of credit, certificate of deposit, or other surety in the amount of \$50,000

Connecticut:

- must prepare listing of equipment and services and give to Commissioner of Consumer Protection and put on every contract; spa is not considered to be open until substantially all of the items on the list are available
- must provide that the spa will be fully operative on a specified date no later than one year after the contract
- five day penalty-free cancellation after opening of spa
- escrow pre-opening receipts or fidelity bond of \$50,000

Florida:

- maintain bond before opened
- rules promulgated regulating contract for future sales

Georgia:

- if unopen for more than 60 days, three day penalty-free cancellation after opening

Hawaii:

- must be operative within one year of contract
- five day cancellation from written notice that facility is fully operative

Illinois:

- seven day penalty-free cancellation instead of three day if spa is unopen
- planned centers must be open within three months of a specified date of within twelve months, whichever is earlier
- escrow pre-opening receipts or provide information required by Attorney General

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Indiana:

- must be in operation within twelve months
- \$25,000 bond with the Secretary of State until opening

Kentucky:

- prepayment contracts placed in escrow until spa is opened for thirty days

Louisiana:

- none

Maryland:

- contract may be cancelled if spa is not open by specified date
- may cancel contract within three days of opening
- description of specific services and facilities must be on contract
- date of expected opening must be on contract

Massachussets:

- cancellation if spa fails to open planned location

Minnesota:

- none

Mississippi:

- none

Nevada:

- spa must open by specified date

New Hampshire:

- none

New York:

- escrow pre-opening receipts or furnish information required by Secretary of State

North Carolina:

- establish a bond or trust account for pre-opening receipts which must remain in force until 60 days after all services are available
- three day right to cancel after opening

Oregon:

- must include date of completion on contract
- place pre-opening receipts in trust account and notify Attorney General of the depository
- refund monies if spa isn't open by specified date

Rhode Island:

- none

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South Carolina:

- cannot advertise unopen spas unless clearly state that spas are not open

Tennessee:

- none

Texas:

- must open before the 181st day after the first membership is sold
- escrow pre-opening receipts until 30 days after opening
- spa is considered open when all advertised and promised services are available

Virginia:

- deposit pre-opening receipts in bank until 30 days after opening unless already have a \$50,000 bond

Wisconsin:

- services must be available within 6 months of contract
- three day cancellation after opening
- no more than \$25 or 10% of total contract price, whichever is less, may be required prior to the date buyer receives written notice that facilities and services are fully available

V. CONTRACT DURATION

Twenty states have required that there be a maximum duration for health spa contracts. In addition, eight states have indicated that contracts may not be measured by the life of the buyer.

Alabama:
-none

Arizona:
-3 years

California:
-3 years; may not be measured by life of buyer

Colorado:
-2 years

Connecticut:
-2 years
-must make 12 month contract available

Florida:
-3 years; may not be measured by life of buyer

Georgia:
-36 months

Hawaii:
-3 years; may not be measured by life of buyer

Illinois:
-2 years

Indiana:
-may not be measured by life of buyer

Kentucky:
-none

Louisiana:
-3 years; may not be measured by life of buyer

Maryland:
-none

Massachussets:
-2 years; may not be measured by life of buyer

Minnesota:
-18 months; may be extended after buyer has been a member for
at least 6 months

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Mississippi:
-24 months

Nevada:
-none

New Hampshire:
-none

New York:
-3 years; may not be measured by life of buyer

North Carolina:
-3 years

Oregon:
-3 years

Rhode Island:
-2 years

South Carolina:
-2 years

Tennessee:
-3 years

Texas:
-may not be measured by life of buyer

Virginia:
-3 years

Wisconsin:
-2 years

VI. RENEWAL PROVISIONS

Fifteen states have some kind of provisions for renewal of contracts. These may either be a specific provision or the general requirement that there be no automatic renewals of health spa contracts.

Alabama:

-none

Arizona:

-none

California:

-none

Colorado:

-none

Connecticut:

-no automatic renewal

-renewal must be accepted in writing and may become effective only upon payment of renewal price

Florida:

-renewable annually

-may not be executed and paid for until 60 days or less prior to the expiration of the previous contract

Georgia:

-renewable at option of both parties

Hawaii:

-must pay not less than 10% of cash price of the original contract

Illinois:

-renewable annually

-must not pay less than 10% of cash price of the original contract

Indiana:

-none

Kentucky:

-none

Louisiana:

-none

Maryland:

-no automatic renewal

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Massachussets:

- offerable upon expiration of previous contract
- not to exceed 24 months

Minnesota:

- none

Mississippi:

- none

Nevada:

- no automatic renewal

New Hampshire:

- no automatic renewal
- may provide option to be accepted in writing to go into effect upon payment of renewal price

New York:

- at the option of the buyer up to 30 days after expiration of previous contract
- must be for like period

North Carolina:

- none

Oregon:

- none

Rhode Island:

- none

South Carolina:

- upon expiration of previous contract upon payment by buyer
- for twelve months

Tennessee:

- may not exceed 36 months
- no automatic renewal

Texas:

- fee of not less than \$50
- not to exceed 2 years

Virginia:

- may have a renewal option

Wisconsin:

- original contract not to exceed 2 years

VII. FINANCING PERIOD

Nine states have decided that contracts must be financed within a specific time period. The list below indicates the maximum financing periods allowed.

Alabama:
-2 years

Arizona:
-none

California:
-2 years

Colorado:
-2 years

Connecticut:
-none

Florida:
-none

Georgia:
-36 months

Hawaii:
-none

Illinois:
-none

Indiana:
-3 years

Kentucky:
-none

Louisiana:
-none

Maryland:
-none

Massachussets:
-25 months

Minnesota:
-none

Mississippi:
-none

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Nevada:
-none

New Hampshire:
-2 years

New York:
-37 months

North Carolina:
-none

Oregon:
-none

Rhode Island:
-none

South Carolina:
-none

Tennessee:
-none

Texas:
-2 years

Virginia:
-none

Wisconsin:
-none

VIII. PROVISIONS FOR CANCELLATION OF CONTRACTS

Every state with a health spa law requires that contracts have provisions for cancellation. The most common of these provisions is a "cooling off" period of three to ten days during which the buyer may cancel his contract without any penalties. Most refunds must be issued within a set period of time. Other common provisions are cancellation as a result of the death or disability of the buyer and cancellation if the spa or buyer moves.

Alabama:

- 3 day penalty-free
- spa goes out of business or moves and does not provide facilities within 5 miles
- buyer dies or becomes disabled
- buyer moves out of town and there is no facility within 15 miles
- spa does not open by date specified
- 30 days after spa fully operational, if misrepresentation concerning available facilities

Arizona:

- 3 day penalty-free
- buyer dies or becomes disabled
- buyer moves and there is no facility within 25 miles

California:

- 3 day penalty-free
- buyer dies or becomes disabled
- buyer moves and there is no facility within 25 miles
- services must begin within 6 months of contract

Colorado:

- 3 day penalty-free
- buyer dies or becomes disabled (cancellation or extension)
- spa moves and there is no facility within 5 miles
- spa opening is delayed more than 60 days

Connecticut:

- 3 day penalty-free
- buyer dies or becomes disabled (cancellation or extension)

Florida:

- 3 day penalty-free
- spa goes out of business or moves and there is no facility within 5 miles
- buyer dies or becomes disabled

Georgia:

- 3 day penalty-free
- buyer dies or becomes disabled
- services must begin within 6 months of contract

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Hawaii:

- 3 day penalty-free
- buyer dies or becomes disabled (cancellation or extension)
- five day penalty-free from time spa opens (if not open at signing of contract)
- must be operative within one year of contract

Illinois:

- 3 day penalty-free
- 7 day penalty-free if spa is not open when contract is signed
- buyer moves and there is no facility within 25 miles
- buyer dies or becomes disabled
- spa doesn't open 12 months from date of contract or within 3 months of date specified (whichever is earlier)

Indiana:

- 3 day penalty-free
- spa does not open within 12 months
- buyer dies or becomes disabled
- spa moves more than five miles
- spa goes out of business
- must be operative within twelve months

Kentucky:

- 3 day penalty-free

Louisiana:

- 3 day penalty-free

Maryland:

- 3 day penalty-free
- 3 day penalty-free from opening of spa
- buyer becomes disabled (extension only)
- spa closes for more than one month (extension or cancellation)
- spa does not open by date specified

Massachussets:

- 3 day penalty-free
- buyer dies or becomes disabled
- spa fails to open a planned location
- spa closes
- spa changes operation
- spa moves
- buyer moves and there is no facility within 25 miles

Minnesota:

- 3 day penalty-free

Mississippi:

- 5 day penalty-free
- buyer dies or becomes disabled

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Nevada:

- 3 day penalty-free
- buyer becomes disabled (extension or cancellation)
- spa is closed for more than one month (extension or cancellation)
- does not open by date specified

New Hampshire:

- 3 day penalty-free
- buyer dies or becomes disabled
- spa services are changed drastically
- spa moves 8 miles

New York:

- 3 day penalty-free
- spa doesn't open within one year
- buyer dies or becomes disabled
- buyer moves and there is no facility within 25 miles
- spa closes or changes operation

North Carolina:

- 3 day penalty-free
- buyer dies or becomes disabled
- buyer moves more than eight miles and there is no facility within 30 miles
- spa changes operation
- 3 day penalty-free after opening

Oregon:

- 3 day penalty-free
- buyer dies or becomes disabled
- spa goes out of business
- spa moves more than five miles
- spa does not open by date specified
- spa changes operation

Rhode Island:

- 10 day penalty-free
- buyer moves 25 miles
- buyer dies or becomes disabled

South Carolina:

- 3 day penalty-free
- buyer dies or becomes disabled
- buyer moves and there is no facility within 50 miles
- extension for disability or pregnancy

Tennessee:

- 3 day penalty-free

Texas:

- 3 day penalty-free
- goes out of business and there is no facility within 10 miles
- buyer dies or becomes disabled
- spa does not provide advertised services

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Virginia:

- 3 day penalty-free
- spa moves or goes out of business and there is no facility within five miles
- buyer dies or becomes disabled

Wisconsin:

- 3 day penalty-free
- spa does not open within 6 months
- buyer dies or becomes disabled

IX. ENFORCEMENT

Laws are not successful unless there is some way to enforce them. Below is each state's method of enforcement.

Alabama:

- supervision and enforcement by the Attorney General and district attorneys
- violation is a Class C felony
- noncompliance is an "unfair or deceptive trade practice"

Arizona:

- Attorney General, county attorneys, city attorneys, or any aggrieved buyer may institute proceedings
- buyer may bring action for damages, reasonable attorney fees, and, if the violation is willful, punitive damages in the amount of \$2,000 per violation

California:

- buyer may bring action for 3 times the actual damages plus reasonable attorney fees
- failure to comply may be corrected within 30 days without penalty

Colorado:

- part of the Colorado Consumer Protection Act
- 30 day "right to cure" after new ownership

Connecticut:

- enforcement by Attorney General and Commissioner of Consumer Protection
- may use Chapter 54

Florida:

- enforcement by Department of Agriculture and Consumer Services
- part of the Florida Consumer Protection Act
- violators are guilty of misdemeanors of the first degree

Georgia:

- part of the Fair Business Practices Act of 1975

Hawaii:

- noncompliance is an "unfair or deceptive act"
- buyers may bring action

Illinois:

- enforcement by Attorney General under the Consumer Fraud and Deceptive Practices Act; buyer may be awarded 3 times the damages
- buyer may bring action for 3 times the costs and reasonable attorney fees

Indiana:

- noncompliance is a "deceptive act"

- enforcement by attorney general or buyer
- secretary of state brings action on the bond

Kentucky:

- enforcement by attorney general
- buyer may bring action for relief, reasonable attorney fees, and costs
- statute of limitations is one year after action of attorney general or two years after violation is discovered (whichever is later)

Louisiana:

- must receive written warning and then be fined \$500 or less

Maryland:

- noncompliance is an "unfair or deceptive trade practice"

Massachusetts:

- buyer may bring action for injunctive relief, multiple damages, and attorney fees
- civil penalty not to exceed \$2,500 per violation
- attorney general may bring action to enforce bonding provisions

Minnesota:

- attorney general may sue for injunctive relief and civil penalty not to exceed \$25,000
- spa must close if it does not follow bond provisions
- buyer may bring action to recover damages, costs, disbursements, including reasonable attorney fees, and equitable relief

Mississippi:

- buyer may bring action for damages, reasonable attorney fees and costs
- criminal penalties for failure to comply with registration or contract requirements or if there are misrepresentations for not more than \$2,000 or imprisonment for not more than one year, or both; this is a misdemeanor

Nevada:

- misdemeanor

New Hampshire:

- failure to comply is an "unfair or deceptive trade practice"
- remedy through RSA 358-A, (Consumer Act)

New York:

- buyer may bring action for 3 times damages plus reasonable attorney fees
- civil penalty of not more than \$2,500 per violation
- enforcement by attorney general
- political subdivisions may enact local laws to enable local enforcement

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North Carolina:

- buyer may bring action for damages and reasonable attorney fees
- noncompliance is an "unfair practice"

Oregon:

- remedies through "unlawful Trade Practices" section

Rhode Island:

- none

South Carolina:

- enforcement by administrator of Department of Consumer Affairs
- violation is a misdemeanor
- must be fined not less than \$500 nor more than \$5,000 or be imprisoned for not more than three years or both
- violation is a violation of the South Carolina Trade Practices Act

Tennessee:

- enforcement by Consumer Affairs Division

Texas:

- buyer may bring action for damages, equitable relief, attorney fees, and costs
- statute of limitations is one year after district attorney, county attorney, or attorney general terminates action or two years after violation is discovered, whichever is later
- civil penalties of \$25,000 or less per violation and \$50,000 or less for all violations
- enforcement by district attorney, county attorney, and attorney general
- noncompliance is a "false, misleading, or deceptive act or practice" within the Business Commerce Code
- registration, escrow, or security violation is a misdemeanor
- fine for withholding or falsifying documents not to exceed \$2,000

Virginia:

- enforced through the Virginia Consumer Protection Act

Wisconsin:

- enforcement by the Department of Agriculture, Trade and Consumer Protection
- action for temporary or permanent injunctive relief
- civil penalty of between \$100 and \$10,000
- buyer may bring civil action to recover damages, costs, disbursements, including reasonable attorney fees, and such other equitable relief

X. MISCELLANEOUS

Below are listed additional requirements that each state may have.

California:

- maximum payment of \$1,000

Connecticut:

- if a spa offers a contract of more than 12 months duration, it must offer a contract of 12 months duration

Florida:

- buyer must be provided with rules and regulations prior to the signing of the contract
- whenever ownership (or stock ownership) is changed, members must be notified
- members must furnish identification upon entering spa

Georgia:

- spa must state on contract that buyers with heart disease should consult physician before joining

Hawaii:

- spa must provide buyer with list of services and equipment prior to the signing of the contract

Illinois:

- at least one person with CPR certification must be on premises at all times
- maximum payment of \$2,500

Kentucky:

- spa must provide buyers with list of membership plans and prices prior to the signing of the contract; spa may not sell memberships that are not on this list
- cannot offer specials or discounts unless they are available to all prospective buyers

Louisiana:

- none

Mississippi:

- must present a comprehensive list of plans and prices available to buyers; spa may not sell memberships that are not on this list or for more than the prices on the list

New Hampshire:

- list of membership plans must be provided to buyer; spa may not sell plans that are not on this list
- cannot offer specials or discounts unless they are available to all prospective buyers

New York:

- maximum payment of \$1,200

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Oregon:

- must prepare list of plans and services; cannot sell any form or plan not included on this list

South Carolina:

- no spa can advertise services which are not available in every branch unless specifying such

Texas:

- spa must provide list of plans prior to the signing of the contract
- cannot offer specials or discounts unless they are available to all prospective buyers
- if an Act of God prevents the spa from being open for more than 30 consecutive days, contracts must be extended

Virginia:

- any contract entered into by buyer on false or misleading information, representation, notice or advertisement is void and unenforceable

Wisconsin:

- buyer liable for only the portion of total contract used if any of the facilities or services described become unavailable or no longer fully operational and is entitled to a refund of any other funds already paid

XI. SUMMARY CHART

HEALTH SPA LAWS

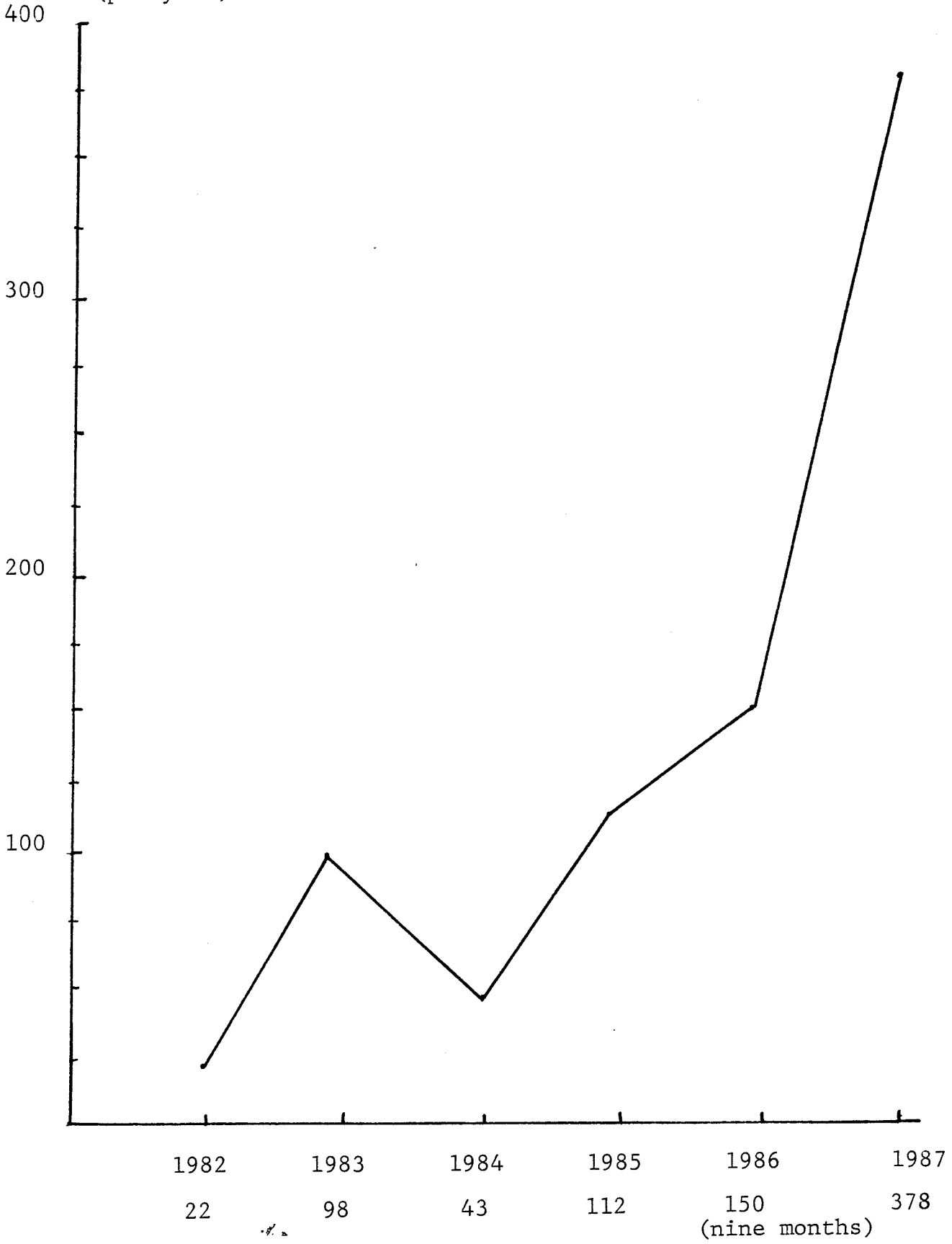
	REGISTRATION PROCEDURES	REQUIRED BOND AMOUNTS	PROVISIONS THAT GOVERN UNOPENED SPAS	CONTRACT DURATION	RENEWAL PROVISIONS	FINANCING PERIOD	PROVISIONS FOR CANCELLATION OF CONTRACT	ENFORCEMENT, ETC.	MISCELLANEOUS
ALABAMA	X	X	X			X	X	X	
ARIZONA				X			X	X	
CALIFORNIA			X	X		X	X	X	X
COLORADO		X	X	X		X	X	X	
CONNECTICUT	X		X	X	X		X	X	X
FLORIDA	X	X	X	X	X		X	X	X
GEORGIA			X	X	X	X	X	X	X
HAWAII		X	X	X	X		X	X	X
ILLINOIS			X	X	X		X	X	X
INDIANA		X	X	X		X	X	X	
KENTUCKY	X	X	X				X	X	X
LOUISIANA		X		X			X	X	
MARYLAND	X	X	X		X		X	X	
MASSACHUSSETTS		X	X	X	X	X	X	X	
MINNESOTA		X		X			X	X	
MISSISSIPPI	X	X		X			X	X	X
NEVADA	X	X	X		X		X	X	
NEW HAMPSHIRE	X	X			X	X	X	X	X
NEW YORK			X	X	X	X	X	X	X
NORTH CAROLINA		X	X	X			X	X	
OREGON			X	X			X	X	X
RHODE ISLAND				X			X		
SOUTH CAROLINA	X	X	X	X	X		X	X	X
TENNESSEE		X		X	X		X	X	
TEXAS	X	X	X	X	X	X	X	X	X
VIRGINIA	X	X	X	X	X		X	X	X
WISCONSIN			X	X			X	X	X

XII. CONCLUSION

As more consumers are injured physically and financially, more states are adopting legislation to help regulate health spas. The most popular aspects of these laws, thus far, are required bonding and provisions for cancellation of contracts. It is hoped that the establishment of these laws has helped to curb fraudulent activities by the health spas in the states which have established these laws.

Sedgwick County Health Club Complaints

Total Complaints
(per year)



Health-club chain files for reorganization

By Forrest S. Gossett
Staff Writer

Citing an aggressive expansion plan that backfired, the largest private health-club chain in Wichita is seeking protection from its creditors in U.S. Bankruptcy Court.

United Health, which operates the Mademoiselle Fitness Center, the Executive Fitness Center and Executive/Mademoiselle Fitness Center, filed for Chapter 11 reorganization this week, listing unsecured debts of \$103,201.

The largest single creditor is Twin

Lakes shopping center, which is owed \$50,000.

However, the filing did not list the more than 10,000 people who are reported to be members of the health clubs.

An employee who identified himself as "Marvin" said the 10,000-member figure was "in the ballpark" for the chain, which has six locations around the city.

A statement read by the employee blamed the reorganization on an effort to expand in November following the

closing of Universal Nautilus Fitness Centers in Wichita.

The company took leases from the closed health clubs and tried to capture a larger share of the market, the employee said.

"Management expects a timely acceptance of the reorganization plan and a speedy recovery from the temporary trouble," the employee read from the statement. The fitness centers, he said, plan to continue normal daily operations.

United Fitness Center's problems are the latest in a round of financial woes that have beset operators of private health clubs in Wichita, said David Moses, chief of the Sedgwick County Consumer Fraud office.

Moses said that his office will "monitor" the bankruptcy filing to ensure that people who have paid for contracts at the clubs receive the services they have paid for.

The chain's executive offices are at 555 N. Woodlawn.

Wichita Eagle/Beacon 27 Feb 1988



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Testimony of Arthur R. Weiss
Deputy Attorney General, Consumer Protection Division
Before the Senate Committee on Public Health & Welfare
Hearing on S.B. 609

February 29, 1988

Mr. Chairman & Members of the Committee:

Attorney General Stephan supports the protections afforded consumers by this bill. Thousands of consumer dollars are lost as health spas fail to provide services and facilities as promised. Many clubs are undercapitalized. They file bankruptcy within months of their opening after collecting thousands of dollars for "lifetime" memberships. Sales representatives make claims for future improvements like racquetball courts or swimming pools. Those improvements never materialize.

Under this bill, health spas would register with the Secretary of State before offering for sale or selling memberships. Among other things, the registration information would include a disclosure of any litigation against the spa, its owners or officers and directors within the past two

years. This information would then be available to members at the spa. It is important for members to know whether the club they are joining has ongoing problems.

The health spas would be required to escrow membership fees collected until 30 days after the club fully opens for business. This protects against solicitation and collection of fees for a club which never opens its doors.

Health spas would be required to post a surety bond in favor of the state. It would be held for the benefit of any members who suffer losses due to the insolvency or closing of the spa. One striking example of this occurred only last year in the Kansas City area. Thousands of consumer dollars were lost when a large spa filed for liquidation in bankruptcy. The members were left with no facility to use and no way to collect on the advance payment for "lifetime" memberships. This bond would have prevented a total loss. At least some of the consumer money would have been refunded through the bond.

The consumer would have specific cancellation privileges. First, if the consumer changes his or her mind he or she can cancel before midnight of the third business day. This gives the consumer a cooling off period. Many of these spas use high pressure sales tactics at the contract signing. Second, the consumer can cancel if the health spa goes out of business or closes and does not provide a new facility within four miles of the old facility. This prevents the possibility

of a spa closing its doors but stating that the members can use a facility in some location inconvenient to the member. Third, the consumer can cancel if he or she becomes permanently disabled or the estate can cancel if the consumer dies. All these cancellation privileges are disclosed in the contract. Under the second and third of these options, the consumer would be liable for the value of the services used before the cancellation.

Health spas will not be allowed to sell "lifetime" memberships which are for the life of the member. It has long been a pattern of health spas to open for a short period of time, sell hundreds of memberships and then close the doors. These "lifetime" members are left with no health spa at which to use their memberships. This limitation would prevent this pattern by the spas.

The bill refers to assignments and transfers of the contract in lines 0383 through 0387. However, the reference is unclear. It is difficult to tell whether the assignment would be by the club to a finance company or lender. It is unclear whether the transfer refers to transfer by the member to another member or transfer between clubs.

Attorney General Stephan requests enforcement power under the bill's criminal provisions. Lines 0448 through 0450 allow enforcement by the county and district attorneys only.

With that requested amendment, Attorney General Stephan supports the bill and encourages your support of it.

Thank you for your consideration.

PUBLIC HEALTH & WELFARE
Testimony on SB #609

Tom Burgess
Affiliated Fitness Centers
February 29, 1988

Affiliated Fitness Center of Kansas is not necessarily against health spa regulation, but we must oppose SB #609 in its present form. We have found several sections of SB #609 that place an unnecessary burden on fitness centers. The Fitness business is obviously a tough business. A good indication of this is the number of health spa's that have closed. If an additional burden is placed on the Fitness Centers it will cause more of them to close down, leaving more consumers without service. We have located a number of problems with SB 609 and have many questions. I will touch on a few of the major points.

The bond requirement for Fitness Centers poses a enormous problem with the cost and availability of bonds to Fitness Centers. The clubs may not be able to get bonded or afford it.

There is a requirement of a written contract, filled out and given to the purchaser before they sign it. This presents a problem because some clubs don't use written contracts.

This bill limits the down payment so the purchaser can't even pay the first months payment.

There is a three day cancelation clause in a minimum of 10 point boldface type. I believe this may encourage people to cancel when you work out for the first time you always get a little stiff and sore, usually the second or third day. This may cause people who are not dissatisfied with the facility or services to cancel their membership.

There are a lot of clubs that use a finance company. There is a clause in SB #609 that doesn't allow them to do that in my opinion.

We acknowledge that there have been problems with Health Spa's in Kansas, but this bill blankets all clubs, not just the spa's that are causing the problems. We need to come up with a bill that addresses the problem clubs only and isn't going to place an unnecessary burden on the good clubs. We would like to see more time spent studying the problem and would like to be involved in finding a solution.