

Approved 3-22-88
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 March 7, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Chairman Ehrlich announced that the minutes handed to committee members will be presented for approval or correction March 14, 1988 when the committee convenes. It was also announced that the committee would not meet March 8 or 9.

Consideration on the SB-585 balloon amendment, started on Friday, March 4, 1988, was continued. Attachment 1

Senator Francisco made the motion to adopt the language presented by the Health Care Association defining "significantly and adversely." No second was forthcoming and the motion was lost. Attachment 2

Senator Bond made the motion to pass SB-585 out favorable as amended by the subcommittee report. Senator Mulich seconded the motion and the motion carried. Senator Francisco requested his NO vote be recorded. Senator Salisbury will carry SB-585.

Senate Bill 609 was placed before the committee for action. The District Attorney from Sedgwick County had requested amendments. Attachment 3 Amendments were also submitted by Affiliated Fitness Centers of Kansas. Attachment 4

Senator Vidricksen made a motion to ask the chairman to request an interium study on SB-609. Senator Bond seconded the motion. Following discussion Senator Anderson made a substitute motion requesting SB-609 be sent to Federal and State Affairs to be re-referred to Senate Public Health and Welfare Committee. Senator Morris seconded the motion and the motion carried. Senate Bill 609 will be assigned to a subcommittee when it is returned.

Senate Bill 658 was placed before the committee for action. Senator Salisbury presented an amendment which had been prepared by the Revisor's Office. Attachment 5 The proposed amendment would be amendatory to current law, replacing Section 1 of SB-658. It would eliminate the restraint requirement for a treatment facility which is licensed as an adult care home. Staff suggested a change which would eliminate the total exception and still require re-evaluation but would exempt the re-evaluation from the "every three hours" requirement and state "is required as ordered by the physician or psychologist who ordered the initial restraint or seclusion."

Senator Bond made a conceptual motion that the language in the proposal be worded so the total exemption is not given to the adult care home but would give discretion for re-evaluation to the physician or psychologist. Senator Mulich seconded the motion and the motion carried.

Senator Kerr made a motion to adopt the amendment proposed by Senator Salisbury and the amendment proposed by Senator Bond into the amendment.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m.~~p.m.~~ on March 7, 1988

Senator Anderson seconded the motion and the motion carried.

Senator Kerr made the motion to pass SB-658 out favorable for passage as amended. Senator Mulich seconded the motion and the motion carried. Senator Mulich will carry SB-658.

Senate Bill 570 was brought to the attention of the committee with the Chairman requesting Senator Reilly's wishes concerning this bill. It was decided that the sections preserving genetic screening and outpatient outreach were needed.

Senator Reilly made a conceptual motion that staff provide language to describe and permit continuation of the present genetics program now conducted by the Department of Health and Environment. Senator Bond seconded the motion and the motion carried. Senator Reilly will carry SB-570.

The chairman requested the wishes of the committee concerning SB-701. Senator Bond made a motion to report SB-701 adversely. Senator Morris seconded the motion. Following discussion the vote was called and division requested. The motion carried with 6 votes for and 4 votes against.

The Chairman requested a meeting with Vice-Chairman Bond and Ranking Minority Member Francisco to discuss which bills should receive re-referral requests. The bills are: SB-524, SB-573, SB-622, SB-672 and SB-678. Committee members were requested to advise either Senator Bond or Senator Francisco on their wishes concerning the aforementioned bills.

The meeting adjourned at 10:58 a.m. and will meet Monday, March 14, 1988, Room 526-S at 10:00 a.m.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE March 7, 1988

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

<u>G. K. Sulett</u>	<u>KDHE</u>
<u>Richard Mearissey</u>	<u>KDHE</u>
<u>AC Grant</u>	<u>KDHE</u>
<u>Mark Intermill</u>	<u>KCOA</u>
<u>Marilyn Braedt</u>	<u>UINTH</u>
<u>Roris R. Stout</u>	<u>LTC OMBUDSMAN - KDOA</u>
<u>Carolyn Maddendoy</u>	<u>KSWA</u>
<u>Dick Hummel</u>	<u>KACA</u>
<u>Lewis Allen</u>	<u>KHCA</u>
<u>KEITH R LANDIS</u>	<u>CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS</u>
<u>Ken Baker</u>	<u>S. Assn of Prof. Psychologists</u>
<u>JERRY SWANWATER</u>	<u>KMS</u>
<u>Chip Wheelen</u>	<u>KMS</u>
<u>Mary Ann Yehel</u>	<u>BSRB</u>
<u>HAROLD E. RIENM</u>	<u>KAOM</u>
<u>Tom Burgess</u>	<u>Affiliated Fitness Centers</u>
<u>Tom Bell</u>	<u>KHA</u>
<u>GARY Robbins</u>	<u>Ks Opt Assn</u>
<u>Sherman A. Parks, Jr.</u>	<u>Ks Chiropractic Assn.</u>

SENATE BILL No. 585

By Committee on Public Health and Welfare

2-8

0016 AN ACT concerning the adult care home licensure act; relating
0017 to the issuance of correction orders, citations and assessments;
0018 prohibiting new admissions to adult care homes in certain
0019 cases; amending K.S.A. 39-945 and 39-946 and repealing the
0020 existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 39-945 is hereby amended to read as fol-
0023 lows: 39-945. A correction order may be issued by the secretary
0024 of health and environment or the secretary's designee to a person
0025 licensed to operate an adult care home whenever the state fire
0026 marshal or the marshal's representative or a duly authorized
0027 representative of the secretary of health and environment in-
0028 spect or investigates an adult care home and determines that the
0029 adult care home is not in compliance with the provisions of
0030 article 9 of chapter 39 of the Kansas Statutes Annotated or ~~the~~
0031 ~~and regulation~~ *rules and regulations* promulgated thereunder
0032 which *individually or jointly* affects significantly and adversely
0033 the health, safety, nutrition or sanitation of the adult care home
0034 residents. The correction order shall be served upon the licensee
0035 either personally or by certified mail, return receipt requested.
0036 The correction order shall be in writing, shall state the defi-
0037 ciency, cite the specific statutory provision or rule and regulation
0038 alleged to have been violated, and shall specify the time allowed
0039 for correction.

0040 Sec. 2. K.S.A. 39-946 is hereby amended to read as follows:
0041 39-946. (a) If upon reinspection by the state fire marshal or the
0042 marshal's representative or a duly authorized representative of
0043 the secretary of health and environment it is found that the
0044 licensee of the adult care home which was issued a correction

 , which reinspection shall be conducted within 14 days
from the day the correction order is served upon the
licensee,

order has not corrected the deficiency or deficiencies specified
in the order, the secretary of health and environment or the
secretary's designee shall issue a citation listing the uncorrected
deficiency or deficiencies. The citation shall be served upon the
licensee of the adult care home either personally or by certified
mail, return receipt requested. The citation shall also specify
whether the uncorrected deficiencies have an endangering rela-
tionship to the health, safety or sanitation of the adult care home
residents.

(b) The secretary of health and environment may assess a
civil penalty in an amount not to exceed ~~one hundred dollars~~
~~(\$100)~~ \$500 per day per deficiency against the licensee of an
adult care home for each day subsequent to the day following the
issuance of a citation pursuant to this section *time allowed for*
correction of the deficiency as specified in the correction order
that the adult care home has not corrected the deficiency or
deficiencies listed in the ~~citation~~ *correction order*, but the max-
imum assessment shall not exceed ~~five hundred dollars (\$500)~~
\$2,500. A written notice of assessment shall be served upon the
licensee of an adult care home either personally or by certified
mail, return receipt requested.

(b) *If the secretary of health and environment finds that
some or all deficiencies cited in the correction order have also
been cited against the adult care home as a result of any
inspection or investigation which occurred within 18 months
prior to the inspection or investigation which resulted in such
correction order, the secretary of health and environment may
double the civil penalty assessed against the licensee of the
adult care home, the maximum not to exceed \$5,000.*

(c) All civil penalties assessed shall be due and payable
within ~~ten (10)~~ 10 days after written notice of assessment is
served on the licensee, unless a longer period of time is granted
by the secretary. If a civil penalty is not paid within the applica-
ble time period, the secretary of health and environment may file
a certified copy of the notice of assessment with the clerk of the
district court in the county where the adult care home is located.
The notice of assessment shall be enforced in the same manner

1-2

Before the assessment of a civil penalty, the secretary shall consider the following factors in determining the amount of the civil penalty to be assessed: (1) The severity of the violation; (2) the good faith effort exercised by the adult care home to correct the violation; and (3) the adult care home's history of compliance with the rules and regulations.

0 a judgment of the district court.

0083 New Sec. 3. (a) At any time the secretary of health and
 0084 environment initiates any action concerning an adult care home
 0085 in which it is alleged that there has been a substantial failure to
 0086 comply with the requirements, standards or rules and regula-
 0087 tions established under the adult care home licensure act, that
 0088 conditions exist in the adult care home which are life threatening
 0089 or endangering to the residents of the adult care home, that the
 0090 adult care home is insolvent, or that the adult care home has
 0091 deficiencies which significantly and adversely affect the health,
 0092 safety, nutrition or sanitation of the adult care home residents,
 0093 the secretary may issue an order, pursuant to the emergency
 0094 proceedings provided for under the Kansas administrative pro-
 0095 cedure act, prohibiting any new admissions into the adult care
 0096 home until further determination by the secretary. This remedy
 0097 granted to the secretary is in addition to any other statutory
 0098 authority the secretary has relating to the licensure and operation
 0099 of adult care homes and is not be construed to limit any of the
 0100 powers and duties of the secretary under the adult care home
 0101 licensure act.

0102 (b) This section shall be part of and supplemental to the adult
0103 care home licensure act.

New Sec. 4. (a) The secretary shall issue annually to each adult care home a report summarizing by category of licensure, violation and frequency of occurrence those violations which have resulted in the issuance of correction orders and civil penalties within the preceding twelve-month period.
 (b) This section shall be part of and supplemental to the adult care home licensure act.

0104 Sec. 4. K.S.A. 39-945 and 30-946 are hereby repealed.

5

0105 Sec. 5. This act shall take effect and be in force from and
0106 after its publication in the statute book.

6



DATE: FEBRUARY 17, 1988

TO: SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

FROM: DICK HUMMEL, EXECUTIVE VICE PRESIDENT

SUBJECT: SENATE BILL 585, ADULT CARE HOME CIVIL PENALTY SYSTEM

SENATOR EHRLICH AND COMMITTEE MEMBERS:

REPRESENTING OVER 200 LICENSED ADULT CARE HOMES, BOTH LARGE AND SMALL, URBAN AND RURAL, PROFIT AND NONPROFIT, THE KANSAS HEALTH CARE ASSOCIATION (KHCA) SUPPORTS S.B. 585 WITH THE ATTACHED AMENDMENTS.

AS EXPLAINED TO YOU BY THE SECRETARY, THE PURPOSE OF THE BILL IS TO REFINE AND ACCELERATE THE PROCESS IN ORDER TO LEVY THE POWER OF THE AGENCY QUICKLY ON A SMALL MINORITY OF ADULT CARE HOME PROVIDERS WHICH HAVE RECURRING SERIOUS LICENSURE INFRACTIONS. WE AGREE THAT IS THE PURPOSE OF THE CIVIL PENALTY SYSTEM AND HOW IT SHOULD FUNCTION, BUT IT HASN'T.

RATHER, IT HAS BEEN USED BROADLY AND SUBJECTIVELY -- A WIDE SHOT PATTERN WITH ALL PROVIDERS AS TARGETS. OUR AMENDMENTS ARE TO TIE THE AMOUNT OF THE FINES AND PUNITIVE ACTIONS TO THE SEVERITY OF THE INFRACTION -- TO FOCUS THE BARREL SIGHT ON THE TARGET.

"We Care"

THE TERM "SIGNIFICANTLY AND ADVERSELY" APPEARING ON LINES 0032 AND 0091 IS THE DESCRIPTOR WHICH HAS BEEN USED INTERNALLY BY THE AGENCY TO DETERMINE WHETHER OR NOT AN INFRACTION IS SERIOUS ENOUGH TO BEGIN THE CIVIL PENALTY PROCESS. THIS TERM, VAGUE AND OPEN TO INTERPRETATION, IS THE KEY AND TRIGGER TO THE WHOLE PROCESS. THIS IS THE STANDARD OF PERFORMANCE, OR NON-PERFORMANCE. IT SETS OFF THE CHAIN REACTION TO NOW LEVY HIGHER FINES, REMOVE THE CITATION STEP, DOUBLE THE AMOUNT OF FINES, AND DENY NEW PATIENT ADMISSIONS.

WE ARE ASKING THAT THIS TERM BE DEFINED, PER OUR AMENDMENT, TO A HIGHER THRESHOLD OF OFFENSE AND THAT THE SYSTEM BE AIMED AT VIOLATIONS THAT POSE IMMEDIATE JEOPARDY, IMMINENT DANGER, OR HARM TO RESIDENTS. WE THINK THIS IS REASONABLE IF THE FINES ARE TO BE HIGHER -- RELATE THE PENALTY TO THE SERIOUSNESS OF THE OFFENSE.

THE OTHER AMENDMENTS ACCOMPLISH THE FOLLOWING:

2. EXEMPTION FOR NON-COMPLIANCE WITH 24 HOUR NURSE STAFFING. ON JULY 1, 1988, ALL NURSING HOMES MUST HAVE 24-HOUR STAFFING (FEDERAL REQUIREMENT OCTOBER 1990). IF FACILITIES HAVE MADE DILIGENT ATTEMPTS TO OBTAIN NURSING PERSONNEL, BUT THEY ARE UNAVAILABLE, WE DON'T BELIEVE THIS SHOULD BE A FINEABLE OFFENSE.

3. REINSPECTION IN 10 DAYS. WE BELIEVE THIS IS GOOD POLICY, NOW GENERALLY FOLLOWED BY THE AGENCY, BUT SHOULD BE IN STATUTE.

4. INFORMAL CONFERENCE WITH KDH&E SECRETARY.

BEFORE A FINE IS ISSUED, THE PROVIDER COULD REQUEST AN INFORMAL CONFERENCE TO REVIEW ALL RELEVANT FACTS. THIS WOULD REPLACE THE CURRENT CITATION STEP WHICH THE AGENCY IS ASKING TO BE REMOVED.

5. PUBLIC/PROVIDER NOTICE AND INFORMATION.

UNDER THIS SECTION THE AGENCY WOULD BE REQUIRED QUARTERLY TO ISSUE A NEWS RELEASE IDENTIFYING NURSING HOMES WHICH HAVEN'T RECEIVED A CORRECTION ORDER. (AGENCY NOW ISSUES TO THE PRESS THE NAMES OF FACILITIES FINED.) THIS IS POSITIVE REINFORCEMENT.

THE OTHER REQUIREMENT IS VERY IMPORTANT, THAT IS, FOR THE AGENCY TO TELL US THE TYPES AND NUMBER OF LICENSURE VIOLATIONS WHICH THEY HAVE DETERMINED TO BE CORRECTABLE OFFENSES. WE KNOW THAT IT WOULD BE IMPRACTICAL TO PUBLISH A "LAUNDRY LIST" IN THE STATUTES; HOWEVER, WE ALSO KNOW THAT IN THIS PROCESS THAT SOMEONE MAKES A DETERMINATION OF WHAT SHOULD OR SHOULDN'T BE TARGETED AS AN OFFENSE. WE'RE ASKING, IN FAIR PLAY, THAT THIS BE SHARED WITH US.

THANK YOU VERY MUCH FOR THIS OPPORTUNITY. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS.

SENATE BILL No. 585

By Committee on Public Health and Welfare

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0028 spects or investigates an adult care home and determines that the
0029 adult care home is not in compliance with the provisions of
0030 article 9 of chapter 39 of the Kansas Statutes Annotated or ~~rule~~
0031 ~~and regulation rules and regulations~~ promulgated thereunder
0032 which *individually or jointly* affects significantly and adversely
0033 the health, safety, nutrition or sanitation of the adult care home
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0035 either personally or by certified mail, return receipt requested.
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0043 the secretary of health and environment it is found that the
0044 licensee of the adult care home which was issued a correction

ADD: (a) *Significantly and adversely as used above is defined to mean those violations of the adult care home standards which individually or jointly may:*

(1) *Have been a direct, proximate cause of death of a resident, or;*

(2) *Present either imminent danger that death or serious harm to the resident would result therefrom or a substantial probability that death or serious physical harm to a resident would result therefrom, or;*

(3) *Pose immediate and serious jeopardy to the health and safety of a resident.*

(b) *A correction order shall not be issued to a facility for its failure to provide 24 hour professional nurse staffing if the facility has exercised bona fide, good faith efforts to recruit and hire such personnel but is unable to do so, the agency has issued a waiver from the requirement to the facility, and alternate arrangements for meeting the nursing service needs of residents have been made.*

2-4

0045 order has not corrected the deficiency or deficiencies specified
 0046 in the order, the secretary of health and environment or the
 0047 secretary's designee shall issue a citation listing the uncorrected
 0048 deficiency or deficiencies. The citation shall be served upon the
 0049 licensee of the adult care home either personally or by certified
 0050 mail, return receipt requested. The citation shall also specify
 0051 whether the uncorrected deficiencies have an endangering rela-
 0052 tionship to the health, safety or sanitation of the adult care home
 0053 residents.

0054 (b) The secretary of health and environment may assess a
 0055 civil penalty in an amount not to exceed ~~one hundred dollars~~
 0056 ~~(\$100)~~ \$500 per day per deficiency against the licensee of an
 0057 adult care home for each day subsequent to the day following the
 0058 issuance of a citation pursuant to this section *time allowed for*
 0059 *correction of the deficiency as specified in the correction order*
 0060 that the adult care home has not corrected the deficiency or
 0061 deficiencies listed in the *citation correction order*, but the max-
 0062 imum assessment shall not exceed ~~five hundred dollars (\$500)~~
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 0064 licensee of an adult care home either personally or by certified
 0065 mail, return receipt requested.

0066 (b) *If the secretary of health and environment finds that*
 0067 *some or all deficiencies cited in the correction order have also*
 0068 *been cited against the adult care home as a result of any*
 0069 *inspection or investigation which occurred within 18 months*
 0070 *prior to the inspection or investigation which resulted in such*
 0071 *correction order, the secretary of health and environment may*
 0072 *double the civil penalty assessed against the licensee of the*
 0073 *adult care home, the maximum not to exceed \$5,000.*

0074 (c) All civil penalties assessed shall be due and payable
 0075 within ~~ten (10)~~ 10 days after written notice of assessment is
 0076 served on the licensee, unless a longer period of time is granted
 0077 by the secretary. If a civil penalty is not paid within the applica-
 0078 ble time period, the secretary of health and environment may file
 0079 a certified copy of the notice of assessment with the clerk of the
 0080 district court in the county where the adult care home is located.
 0081 The notice of assessment shall be enforced in the same manner

ADD: (b) *The reinspection mentioned in this section shall be conducted within 10 days from the date of the receipt of the notice of the written assessment.*

(c) *Before the issuance of a civil penalty an informal conference shall be held by the secretary with the licensee, if requested by the licensee. All relevant facts shall be considered by the secretary, including, but not limited to:*

- (1) *The probability and severity of the risk which the violation presents to the resident's mental and physical condition.*
- (2) *The resident's medical condition.*
- (3) *The good faith efforts exercised by the facility to prevent the violation from occurring.*
- (4) *The licensee's history of compliance with the regulations.*

0082 as a judgment of the district court.

0083 New Sec. 3. (a) At any time the secretary of health and
 0084 environment initiates any action concerning an adult care home
 0085 in which it is alleged that there has been a substantial failure to
 0086 comply with the requirements, standards or rules and regula-
 0087 tions established under the adult care home licensure act, that
 0088 conditions exist in the adult care home which are life threatening
 0089 or endangering to the residents of the adult care home, that the
 0090 adult care home is insolvent, or that the adult care home has
 0091 deficiencies which significantly and adversely affect the health,
 0092 safety, nutrition or sanitation of the adult care home residents,
 0093 the secretary may issue an order, pursuant to the emergency
 0094 proceedings provided for under the Kansas administrative pro-
 0095 cedure act, prohibiting any new admissions into the adult care
 0096 home until further determination by the secretary. This remedy
 0097 granted to the secretary is in addition to any other statutory
 0098 authority the secretary has relating to the licensure and operation
 0099 of adult care homes and is not be construed to limit any of the
 0100 powers and duties of the secretary under the adult care home
 0101 licensure act.

0102 (b) This section shall be part of and supplemental to the adult
 0103 care home licensure act.

0104 Sec. 4. K.S.A. 39-945 and 30-946 are hereby repealed.

0105 Sec. 5. This act shall take effect and be in force from and
 0106 after its publication in the statute book.

ADD Sec. 4. The Secretary shall once each quarter:

(a) Issue a public information release to the states' news media identifying all adult care homes in the state which have not had a correction order in the past 12 months, and

(b) Issue to adult care homes a report summarizing by category of licensure violation and frequency of occurrence those violations which have resulted in the issuance of correction orders and civil penalties in the past 12 months.

Senat' Bill 609
 Sen Public Health and Welfare; Senator Ehrlich, Chairman

0150 (2) sworn affidavit that states that there has been no
 0179 sworn affidavit that identifies the financial institution in
 0182 spa that gives such sworn affidavit to the secretary a rea-
 0195 spa files an sworn affidavit with the secretary certifying that all
 obliga-
 0199 charge each health spa that files an sworn affidavit a reasonable fee as
 0327 CLOSES AND DOES NOT PROVIDE FACILITIES WITH SUBSTANTIALLY SIMILAR
 SERVICES WITHIN
 0331 YOU ARE ENROLLED AND FAILS TO PROVIDE SUBSTANTIALLY SIMILAR SERVICES, YOU
 MAY CANCEL THIS CON-
 0358 spa goes out of business or closes and fails to provide facilities with
 substantially similar services
 0360 from the location in which the member is enrolled and fails to provide
 substantially similar services. A member
 0384 is not assignable or transferable except as provided by New Sec. 17 (f).
 0397 discount to an individual unless the special offer or discount is
 PF1 Top PF2 Bottom PF4 Up PF5 Down PF6 Note Screen 1 of 2
 PF9 Help PF10 Next Screen PF11 Previous Screen PF12 Return

====>
~~VIEW THE DOCUMENT~~

I00

0397 discount to an individual unless the special offer or discount is
 available to all
 0398 prospective individual members.
 0448 New Sec. 20. The county or district attorney of each county or the
 attorney general

END OF DOCUMENT

CALLED IN BY DAVID MOSES AS PER TELEPHONE MESSAGE MARCH 3, 1988

Page 2

0074 Take out "primarily" and after word "operated" insert word "solely."

Page 8

0303 After word "contract" insert "which is sold, negotiated, transferred or
 assigned to any bank or finance company"

PF1 Top PF2 Bottom PF4 Up PF5 Down PF6 Note Screen 2 of 2
 PF9 Help PF10 Next Screen PF11 Previous Screen PF12 Return

From David Moses, SB-609
 3-1-88

Affiliated Fitness Centers of Kansas

c/o Mademoiselle Spa Business Office

P.O. Box 28100

Gladstone, Missouri 64118

(816) 455-4021

TO: SENATE COMMITTEE FOR PUBLIC HEALTH & WELFARE

FROM: KATHLEEN PIPER, PRESIDENT, AFFILIATED FITNESS CENTERS OF KANSAS

RE: MY REVISIONS ON 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

DATE: MARCH 2, 1988

Section #1 (a) Line #0025 - 0034, I do not understand how "AGRICULTURAL PURPOSE" would apply to Regulation of Health Spas.

New Section #9 (a) This section disallows a spa operator to use his advance sales to pay for construction of his/her club. You are totally eliminating the right of a "Mom and Pop Operator." This would allow only large corporate facilities to open. Assuming you don't have \$200,000 to \$500,000 up front to fund construction, then you can't do business in the State of Kansas.

It would be difficult to find a contractor to do business with you and be willing to accept payment thirty days after the job is totally complete.

(d) Same objection of (a) above

(e) Oftentimes, an operator will open club in stages - i.e. open exercise area for members while pool area is still under construction.

Still under Section #9 -

I believe the terminology - i.e. New Section #7, Line 0150 - 0153 - "Complaint Filed with a Governmental Authority, relating to the opening or closing of the Health Spa within past two years." - should be tied down to a more specific terminology. Specifically, how does this affect if an owner moves a club to an updated facility, etc.

I believe terminology "complaint filed" should be rewritten to proven offense. These complaints must prove to be warranted.

New Section #10 - Bonding Issue, the way the bond industry is today, you must have cash, or a letter of credit (same as cash) to be bonded. Here, again, elimination of Mom and Pop operator. What small business operator would have a minimum of \$25,000 to \$200,000 cash on hand to be tied up ad finitum. If this were the case, then I believe ALL small businesses should be required to do the same.

Senate Public Health & Welfare

March 7, 1988

Attachment 4

New Section #10 (d) line 262-266, here again, I feel complaint should be proven to be warranted.

line 273, the prior bill stated that "the surety shall not be liable..." this reads "the surety shall be liable..."

New Section #11 (#0285 - 0290) eliminates all rights to pre-sale or pay as we construct - unless it's thirty days or less.

New Section #12 (lines #0291 - 0295) not all clubs use a contract - We want to maintain the right to a month-to-month dues basis as well.

(line #0296 - 0302) this is limiting our finance time to only twelve months - with only a twelve month's renewal option. In order to keep membership affordable, we want to be able to finance for as long as twenty-four months with an annual renewal thereafter. The renewable is an option for the member if he/she wishes to keep their membership, they renew.

New Section #12 (c) lines 303 - 304 - I am opposed to dictation of how much a consumer can pay up front. This is dictating their freedom of form of payment.

(e) lines 0308-0311, here again, we are eliminating our source of financing.

(f) why not print in a minimum of five points? If we agree to comply with cancellation, why does it have to be so outstanding. Why should three-day cancellation be dictated? Wouldn't this be a matter of business integrity.

Lines 0326 - 0330 - Why four miles? With our highly mobile society of today, why not ten miles? Our fears are future relocations doen to modernize, expand, improve parking, lease expirations, etc.

New Section #13 - If member decides to cancel, I feel club should be able to collected a nominal cancellation fee not to exceed \$25.00.

Lines 0358 - 0362 - here, again, four miles - that may prove difficult.

Lines 0361 - 0363 - who is going to interpret "advertised services." At times, pools and whirlpools have to be repainted, motors and filters rebuilt. A lot of this happens with no forewarding - I think this statement is too general.

(d) lines 0380 - 0382 - I feel should read after the health spa has agreed the request for cancellation is valid and warranted.

New Section #14 (a) lines 0383-0384 - eliminates our right to finance our contracts with a financial institution. Why is this necessary? This would again put us out of business.

New Section #15 Lines 0385 + 0387 - What is being referred to herein.

New Section #17 (a) Lines 0396 + 0398 - eliminates the right to a corporate sale package. Many corporations are today buying memberships for their employees

(b) Should read - "A health Spa operator should not willfully make a material misrepresentation-etc." It is impossible to be responsible for every statement uttered by an employee - if this

New Section #17

were the case, all business should be held responsible for all statements. We should have the right to eliminate the employee and rectify the problem, but not be held responsible as if this were an unlawful and deliberate act. We, as in all phases of business, do from time to time find our employees exaggerating the truth - unfortunately, we cannot sit in on our staff at all times. I feel that we should be responsible if we have instructed them to make a misrepresentation.

(e) lines 0417 - 0418 - What if we run a special discount to increase business on a "snow day," etc. - as long as this membership is made available to all on that day, we should be allowed.

(f) lines 0419 - 0423 - Why will you not allow us to finance our memberships with a finance company? If we cannot use a financial source, here again, you are forcing us out of business.

New Section #18

Lines 0424 - 0433 - What is being referred to here as an "unlawful act or practice."

New Section 19

If we are forced to bond, we are out of business as we know it today. Why not penalize the known offenders and not assume we are all here to hurt the consumer.

(b) I feel because of the actions of others, we are assumed to be a dishonest operation.

Affiliated Fitness Centers of Kansas

c/o Mademoiselle Spa Business Office

P.O. Box 28100

Gladstone, Missouri 64118

(816) 455-4021

TO: SENATE COMMITTEE FOR PUBLIC HEALTH & WELFARE

FROM: KATHLEEN PIPER, PRESIDENT, AFFILIATED FITNESS CENTERS OF KANSAS

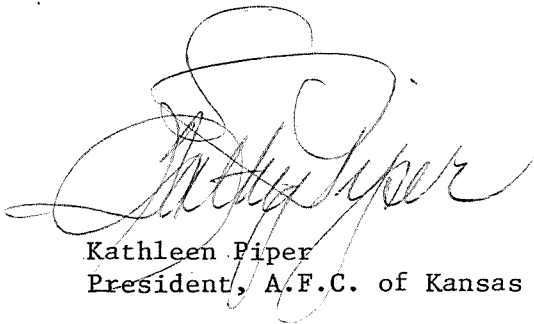
RE: SUMMARY - ON SENATE BILL #609

DATE: MARCH 2, 1988

I would like the opportunity to say there are some bad apples in our industry, as in any industry. However, the passage of this bill as it is written will only put undue hardship on the legitimate, small-scale operator. I believe we should have available to us the same opportunity of free enterprise as does any industry. We are willing to follow guidelines that will protect all involved parties, but not something that could eliminate our business as we know it today. Here, again, the honest club operator who has struggled to offer his/her members a good facility, will be penalized for others who have proven themselves to be deceitful.

I hope you will take a moment to view this situation from our side of the issue as well.

Thank you for your considerations.



Kathleen Piper
President, A.F.C. of Kansas

KP/bc

Proposed Amendment to SENATE BILL NO. 658

Be Amended:

On page 1, in line 20, by striking all after "Section 1."; by striking all of lines 21 to 44, inclusive;

On page 2, by striking all of lines 45 to 81, inclusive;

On page 3, by striking all of lines 82 to 114, inclusive, and inserting in lieu thereof the following:

"K.S.A. 1987 Supp. 59-2928 is hereby amended to read as follows: 59-2928. (a) Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the treatment facility or a physician or psychologist to be required to prevent substantial bodily injury to such patient or others. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent injury to the patient or others, and the use of restraint or seclusion shall not exceed three hours without medical reevaluation, except that such medical reevaluation shall not be required; (1) Unless necessary, between the hours of 12:00 midnight and 8:00 a.m.; or (2) in a treatment facility which is a licensed adult care home.

When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or psychologist, which shall be no less than once per hour. The head of the treatment facility or a physician or psychologist shall sign a statement explaining the treatment necessity for the use of any restraint and seclusion and shall make such statement a part of the permanent treatment record of such patient.

(b) The provisions of subsection (a) shall not prevent, for a period not exceeding two hours without review and approval thereof by the head of the treatment facility or a physician or psychologist:

(1) Staff at the state security hospital from confining patients in their rooms when it is considered necessary for

security or proper institutional management;

(2) the use of such restraints as necessary for a patient who is likely to cause physical injury to self or others without the use of such restraints; or

(3) the use of restraints when needed primarily for examination or treatment or to insure the healing process.";

Also on page 3, in line 115, by striking "59-2902" and inserting in lieu thereof "59-2928";

On page 1, in the title, line 17, by striking "definition of treatment facility" and inserting in lieu thereof "use of restraints or seclusion"; in line 18, by striking "59-2902" and inserting in lieu thereof "59-2928";