

Approved _____

3-5-92
Date *ch*

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Carol H. Sader at _____
Chairperson

1:30 AM/p.m. on February 20, 1992 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Research
Bill Wolff, Research
Norman Furse, Revisor
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Representative Kenneth King
Representative Tim Shallenburger
Dan Kolditz, Deputy Attorney General
Tom Burgess, Association of Physical Fitness Centers
Mark Fisher, U.S. Fitness Management, Inc.
Joe Kisner, Senior Attorney, Consumer Fraud/Economic Crime Division,
Office of District Attorney, 18th Judicial District, Sedgwick County
(Written testimony only)
Todd Erickson, Owner/Operator, Serious Training, Wichita, Kansas
Mike Shaw, Wichita Workout/Racketball Club, Wichita, Kansas
Keith Hurling, Popeye's Cardio Fitness Center, Topeka, Kansas
Sabrina Parker, Sailor's Health Club, Wichita, Kansas
Allen A. Ternent, interested citizen

Chair called meeting to order drawing attention to HB 2740 and asked Staff for a briefing on the bill. See attachment 12

BRIEFING ON HB 2740.

Bill Wolff gave an outline of language in HB 2740, then detailed each section. There were no questions asked by members.

HEARINGS BEGAN ON HB 2740.

Rep. King (Attachment No. 1) stated HB 2740 was introduced to provide some financial protection to the consumer who joins health clubs. In recent years, several health clubs have closed down with a number of individuals losing money that was paid up-front. This legislation, if enacted, would help to correct that problem by disallowing advance payment to join a club. He answered questions.

Representative Shallenburger, (no hand-out provided), spoke today as a consumer advocate. He noted perhaps some of the verbage would need to be changed, but he feels this is important legislation. He would like to see free enterprise prosper, and not penalize the responsible health spa owner, but there does need to be some restrictions on the advance payments required by clubs. There have been problems that when the owners skip town, the consumer is the one left with the problem. He drew attention to the language in the bill with respect to schools, YMCA's, churches, booster clubs being exempt. He answered questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 a.m./p.m. on February 20, 1992

HEARINGS CONTINUED ON HB 2740.

Dan Kolditz, Assistant Attorney General, spoke in behalf of Attorney General Bob Stephan, (Attachment No. 2), who believes the proposed legislation in HB 2740 could be an important tool in preventing consumer problems that arise from health spa contracts. An amendment was recommended, to add a new section 2 (a) to read, "it is an unconscionable act or practice under the Kansas Consumer Protection Act." He stated that by identifying this violation as a per se unconscionable act, the law will be easier to enforce by the Attorney General's office. He answered questions, i.e., requiring proprietors to purchase a bond to secure the funds paid by the consumer for advance payments for memberships.

Tom Burgess, Association of Physical Fitness Centers, noted his opposition to HB 2740. (Attachment No. 3). He appreciates legislation to protect consumers from unscrupulous health club owners because those individuals hurt the image of the Health Club industry. He noted, however, there are concerns with language in HB 2740, i.e., there is no definition of service; prepayment as used in legislation means payments made prior to the opening of the facility and that seems to apply here; no time limit on services that are rendered to consumer; no clear definition of length of the services to be received; clubs would be burdened by large administrative costs for keeping a count of member usage and collecting fees if such payments were made each time a member came to use the facility; initial start up costs are significant for a health spa owner, so paid-in-advance memberships are very important.

Mark Fisher, President of U.S. Fitness Management, offered hand-out, (Attachment No. 4). He noted because their industry has been tainted due to unscrupulous operators and poorly managed clubs, they actually favor regulations/guidelines being developed to prohibit any further consumer abuse. They propose a Model Bill for consideration. He drew attention to the draft in his attachment. As written, HB 2740 may only serve to harm responsible owners. The bulk of expenses is related to the aquisition of members and the preparation of that member to properly use the equipment, so it is best not to have the member pay just one or two months at a time. He drew attention to the letter with the Attorney General's comments sent to members of this Committee.

Joe Kisner, Senior Attorney, Consumer Fraud/Economic Crime Division of District Attorney's office, Sedgwick County, had provided written testimony only. (Attachment No. 5). This statement contained comments that noted there is no question a problem exists when consumers pre-pay for services at health clubs and do not get what they pay for. Requiring health spa management to collect for services only after services have been rendered would change the focus of their business. He suggested HB 2740 be rejected and better language developed to provide consumer protection and at the same time allow responsible health club owners to operate in a solid manner at a reasonable cost to members.

Todd Erickson, owner/operator of Serious Training, offered hand-out (Attachment No. 6). He reviewed the economic impact on his business and others in the industry if HB 2740 is passed in its current form. If services are not paid for until after received, the business is at a disadvantage since they operate on fixed costs. It is his view there would be a problem collecting via bank draft from clients; will cost him more administratively; collection of unwilling accounts will add administrative costs as well. He favors consumer protection, but in a manner that is fair to both sides.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S Statehouse, at 1:30 a.m./p.m. on February 20, 1992

HEARINGS CONTINUED ON HB 2740.

Mike Shaw, Wichita Workout/Racquetball Club offered hand-out (Attachment No. 7), and noted the responsible, hardworking "on premise" club owner/operator pledges his assets, risks his life savings, works 60-80 hours a week in an honest attempt to deliver quality health/fitness services to the consumer in a highly competitive business. His club does offer 1 day, 1 month, 1 year passes. Some clubs do not. He drew attention to materials in his hand-out, noting the ISRA (International Racquet and Sports Association) would be happy to work with the State Legislature in the development of a comprehensive bill that would serve to protect the consumer and allow the owner to operate as well. A 50 state summary is also included in Attachment No. 7).

Tia Willows and Lou Terse, both representing Bally's Racket and Tennis Clubs of America. Mr. Terse stated his opposition to HB 2740 and noted it would be virtually impossible for Clubs to work under payments not being made until after services are rendered. This bill would create more problems than already exist. He feels the exemptions for Aerobic Studios, YMCA's dance studios is unfair. YMCA's for example are operating as a non-profit organizations, when, in fact, the memberships for aerobic and workouts cost virtually the same as in health spas. He explained rationale for the differences in selling a product vs. a service, and the differences in costs to the operator.

Keith Hurling, Popeye's Cardio Fitness, offered hand-out (Attachment No. 8). He views the service from health spas as a fair exchange for the fees paid. If HB 2740 passes in its current form, health clubs will be forced to increase the membership fees, then it will be offering an unfair exchange. We do not oppose regulation in our industry, we endorse certification and membership options, and a bonding system that has reasonable requirements. We have honored memberships from other clubs that have closed. We try very hard to offer good programs for the consumer. We offer 1 month, 4 month, 1 year options for memberships at reduced prices. This is a fair exchange, but if we are unable to do this, our costs will run ahead of the revenue. He spoke of renewals in the industry currently running 35-36% which isn't a lot. We have doubled that percentage here in Topeka, which is good, he said, and we would like to stay in business for a long time.

Numerous questions were asked by Committee of the conferees, i.e., dropout rate of clients; contracts sold to another if the contract holder moves away; a model bill was discussed; different payment options were discussed; YMCA's offering similar services, but as a non-profit business was discussed.

Chair drew attention to written testimony provided by Sailor's Health Club, by Ms. Sabrina Parker of Wichita, Kansas. (See Attachment No. 9).

Allen Ternent, (Attachment No. 10) a law student at Washburn University, told of his personal experience as a victim of health club fraud. He is also an entrepreneur with an interest in business development issues so views this from both sides. He had been a member of the American Super Club which has closed recently defrauding members out of a great deal of money. This business continued to sell memberships even after it knew it would be filing bankruptcy. Many consumers in Topeka were defrauded and although the detective involved in the investigation felt he had a strong case and wished to investigate further he was precluded from doing so because he could find no one willing to prosecute.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 a.m./p.m. on February 20, 1992.

HEARINGS CONTINUED ON HB 2740.

Allen Ternent continued:

The manager of the American Super Clubs still resides in Topeka and has never been held accountable for the role in fraud. As a victim, he is encouraged to see legislation for the protection of the consumer. As an entrepreneur, he does have concerns with language in the bill, i.e., disallowing prepayments since this would hamper this particular business since their initial costs are heavy. He suggested this particular legislation might follow that from other states that seem to be working well. The state of Wisconsin requires a secured bond.

He answered questions.

HEARINGS CLOSED ON HB 2740.

Chair drew attention to a hand-out provided by Staff (Attachment No. 11). Ms. Correll noted there were questions at an earlier meeting in regard to the Infants/Toddlers and state funding for same. She recalled, for informational purposes, this program was to be funded from multiple sources. There is no State General Fund money through the Department of Health and Environment. Federal money available includes funds from Medicaid and ESDT. The only state General Fund money they could identify is bracketed in her hand-out and is through the State Board of Education. This all relates to HB 2759, discussed previously.

Chair noted at this time, on Monday February 24th, Chair hopes to take action on bills previously hears (HB 2844, HB 2882, HB 2883) and proceed to others if time allows.

A Sub-Committee was appointed to work on suggested amendments to HB 2796. Rep. Bishop, Rep. Samuelson, Rep. White were appointed to serve.

Chair adjourned meeting at 2:53 p.m.

KENNETH R. KING
REPRESENTATIVE SEVENTY-SEVENTH DISTRICT
BUTLER COUNTY



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: COMMERCIAL & FINANCIAL INSTITUTIONS
ELECTIONS
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

HB 2740

February 20, 1992

Testimony Before the
House Public Health and Welfare Committee

by

Kenneth R. King
Representative, 77th District

Madam Chairperson and members of the committee:

HB 2740 was introduced to provide some financial protection to people who join health clubs. Most clubs require several hundred dollars up front to join. For that, the people have the privilege of using the health club facility for a period of time (maybe 6 months or a year).

In recent years, we have had several of these clubs go under. The result of that is the people have no health club and their money is gone. This bill would correct part of the problem by disallowing advance payment. They would pay as they used the club.

*PK/KW
2-20-92
Attm #1.*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
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Testimony of
Deputy Attorney General Dan Kolditz
On Behalf of Attorney General Robert T. Stephan
Before the House Public, Health, and Welfare Committee
RE: House Bill 2740
February 20, 1992

On behalf of Attorney General Bob Stephan, I appear to support House Bill 2740. The Attorney General believes that the proposed legislation could be an important tool in preventing consumer problems that arise from health spa contracts.

Health spa membership contracts are expensive. By requiring consumers to pre-pay for use of the health spa facility, "lifetime" memberships are simply valid for the health spa's lifetime, not the consumer's lifetime.

However, the Attorney General requests that the new section be amended to state that a violation of Section 2(a) is an unconscionable act or practice under the Kansas Consumer Protection Act. By identifying a violation as a per se unconscionable act, the law will be easier to enforce by the Attorney General's Office. Also, it will ensure that all of the remedies provided by the act are available in an action brought by the State of Kansas.

DHKW
2-20-92
Attm # 2

OFFICE OF THE DISTRICT ATTORNEY
Eighteenth Judicial District
Sedgwick County Courthouse
535 North Main
Wichita, Kansas 67203-3786

NOLA FOULSTON
District Attorney

Consumer Fraud and
Economic Crime Division
(316) 383-7921

February 19, 1992

Representative Carol H. Sader, Chairperson
House Public Health and Welfare Committee
State Capitol Building, Room 115-S
Topeka, KS 66612

RE: House Bill 2740

Dear Representative Sader:

Enclosed please find copies of my testimony in opposition to House Bill 2740. It is my understanding that this bill is set for hearing before the House Public Health and Welfare Committee on Thursday, February 20th. Unfortunately, I am scheduled to be involved in a district court hearing on that day and will not be able to be in Topeka to testify. I am therefore enclosing 25 copies of my testimony and request that they be distributed to the members of the committee. In addition, I would ask that my testimony be made a part of the record on House Bill 2740.

I appreciate your consideration and please call me if you have any questions or if I can be of assistance in any way.

Very truly yours,



Joe Kisner
Assistant District Attorney

JK/srb

encl.

PHAW
2-20-92
att # 153
1-3

BURGESS & ASSOCIATES

Suite 1100 - 800 SW Jackson - Topeka, Ks 66612
(913) 234-2728 Fax (913) 233-7991

Testimony

before the
House Public Health and Welfare Committee

Presented by Tom Burgess
Association of Physical Fitness Centers
Thursday February 20, 1992

House Bill No. 2740

Chair-person Sader and members of the committee:

I am Tom Burgess representing the Association of Physical Fitness Centers in opposition to HB 2740.

We appreciate your desire to protect consumers from unscrupulous health club owners, because those bad owners hurt the image of the industry. But we would also like some protection for the legitimate club owners who provide the place and opportunity for people to exercise. This bill would create an undo hardship on clubs. It would be an accounting nightmare to keep track of the memberships and expenses. With a business climate and economy that's unfavorable to business, this seems to be a bad time to create more hardships on legitimate businesses trying to provide quality services. We would urge you to find a different method of regulating health clubs.

We have several questions that we would like to have considered:

(1) There is no definition of Services. The modern health club provides a wide range of services sometimes including restaurants and racquetball sports.

(2) The term "prepayment" as used in legislation means payments made prior to the opening of the facility. I believe that interpretation could be applied here

(3) There is also no time limit to the services that are rendered the consumer. Nor does HB 2740 define the length of the services to be received.

PH&W
2-20-92
Att # 3
2-3

(4) Many Health spas, at the request of the consumer, sell term memberships of two and three years. These payments allow individuals who could otherwise not afford a health club membership to be members.

(5) Unless electronic funds transfer or some other automatic way of receiving payment is applied, the health club would be burdened by the substantial administrative costs of keeping a count of member usage and collecting the fees.

(6) Studies of the industry have shown that the bulk of expenses relating to the consumer occurs in the acquisition of the member and the preparation of the member to properly use the equipment in the health club. Because the costs are so great at the beginning, the health club would lose substantial revenues if members pay for one to three months and then dropped. In this case, the costs of acquiring, programming, and supervising the member would be in excess of an amount received. Thus, health clubs all over Kansas would not be able to cover their costs and would subsequently close.

Thank you for the opportunity to speak in opposition to House Bill 2740.

PHAW
2-20-92
Att #3
2-3

U.S. FITNESS MANAGEMENT INC.

Kansas House of Representatives
Public Health and Welfare Committee

RE: House Bill Number 2740

My name is Mark Fisher and I am the President of U.S. Fitness Management. We own and operate the largest chain of health clubs in the state of Kansas. With 4 locations, 20,000 members and over 150 employees.

As a company we are extremely concerned about the consumers preception of the health club industry. Our clubs belong to the APFC (Association of Physical Fitness Centers) which has established a code of Ethical Practices to which we adhere. The APFC represents over 500 health and fitness centers across the country with the goal of providing excellent health and fitness facilities to the public in a fair, equitable and professional manner. Because our industry has been tainted due to unscrupulous operators and poorly managed clubs we are in favor of regulations and guidelines being developed to prohibit any further consumer abuse. To that end the APFC has purposed a Model Bill for consideration. This bill would serve as a fair and equitable guideline and is very comprehensive. We will offer our assistance to the committee to work with this bill or to create a bill that is fair and enforceable.

However, House Bill Number 2740 may only serve to harm legitimate, consumer concerned club operators. Studies of our industry have shown that the bulk of expenses relating to the consumer occurs in the aquisition of the member and the preparation of the member to properly use the equipment in the health club. Because the costs are so great at the beginning, the health club would lose substantial revenues if members pay for one to three months and then dropped out. In this case, the cost of acquiring, programming, testing, and supervising the member would be in excess of an amount received. Thus, health clubs all over Kansas would not be able to cover their costs and would subsequently close.

PHW
2-20-92
atlm # 4

U.S. FINANCIAL MANAGEMENT INC.

If House Bill Number 2740 were passed health clubs would have to process all funds electronically, thus becoming burdened by the substantial administrative costs of keeping a count of member usage and collecting fees. This would erode profit margins and ultimately reduce services to the member.

We would like for the Committee to consider the model bill that the APFC has proposed and additionally to ensure the committee that we are willing to work with them to develop a comprehensive and fair solution to this problem.

Sincerely,



Mark S. Fisher
President

MSF/jhf

PHW,
2-20-92
Att#4
29

OFFERED BY
THE ASSOCIATION OF PHYSICAL FITNESS CENTERS

*Mod
Bill
Mark Fisher*

AN ACT

Regulating contracts for health spa services and prescribing remedies.

The (Legislative body) of the (Commonwealth; State) of _____ hereby enacts as follows:

Section 1. Short Title. This act shall be known and may be cited as the "Health Spa Consumer Protection Act".

Section 2. Definitions.

(a) As used in this act, "contract for health spa services" means a contract for instruction, training or assistance in physical culture, bodybuilding, exercising, reducing, figure development, or any other such activity or for the use of the facilities of a health spa, figure salon, racquetball club, weight loss clinic, gymnasium or other facility used for any of the above purposes, or for membership in any group, club, association or organization formed for any of the above purposes.

(b) As used in this act, "health spa" is defined as any business entity offering to the public the services included in Section 2 (a) of this act.

Section 3. Written Contract Required. Every contract for health spa services shall be in writing and shall be subject to the provisions of this act. A copy of the written contract shall be given to the buyer at the time the contract is executed.

*PHAW
2-20-92
Att #4
3-9*

Section 4. Single Contract; Limitation on Payment Period; Prohibition Against Life Contract; Permissible Service Period; Cancellation Period.

(a) All contracts for health spa membership which may be in effect between the same seller and the same buyer, the terms of which overlap for any period shall be considered as one contract for the purpose of this act.

(b) No contract for health spa services shall require payments or financing by the buyer over a period of excess of thirty-seven (37) months from the date the contract is entered into, nor shall the term of any such contract be measured by or be for the life of the buyer; however, the availability of the health spa facilities to the buyer and under the contract may extend over a period not to exceed three (3) years from the date the contract is entered into with the right to renew for additional periods of equal length.

Section 5. Performance of Contract; Cancellation and Refund.

(a) Every contract for health spa services to be rendered at an existing health spa facility shall provide that the performance of the agreed upon services will begin within forty-five (45) days from the date the contract is entered into.

(b) Every contract for health spa services at a planned spa facility or spa facility under construction shall, at the option of the buyer, be voidable in the event that the health spa facilities and the agreed upon services are not available within twelve (12) months from the date the contract is entered into.

PHAW
2-20-92
att# 4
4-9

(c) Every contract for health spa services shall further provide that such contract may be cancelled within thirty (30) business days after the date of receipt by the buyer of a copy of the contract by written notice delivered by certified or registered United States mail to the seller at the address specified in the contract. Such notice must be accompanied by the contract forms, membership cards and any and all other documents and evidence of membership previously delivered to the buyer. All monies paid pursuant to such contract shall be refunded within thirty (30) days of receipt of the notice of cancellation.

(d) Every contract for health spa services shall provide that after the three day period of cancellation as provided in section 5 (c), the buyer's estate may cancel a contract for services if the buyer dies. The buyer may also cancel after three days if the buyer becomes totally and permanently physically disabled or moves his residence to a location more than twenty-five miles from a health club operated by the seller or a substantially similar health club facility which would accept the seller's obligation under the contract or after the services are no longer available as provided in the contract because of the seller's permanent discontinuance of operation. Nothing contained herein shall restrict or prohibit the seller from offering or providing in such contract additional or broader reasons for cancellation.

PHW
2-20-92
Att #4
5-9

(e) The health spa shall have the right to require and verify reasonable evidence of permanent physical relocation, permanent physical disability or death. In the case of permanent disability, the health spa may also require in such contract that the buyer submit to a physical examination by a doctor agreeable to the buyer and the health club, the cost of which examination shall be borne by the health club.

(f) All moneys paid pursuant to such contract cancelled for the reasons contained in this section shall be refunded within thirty (30) days of receipt of such notice of cancellation provided however that the seller may retain the expenses incurred and the portion of the total price representing the services used or completed, and further provided that the seller may receive the reasonable cost of goods and services which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller receive more than the full contract price from the buyer except for goods and services consumed by the buyer separate from the contract. If the buyer has executed any credit or loan agreement to pay for all or part of health spa services, any such negotiable instrument executed by the buyer shall also be returned within thirty (30) days.

Section 6. Provisions Not Exclusive. The provisions of this act are not exclusive and do not relieve the parties of the contracts subject thereto from compliance with all other applicable provisions of law.

PHW
2-20-92
Att #4
6-9

Section 7. Noncomplying Contracts Voidable. Any contract for health spa services which does not comply with the applicable provisions of this act shall be voidable at the option of the buyer. The seller may cure such noncompliance and no class action may be brought for relief under this provision unless following receipt of written notice of such noncompliance the seller fails within thirty (30) days of receipt of such notice of noncompliance to notify all buyers of such noncompliance and fails to make such changes in subsequent contracts for health spa services as may be required to comply with the act.

Section 8. Fraud Rendering Contract Void. Any contract for health spa services entered into in reliance upon any willful and false, fraudulent, or misleading information, representation, notice or advertisement of the seller shall be void and unenforceable.

Section 9. Waiver of Provisions. Any waiver of the buyer of the provisions of this act shall be deemed contrary to public policy and shall be void and unenforceable.

Section 10. Preopening Sales Bond; Amount; Filing. Every health spa which sells contracts for health spa services to be rendered at a planned health spa facility or a health spa facility under construction shall maintain a bond issued by a surety company admitted to do business in the (Commonwealth; state). The principal sum of the bond shall be a minimum of Twenty Five Thousand Dollars (\$25,000.00). The health spa shall be relieved from the obligation to maintain such bond upon commencing health spa service.

P.H.W.
 2-20-92
 Att # 4
 7-9

Section 11. Bond; Persons Protected. The bond required by Section 10 shall be in favor of the (Commonwealth; state) for the benefit of any person injured by having paid moneys for use of a health spa facility which fails to open within twelve (12) months after the date upon which the buyer and the health spa entered into a contract.

Section 12. Proof of Financial Responsibility in Lieu of Bond. In lieu of furnishing the bond required in Section 10 the health spa may furnish such information as required by the _____ executed under penalty of perjury by an officer and/or owner of the health spa which reasonably demonstrates such financial responsibility as will enable the health spa to satisfy the possible claims against the bond allowed by Section 11. In the event the health spa is controlled by, under common control with, or controls other corporation(s) and such other corporation(s) agree(s) in writing to satisfy the claims against a bond allowed by Section 11, then the financial responsibility of such other corporation(s) shall be considered in determining the applicability of this Section 12. In determining whether the health spa shall have the requisite financial responsibility hereunder the _____ may consider the operating and business history and reputation of the health spa and its management within and without the (Commonwealth; state) as well as the operating and business history and reputation of any business controlled by, under common with, or controlling the health spa.

PHW
2-20-92
Att #4
8-9

Section 13. Severability. If any provision of this title or the application thereof to any person or circumstances is held unconstitutional the remainder of the title and the application of such provision to other persons and circumstances shall not be affected thereby.

Section 14. This act shall take effect _____

PHW
2-20-92
att # 4
9-9

TO: The Chairperson and Members of the House Committee on Public Health and Welfare

FROM: Joe Kisner, Senior Attorney, Consumer Fraud and Economic Crime Division of the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas

RE: House Bill 2740 - Health Spas prohibited from accepting prepayment for services

DATE: February 20, 1992

The Consumer Fraud and Economic Crime Division of the Office of the District Attorney is opposed to House Bill 2740. While we agree that some action needs to be taken by the legislature to protect Kansas consumers from health spa closings, we believe this bill could have a very negative impact on the operations of many clubs in the state. This would result in fewer health clubs available to consumers, higher costs of doing business for those who could operate under the restrictions proposed in this bill, and ultimately, higher prices for health spa members.

The Office of the District Attorney in Sedgwick County has experienced the closing of several health club facilities over the past few years. Most recently, Wichita Athletic Club closed down its operation and left town in the middle of the night. Our office received numerous complaints from members, many of whom lost hundreds of dollars that had been paid for services which were never received.

There is no question that a problem exists when consumers pre-pay for services and do not get what they have paid for. District Attorney Nola Foulston recognizes this problem and is currently in the process of establishing a task force to examine possible solutions to this problem. This task force will include owners and operators of local health spas. It is our hope that this group can come up with specific proposals to address the problems that health spa members face when their club goes out of business. It is the District Attorney's desire to then develop legislation to address these problems and have that legislation introduced in the 1993 session of the Kansas legislature.

Requiring health spa management to collect for services only after they have been rendered would change the focus of their business. They would be unable to budget properly, not knowing from month to month what kind of income to expect. They would have to spend significant time and resources in collections from members for services previously rendered and less on providing the quality services consumers expect from their health club.

PHAW
2-20-92
Att #5
1-2

There is no question that House Bill 2740 would prevent consumers from losing out when their club goes out of business. Yet this bill may throw the baby out with the bath water. In the long run, consumers who join and use the facilities provided by Kansas health spas will lose much more. We request the committee reject House Bill 2740 and give our office the opportunity to develop a bill that will provide consumer protection and at the same time allow those businesses operating good solid health clubs to continue to do so at a reasonable cost to their members.

PHAW
2-20-92
Att #5
2-2

To: Kansas House Health and Welfare Committee

From: Todd Erickson, Owner/Operator, **Serious Training**, Wichita, Kansas

The following is a brief summary of my position regarding the effects of the passing of Bill No. 2740.

I have owned and operated **Serious Training** since June 3, 1991; the club is a sole proprietorship. **Serious Training** is a small service-intensive environment which caters to professionals, businesspeople, and athletes in east Wichita. We are unique in that we employ ten personal trainers, who work with people on an individual hourly basis to help them achieve their goals safely and effectively. We also provide aerobics classes, some with weight training included.

I provide jobs for approximately 21 part and full-time employees. I provide service for 200+ members. Most memberships (90%) are sold on a monthly or quarterly basis.

The health club business is a highly competitive industry in Wichita. Although the going has been tough, I am proud to own my own business, and enjoy providing a high quality service for my members. I hope to be in business many years.

PHW
2-20-92
attn #6

Immediate impact of legislation:

--If passed I will sustain loss of all revenue for at least one month

This means while my current members are waiting for their month to expire , there will be no revenues to pay fixed expenses. Almost all of my costs are fixed. So \$10,000 -- 15,000 will have to borrowed to make rent, payroll, utilities, interest payments,etc... No paid in full memberships means cash flow will drastically decrease over the long term.

--If passed ,it will be necessary to require all payment by bank draft rather than cash or check. This is the only way that I would be reasonably sure of collecting dues from my clientele. By requiring bank draft, I will lose customers that do not have accounts to draft out of or current members unwilling to participate in a bank draft. This gives the consumer less options and decreases revenue even further.

--If passed, collecting unwilling accounts will further increase cost and decrease revenues.

RESULT: Due to the competitive nature of this business I am operating on a very small profit margin. The decrease in revenues and increase in costs that Bill No. 2740 would incur on my business would bankrupt me. This would mean loss of tax revenues for the state, loss of 20+ jobs, and loss of money and choice from my current 200 members. I am strongly in favor of consumer protection in the form of a law that is acceptable by both sides. We have submitted an example of this type of legislation.

*PHC
2-20-92
Att #6
2-2*

**Kansas House of Representatives
Public Health and Welfare Committee**

RE: House Bill Number 2740

My name is Mike Shaw from the Wichita Workout & Racquetball Club, 6100 E. Central, Wichita, KS., 67208.

I appreciate the opportunity to speak here today in a dual capacity. In one capacity, I represent myself to you as a Kansas health club operator, and, in the other, I speak as a seven year member of IRSA(International Racquet and Sports Association). IRSA is a international trade association representing over 1800 health, fitness, and racquet clubs. One of IRSA's main objective is based on a simple code of ethics -- "To operate their clubs in the best interest of the consumer and the health, fitness, and racquet sports industry".

We are concerned about the negative image that the health club industry has acquired during the last few years and most recently from the American Super Clubs and The Wichita Athletic club closings. The legitimate and hard working "on premise" club owner/operator who pledges his assets, risks his life savings and works 60 to 80 hours a week in an honest attempt to deliver quality health and fitness facilities and services to the consumer, is constantly being faced with the reputation of being in an industry surrounded by the powerful and strictly bottom-line oriented high pressure selling health club chains.

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The unfair and deceptive business practices currently being used in the State of Kansas by some disreputable health club chains are totally unacceptable by both the consumer and the industry's international trade association -- IRSA, the Association of Quality Clubs -- representing over 1800 clubs.

IRSA has proposed the "IRSA Health Club Consumer Protection Model Legislation" which is very comprehensive and offers numerous alternatives and guidelines which we would be pleased to present to this Committee along with our assistance in order to help create a fair, workable and enforceable legislative proposal that would help eliminate unfair and deceptive practices that are injuring the consumer and our industry's reputation.

While the currently proposed House Bill Number 2740 and its predecessor House Bill Number 2091 make a valiant and commendable attempt at modifying the regulation of health clubs, it also poses some unfair provisions on the legitimate and conscientious owner-operator in addition to the fair provisions aimed at eliminating the abuses being thrust upon the consumer by unscrupulous operators.

We would like to work with the Committee to ensure that strong and effective revisions are made in current law.

Sincerely,

Mike Shaw

Mike Shaw
General Manager

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Position Paper

Consumer Protection Legislation for the Health Club Industry

Position

IRSA supports consumer protection legislation that safeguards the public against fraud, deceit and financial hardship and fosters and encourages competition, fair dealing and prosperity in the health club industry, but is no more restrictive than absolutely necessary.

Explanation of Position

1. Consumer protection legislation should apply to all facilities providing health club services, including tax-exempt facilities. (i.e., YMCA and JCC)
2. Health clubs should not enter into a membership contract more than 12 months prior to clubs opening. All fees collected prior to opening should be placed in an escrow account until the club opens.
3. There should be no limit on the cost of a membership contract. The maximum length should be limited to 36 months, but consumers are permitted to cancel the contract anytime after 12 months. There should be no restrictions preventing a health club from accepting up to one month's prepayment for services.
5. Consumer's may cancel the membership contract during a 3 day introductory period; club relocation of 5 miles or more or substantially changes its facilities; member relocation of 25 miles or more; and consumers death or disability.
6. A health club should not be permitted to misrepresent the services, operation or club facilities in advertising or promotional materials.

12/1/91

IRSA, The Association of Quality Clubs
Model Health Club
Consumer Protection Legislation

Section 1 Statement of Purpose

The purpose of this Chapter is to safeguard the public interest against fraud, deceit and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health club services. This chapter should be construed broadly in order to provide the public with ample protection.

Section 2 Definitions

(a) Buyer - any person who enters into a contract to receive health and fitness services from a seller.

(b) Contract for health club services or contract ("contract") - a term agreement by which a seller agrees to provide a buyer with the right to use the facilities of a health club or provide the buyer with health and fitness services.

(c) Health Club - any person or business entity offering facilities for instruction, training or assistance in the preservation, maintenance, encouragement or development of physical fitness, conditioning, or recreation. Such term shall include but not be limited to health spas, sports, tennis, racquetball, squash, platform tennis, swim and health clubs, figure salons, health studios, gymnasiums, weight control centers or studios, martial arts and self defense schools, or any other similar course of physical training.

The term health club includes bona fide nonprofit organizations including but not limited to the YMCA, YWCA or other similar organizations entering into contracts for health club services unless its function as a health club is only incidental to its operation. The term excludes private clubs not open to the public.

(d) Monthly Dues Contract - a contract providing for the payment of an equal fee each month (excluding usage fees) with the member having the right to cancel at any time upon not more than 45 days notice.

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(e) Seller - a person, or any type of association which provides facilities, instruction, training or assistance in the preservation, maintenance, encouragement or development of physical fitness, or conditioning to the general public.

(f) Term agreement- a contract by which a buyer agrees to enter into a contract for health club services for a specified time duration greater than one month.

(g) Unopened facility - a health club that is not fully constructed, open and available for use when the seller enters into a contract for health club services with a buyer.

(h) Usage fees - the fees charged by a club exclusive of membership or initiation fee for the use of services or products not covered by the contract including, but not limited to, locker rentals, massage, tanning, lessons, or equipment rentals.

Section 3 Registration

(a) All health clubs shall file a registration statement with _____ (designated government agency). No health club shall enter into a health services contract with a buyer before filing a registration statement. All contracts for health club services entered into before the registration statement is filed, or after the current statement expires are void.

(b) The registration statement shall contain the following:

- (1) name and address of health club;
- (2) names and addresses of officers, directors, and majority stockholders of health club, and parent company, if such company exists;
- (3) approximate size of the club;
- (4) type of available facilities;
- (5) type of membership plans offered and their cost;
- (6) copy of the contract for health club services;
- (7) a full and complete disclosure of any pending or completed litigation, or any complaint filed with a governmental authority against the health club, and any of its officers or directors within the last three years, or a notarized statement which states there has been no litigation or complaints filed with a government authority within the past three years.

(c) The registration statement must be updated annually. Except that a health club which changes any of its locations or ceases to do business must, within ten (10) days, provide written notice of changes to the _____(designated/governmental agency).

(d) A copy of the registration statement shall be kept at each health club and be available for inspection by all current members and prospective members at their request.

(e) The _____(designated government agency) may charge each club that files a registration statement a reasonable fee to cover the cost of filing.

Section 4 Pre-opening sales

(a) A health club shall not enter into a contract for health club services with a buyer more than twelve (12) months prior to the scheduled opening of the health club. If the scheduled opening is delayed, through no fault of the health club, the contract may be extended at the option of the buyer.

(b) All payments received by a health club pursuant to a contract for health services involving an unopened facility, shall be placed in an interest bearing escrow account. The escrow account shall be for the exclusive benefit of the buyers. The escrow account shall be established in a bank or savings institution doing business in the state. A separate escrow account shall be required for each health club facility.

(c) The funds deposited in the escrow account shall remain the property of the buyers whose funds have been deposited and shall be subject to full refund, plus interest earned, to those buyers, who request a refund at any time until fifteen (15) operating days following notice that the facility is open and available for inspection and use. The seller shall not encumber the corpus of the escrow account, and may not use the corpus of the escrow account or the interest from the corpus of the escrow account for any purpose except to make refunds to buyers until fifteen (15) operating days after notice was sent to the buyer as required in section (d).

(d) When the construction of the described facility is substantially completed and it is open and available for use by buyers, the seller shall mail or personally deliver to each buyer a written notice that informs the buyer of each of the following:

- (1) The facility is available for inspection and use:
- (2) The buyer has ten (10) operating days after the date of the mailing of the notice in which to inspect the facility and determine whether it substantially conforms with the written

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contract, any written materials provided by the seller, or any advertisement by the seller;

(3) If the buyer determines that the facility does not substantially conform with the written contract, any written materials provided by the seller, or any advertisement by the seller, the buyer may cancel the contract and receive a full refund of any amounts paid, including interest; and

(4) The procedure for cancelling the contract, as described in section 5(a).

(e)(1) If a buyer notifies the seller of his intent to cancel the membership contract, the seller, according to the procedures described in section 5(a), shall notify the escrow account-holder. The escrow account-holder shall make an appropriate refund to the buyer within fourteen (14) days after the health and fitness facility receives written notice of the buyer's cancellation.

(2) If upon reasonable investigation an escrow account holder ascertains that the promised facility was not open and available for use within 60 days after the date promised, and no further work was performed to prepare the facility for opening for a period of more than 30 days thereafter, an escrow account-holder who has received a request from a buyer whose funds have been delivered to the account shall do one or more of the following:

(A) Promptly refund the buyer's share of the corpus of the escrow account to the buyer.

(B) Promptly notify the buyers of the pertinent facts, and establish and carry out a program to effect refunds to buyers in an efficient and expeditious manner.

(f) Upon the expiration of fifteen (15) operating days after the seller has delivered or mailed the notice required by this subdivision to all buyers whose funds have been deposited in escrow, the seller shall inform the escrow account-holder in writing of the names and addresses of all buyers not previously submitted to the escrow account-holder that the seller knows or has reason to believe have validly elected to cancel their membership contracts under the provision of this Chapter, with the amount that each of those persons is entitled to receive from the funds on deposit in escrow. At that time, the escrow account-holder shall disburse the corpus of the escrow, plus interest, as follows:

(1) First to those buyers that the escrow account-holder knows or has reason to believe, from information supplied by the seller or by means of notice from buyers, to have rightly cancelled under the provisions of this title.

2) Second, to the seller.

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Section 5 Buyer's Rights

(a) The buyer at an open facility shall have the right to cancel a contract for health club services as provided below:

(1) A buyer may cancel the contract for any reason until midnight of the third business day after a membership contract is signed and delivered to the buyer. If the buyer cancels the contract, the seller shall refund all amounts received, within fifteen (15) business days of receipt of notice of cancellation. The seller may increase the number of days within which the buyer may cancel.

(2) The buyer shall have the right to cancel a contract for health club services if the health club moves to a new location more than 5 miles from the previous site or substantially changes operation of the health club so that the change materially impairs the buyer's use and enjoyment of the health club.

(3) A buyer may cancel a membership contract if he or she moves their legal residence or place of employment more than twenty-five (25) miles from the health club in which he or she is a member, and is unable to transfer the contract to a facility the buyer deems comparable.

(4) A buyer may cancel the contract if the buyer becomes permanently disabled. A buyer is permanently disabled if he or she is either mentally or physically disabled for a period of time greater than 6 months.

The buyer must provided the seller with written verification of the condition, within twenty (20) days of the diagnosis of the disability, signed by a physician designated and paid for by the buyer. A seller may require buyer to get a second opinion from a physician chosen and paid for by the seller. In case of conflict, the opinion of the second physician will control.

If a physician determines that a buyer is disabled for more than 3 months, but less than 6 months, the contract will be extended for the duration of the temporary disability.

(5) In the event of the buyer's death, the buyer's estate is not responsible for any future payments and may cancel the contract.

(6) To cancel a contract, a buyer must notify the seller of the cancellation, in writing, at the address specified in the contract. The notice must be accompanied by the contract forms, membership cards, and any and all other documents and evidence of membership previously delivered to the buyer. If the buyer fails to provide all documentation the seller may cancel the contract or give the buyer thirty (30) days to provide the documentation.

Such notice must be delivered in person or by registered or certified U.S. mail. The burden of proving that the buyer has cancelled the contract is on the buyer.

If a buyer cancels a contract according to section 5(a)(1), he or she shall be entitled to a pro rata refund for all fees collected. When a buyer cancels a contract according to §(5)(a)(2)-(4) the buyer is entitled to a pro rated refund only on membership fees.

(b) If the ownership of a health club is transferred from one person or business entity to another, the contracts for health club services made by the original owner will be binding on his or her successor without regard to any agreement between the buyer and seller to the contrary. If there are substantial changes in the facilities or services offered as a result of the transfer, the member may cancel his or her contract for health club services, according to (a)(6).

Section 6 Contracts for Health Club Services

(a) All contracts for health club services shall be in writing and shall constitute the entire agreement between the seller and the buyer.

(b) No seller shall accept or receive any payment for health and fitness services from a buyer unless the buyer has signed a fully executed copy of the contract and it has been delivered to the buyer. If the buyer is a minor, the contract must be signed by a parent or legal guardian to be effective.

(c) Term contracts for health club services may be for a period of time up to 36 months as long as the consumer is permitted to cancel the contract for any reason after 12 months. If the buyer cancels the contract, he or she shall be entitled to a pro rated refund of pre-paid, but unused, membership fees. The contract may not contain an automatic renewal clause. The renewed contract cannot be longer than a year and cannot be for less than 50% of the original contract price annualized. It shall not be considered a renewal when the contract contains a provision that at the end of the term of the contract, the member will continue as a monthly member.

(d) No contract for health club services may contain any provisions where the buyer agrees not to assert against the seller, or any assignee or transferee of the health club services contract, any claim or defense arising out of the health club services contract, or the buyer's activities at the health club. No contract for services shall require the buyer to execute a promissory note or series of promissory notes which, when negotiated, cuts off as to third parties a defense which the buyer may

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have against the seller. No contract may be assigned by one health club to another health club without written consent of the buyer.

(e) A health club contract which does not comply with the provisions of this act shall be voidable at the option of the buyer.

(f) Any health club contract entered into by the buyer with 30 days of closing of a health club shall be voidable at the option of the buyer.

Section 7 Contract Provisions

(a) Every contract for health club services shall contain:

- (1) The name, the business address, and the telephone number of the seller, and the name and residence or business address of the buyer;
- (2) The entire agreement of the parties with respect to cost and terms of payment for the services;
- (3) The date the contract was delivered to the buyer;

(b) The contract for health club services shall contain the following written notice in at least ten point bold type in capital letters:

(1) BUYER'S RIGHT TO CANCELLATION

YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS OF THE DATE OF THIS CONTRACT, OR THE DATE OF YOUR RECEIPT, WITHOUT PENALTY OR FURTHER OBLIGATION BY GIVING EITHER BY HAND DELIVERY, WRITTEN NOTICE TO THE SELLER BY CERTIFIED OR

REGISTERED MAIL. IF YOU CANCEL DURING THIS PERIOD, YOU WILL RECEIVE A FULL REFUND (INCLUDING ANY INITIATION OR MEMBERSHIP FEE) WITHIN FIFTEEN (15) BUSINESS DAYS AFTER THE CLUB RECEIVES YOUR NOTICE OF CANCELLATION. TO BE EFFECTIVE, YOUR CANCELLATION MUST BE POSTMARKED BY MIDNIGHT, OR HAND DELIVERED BY MIDNIGHT ON ____, 19__, AND MUST INCLUDE ALL CONTRACT FORMS, MEMBERSHIP CARDS AND ALL OTHER DOCUMENTS AND EVIDENCE OF MEMBERSHIP PREVIOUSLY DELIVERED TO YOU.

(c) The contract for health club services should contain the following notice captioned in at least ten point type:

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ADDITIONAL RIGHTS TO CANCELLATION

You or your estate may cancel this contract for any of the following reasons:

if the health club services provided under this contract are not available because the health club moves more than five (5) miles from its current site or substantially changes the facilities, provided that the changes materially impairs the buyer's use and enjoyment of the health club;

if you move your legal residence or your place of employment more than twenty-five (25) miles from the health club in which you are a member and are unable to transfer the contract to a comparable facility;

if you die or become permanently disabled.

(d) Every contract involving an unopened facility shall also contain the following statement:

All funds received by us on your account, while the facility is unopened, will be held by (name of escrow account-holder) an escrow agent, in an interest bearing escrow account at (name, in-state address and telephone number of the bank or savings association designate to receive and hold all amounts paid to the seller.)

You may cancel this contract if the facility fails to open and become fully operational, unless the delay is through no fault of the seller, by _____ (date listed may not be more than twelve (12) months from the first date contracts were sold) . If you cancel the contract your money held in escrow will be returned to you, along with the interest earned.

Once the facility is open and available for use, we will mail or personally deliver to you an invitation to inspect the facility. You will have 10 days after the mailing or delivery to inspect the facility to determine if it substantially conforms with our written contract, any written materials we have provided, and any of our advertisements. If you rightfully determine that the facility does not substantially conform, you have the right to cancel this contract during this ten (10) day period.

Section 8 Truth in Advertising

(a) It shall be unlawful for a seller, his agents, employees or other representatives to misrepresent directly or indirectly, including in its advertising, promotional materials, or in any other manner:

(1) the size, location, available facilities, or equipment of its health club or health clubs, or the location or locations at which its services, facilities or equipment will be offered;

(2) the nature of its courses, membership programs, training devices or methods, services, pricing structure, price discounts, sales or offers;

(3) the nature, extent, or availability of any services, guidance, instruction, counseling or assistance which the health club will provide to buyers.

Section 9 Enforcement

(a) Any buyer who is injured as a result of a violation of this statute, may bring an action against the seller, any assignee of the seller, any managing employee of the seller, and against any other person who has conspired with any of them in committing the violation, for recovery of damages or other relief, including injunctive relief, multiple damages and attorney's fees.

(b) Any person, including any owner, manager, employee of the seller, and any other person who willfully violates or counsels, aids or abets such a violation shall be liable for a civil penalty of not more than \$2,500 for each violation.

(c) In addition to the other remedies provided herein, the attorney general may bring an action on behalf of the state for a violation of this statute.

Section 10 Common Law Rights Preserved

(a) Nothing in this Chapter shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute, or otherwise. The provisions of this Chapter are not exclusive and do not relive the seller or his or her assignees or the contracts subject to said sections from compliance with all other applicable provisions of law.

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IRSA

The Association of Quality Clubs

State Law Summary



IRSA
Government
Relations

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IRSA'S SUMMARY OF CONSUMER PROTECTION LAWS

PH-400
2-20-9:
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STATE	Regis- tration	Non- Profits Excluded	Maximum Length of Contract (months)	Maximum Length of Financing (months)	Maximum Contract \$ Amount (per year)	Contract Cancellation				Member Death or Disability	Bond/Escrow Required (yes/no)	Pre-opening Payment Limitation (yes/no)
						Renewal Restrictions (yes/no)	Cooling Off Period (days)	Club Moves (miles)	Member Moves (miles)			
ALABAMA	Y	Y		24			3	5	15	Y	Y	Y
ALASKA												
ARIZONA		Y	36				3		25	Y	N	
ARKANSAS	Y	Y	24	25		Y	3		50	Y	N	Y
CALIFORNIA			36	24	\$1,000		3	5	25	Y	N	Y
COLORADO			24	24			3	5		Y	Y	Y
CONNETICUT	Y	Y	24	12		Y	3		25	Y	N	
DELAWARE	Y	Y	36			Y	3	15			Y	Y
FLORIDA	Y	Y	36			Y	3	5		Y	Y	
GEORGIA	Y	Y	36	36		Y	7	10		Y	Y	Y
HAWAII		Y	36				5			Y	Y	Y
IDAHO												
ILLINIOS		Y	24	36	\$2,500	Y	3		25	Y	N	Y
INDIANA		Y	36	36		Y	3	5		Y	Y	Y
IOWA	Y	partially	36/12			Y	3			optional	Y	Y
KANSAS												
KENTUCKY	Y	Y	36	36			3	5	25	Y	Y	Y
LOUISIANA		Y	36				3				Y	
MAINE												
MARYLAND	Y	Y				Y	3			Y	Y	Y
MASSACHUSETTS			36	37		Y	3		25	Y	Y	
MICHIGAN												
MINNESOTA	Y	Y	18			N	3				Y	Y
MISSISSIPPI	Y	Y	24				5			Y	Y	
MISSOURI	Y	Y	36			N	3	10			Y	Y
MONTANA												
NEBRASKA												
NEVADA	Y	Y				Y	3			Y	Y	Y

IRSA'S SUMMARY OF CONSUMER PROTECTION LAWS

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STATE	Regis- tration	Non- Profits Excluded	Maximum Length of Contract (months)	Maximum Length of Financing (months)	Maximum Contract \$ Amount (per year)	Contract Cancellation				Member Death or Disability	Bond/Escrow Required (yes/no)	Pre-opening Payment Limitation (yes/no)
						Renewal Restrictions (yes/no)	Cooling Off Period (days)	Club Moves (miles)	Member Moves (miles)			
NEW HAMPSHIRE	Y	Y		24		Y	3	8		Y	Y	
NEW JERSEY	Y	Y	36			Y	3		25	Y	Y	Y
NEW MEXICO	Y											
NEW YORK	Y	Y	36	37	\$3,600		3		25	Y	Y	Y
NORTH CAROLINA		Y	36				3	8	30	Y	Y	Y
NORTH DAKOTA												
OHIO		Y	36				3 or 7	25	25	Y	Y	Y
OKLAHOMA	Y	Y	36			Y	3	8		Y	Y	Y
OREGON		N	36				3	5		Y	Y	Y
PENNSYLVANIA	Y	Y	36			Y	3		25	Y	Y	
RHODE ISLAND		Y	24				10		25	Y	Y	Y
SOUTH CAROLINA	Y		24			Y	3		50	Y	Y	Y
SOUTH DAKOTA												
TENNESSEE	Y	Y	36			Y	3					Y
TEXAS	Y	Y		2yr. or 5yr.			4	10		Y	Y	Y
UTAH		Y	36								Y	Y
VERMONT												
VIRGINIA	Y	Y	36			Y	3	5		Y	Y	
WASHINGTON		Y		36			3	10	25	Y		Y
W. VIRGINIA												
WISCONSIN		Y	24				3			Y	Y	Y
WYOMING												
WASH. D.C.	Y	Y				Y	15				Y	

IRSA'S SUMMARY OF BOND REQUIREMENTS

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STATE	Bond Amt.	How Bond is Determined	Bond Exemption	Comments
ALABAMA	\$50k	Flat rate		Pre-opening
COLORADO	\$50k			Pre-opening only
CONNECTICUT	other		Monthly contracts only	Clubs pay \$500 annually to Guaranty Fund
DELAWARE	other	\$50k pre-opening	No bond required after club has been open 90 days.	Annual payment to Guaranty Fund based on # of contracts.
FLORIDA	\$50k	Flat rate	Monthly contracts or in business since '85	May be reduced to \$10,000 based on # of outstanding contracts
GEORGIA	other	# of contracts		Pre-opening escrow required.
HAWAII	\$50k	Flat rate or equal to total payments	Putting pre-opening fees into escrow	Pre-opening only. Bond required for 2 years after opening.
INDIANA	\$25K	Flat rate		Pre-opening only.
IOWA	\$150	Flat rate	Placing pre-opening fees into escrow	Bond or escrow account for pre-opening only.
KENTUCKY	\$10-50k	# of contracts	Monthly contracts only	No initiation fee allowed to be eligible for exemption.
LOUISIANA	\$25k	Flat rate	Grandfather provision	Bond only required for two years after opening.
MARYLAND	\$50-200k	Aggregate outstanding liability	Contracts for 3 months or less	\$50k pre-opening bond required.
MASS.	\$25-100k	Length of contract	Monthly with no initiation fee or grandfathered.	No bond required after 5 years of continuous operation
MINNESOTA	\$25-200k	Aggregate outstanding liability	No prepayment for services.	\$25k pre-opening bond required.
MISSISSIPPI	\$25k	Flat rate	Exempt if in operation since 7/85.	Club must also offer contracts for a year of less to be exempt.
MISSOURI	\$10-25k	# of contracts	Clubs opened for 3 years or grandfathered.	Pre-opening escrow required.
NEVADA	\$25k	Flat rate	Contracts for three months or less.	Initiation fee no greater than \$75 to be eligible for exemption.
NEW HAMP.	\$50k	Flat rate		Attorney General may exempt club from bond requirement.
NEW JERSEY	\$25-50k	10% of gross income	Contracts for 3 months or less.	Pre-opening bond of \$50k required.
NEW YORK	\$50-150k	Length of contract & # of locations	Contract for 3 months or less with \$100 initiation	Pre-opening escrow required.
NO. CAROLINA	varies	Total consideration from buyer		Pre-opening bond required.
OHIO	\$10k	Flat rate		Pre-opening bond through first 2 years club is open.
OKLAHOMA	\$30-70k	# of contracts	Monthly contracts only	Exclusion also based on club's net assets.
OREGON				Pre-opening escrow required.
PENN.	\$50-\$200k	Length of contract	Contracts for a year or less with no initiation fee.	Clubs with less than 150 members can post a \$25k bond.
RH. ISLAND	varies	Determined by government		Pre-opening bond only.
SO. CAROLINA	max \$25k	Determined by government		
TEXAS	\$20k			Pre-opening escrow required.
UTAH	\$10-50k	# of contracts	Monthly contracts or cancellation clauses	Fees paid cannot exceed \$100. Pre-opening escrow.
VIRGINIA	\$10-300k	# of contracts	Monthly contracts with \$75 initiation fees or less.	
WISCONSIN	\$25k	Flat rate		
WASH. D.C.	\$25-50k	# of contracts		

POPEYE'S CARDIO FITNESS CENTER



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Orthopedic Surgeon
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J. Roger Hendrix
Attorney at Law
Commerce Bank
267-6380

Concerning House Bill #2740.

We at Popeye's Cardio Fitness, a private corporation, perceive House Bill # 2740 as a back step in our journey forward for the future of fitness. Firstly, we feel penalized for maintaining good management (in our case 9 years in Topeka) As onsite owners and operators we can effectively regulate our membership without the additional expenses and overhead of an elaborate billing system. Currently our collection rate industry wide is 10-12 % ,we are at 6% however we anticipate upwards of 20 % if members are billed afterwards. OUR membership also desires prepaid memberships to obtain even better rates. OUR renewal rate over the past three years has been 68% which proves our service (which in really what is in jepordy here) is more than satisfactory, more than double the industry standard.

WE do not oppose regulation in our industry. We obviously endorse certification and membership options, even a bonding system that has reasonable requirements.

As a reputable business person, who follows the industry code of ethics I feel that if this bill were to pass the 1500 members we currently serve would genuinely be upset and most affected since rates would indeed increase. In our club I have personally talked to hundreds that are prepared to sign a petition stating just that.

Finally, I believe as you do that our industry does need safeguards especially looking at Topeka's track record, (we have honored 6 different gyms in 9 years), but this bill would jepordize the future of one of Topeka's only successful fitness centers left.

Keith Hendrix
VP Popeye's

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FAIRLAWN PLAZA MALL, TOPEKA, KANSAS 66614 (913) 273-8311

Sailors Health Club

1448 South Osage ● Wichita, Kansas 67213 ● (316) 262-4269

Public Health & Welfare Committee

Re: House Bill No. 2740

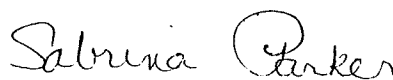
I applaud your efforts to correct the injustice to the consumer, that occurs when a "health spa" closes its doors, and leaves the members with a worthless membership.

However, the proposed House Bill No. 2740, would financially hurt my business. Sailor's Health Club has existed since 1975. The majority of our members pay by the month. The longest in advance payments are for one year. We do not offer contracts.

I could not allow someone to workout for a month, and trust that they would be back to pay me at the end of the month. We would be forced to go to a strictly day fee basis, or check the credit worthiness of every potential member that walks through the door. How would the consumer feel about being questioned about their financial condition just to be able to join a "health spa"?

I resent the operators who have stolen their members money, and in turn given us all a bad name. I certainly do think some restrictions should apply, especially to those offering several years, or life time memberships, with large cash down payments required. I could live with a "pay as you go" system, but the proposed payment after service, would leave me holding a lot of uncollected accounts.

Kind Regards,



Sabrina Parker
Sailor's Health Club

PHW
2-20-92
Att # 9

HS BILL 2740

TESTIMONY OF ALLEN A. TERNENT
BEFORE THE HOUSE COMMITTEE ON PUBLIC HEALTH AND SAFETY

Ladies and Gentlemen,

My name is Allen Ternent. I am a citizen of Kansas and reside in Topeka where I where I am a second year law student at Washburn School of Law. I address you today in two capacities. First, as a victim of health club fraud, and second, as an entrepreneur with an interest in business development issues.

I belonged, until recently, to American Super Clubs; a health club in Topeka owned by a foreign corporation. The club permanently closed its doors in December of 1991 after representing to its membership that it was temporarily closing for a week during the Christmas holidays to correct a wiring difficulty in the pool. Subsequent investigation has uncovered the fact that the club made the decision to permanently close in early November yet continued to sell extended memberships with full knowledge of impending bankruptcy and continued to collect monthly payments from over 1500 members under the fraudulent representations that the club would continue to remain in business.

Many, in not most, of the club's members had paid substantial amounts of money in advance for memberships of up to four years duration. Many others made smaller initial downpayments with the balance paid in monthly installments. My wife and I fell into the latter category having purchased three year memberships.

As a victim I can relate to you the anger and helplessness of being defrauded. I can also the relate the anger and frustration which grows from the realization that the state agencies empowered to charge and prosecute criminal activity often exercise their discretion not to do so. Though perhaps 15 to 2,500 Topeka citizens were defrauded by American Super Clubs the Attorney General declined to prosecute, rationalizing that the ongoing KPERS investigation was consuming too much of their resources to become involved in another investigation. The District Attorney also refused to prosecute on the basis that the matter should be pursued by the Attorney General's office. Though the detective involved in the investigation felt that he had a strong case and wished to investigate further he was ultimately precluded from doing so because he could find no one willing to prosecute it. I might note that the manager of American Super Clubs still resides in Topeka and has never been held accountable for her role in the fraud.

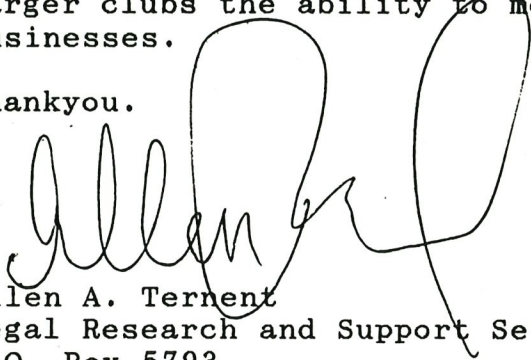
AKK
2-20-92
att 10
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As a victim I am encouraged to see that the legislature has an interest in protecting its constituents from what has become a nationwide problem; fly-by-night health clubs. As a victim I take solace in the belief that with appropriate legislative action others will not be similarly victimized.

As an entrepreneur, however, I have concerns about the present bill. If my understanding is accurate, the bill would preclude health clubs from receiving pre-payment of membership contracts. I know from personal experience that initially capitalizing and cash-flowing a business can be difficult. The ability to collect membership fees in advance may well make the difference between a successful business and a failure.

What I suggest is an approach which has been implemented by numerous other states in dealing with health club fraud and bankruptcy. The State of Wisconsin, for instance, requires that in order to collect advance membership fees in excess of three months that the business must be bonded to insure reimbursement to its members in the event of bankruptcy. Limiting non-bonded clubs to three month advance memberships reduces the potential exposure to consumers. Allowing extended pre-paid memberships for bonded clubs simultaneously protects consumers while allowing reputable larger clubs the ability to more effectively cash-flow their businesses.

Thankyou.



Allen A. Ternent
Legal Research and Support Services Incorporated
P.O. Box 5793
Topeka, KS 66605
(913) 267-1977

PKW
2-20-92
Allen # 10
0292-2

MEMORANDUM

Kansas Legislative Research Department

Room 545-N – Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

February 18, 1992

To: Members of the Joint Committee on Health Care Decisions for the 1990s
From: Emalene Correll, Research Associate
Re: Governor's Support for Funding

Attached is a copy of the letter Dr. Bill Roy referenced in his presentation on the Commission on the Future of Health Care in regard to support from the Governor for the Commission.

As you will note from the attached letter, the support that is to be provided is to be in the form of salary, office space, and other costs provided through the Department of Health and Environment.

The letter notes that provisions for support are contained in the Governor's budget recommendations for FY 92 and FY 93 through the budget of the Department of Health and Environment. I have checked with Research Department fiscal staff and have been informed there are no items in the Department's budget that are specifically identified as support for the Commission on the Future of Health Care.

92-0214/EC

PHW
2-20-92
Att # 11
1-2

STATE OF KANSAS



OFFICE OF THE GOVERNOR

JOAN FINNEY, Governor
State Capitol, 2nd Floor
Topeka, KS 66612-1590

913-296-3232
1-800-432-2487
TDD# 1-800-992-0152
FAX# (913) 296-7973

TO: Dr. Bill Roy
FROM: Susan M. Seltsam *ms*
DATE: February 11, 1992
SUBJECT: Funding for 403 Commission

Knowing of your interest in funding for the Health Care Commission, I want to reiterate the considerable state resources which have been provided for the support of the Commission.

Salary money for the Director and clerical staff comes from Health & Environment and Social & Rehabilitation Services. Office space, equipment, communication costs, as well as office supplies, are provided by Health & Environment. Additionally, travel funds for Commission members who have no other means of reimbursement have been provided through the budget recommendations for KDHE.

Provisions for the above support are contained in the Governor's budget recommendations for FY92 and FY93.

If continued state support is required in FY94 and resources are available, it would appear at this time that similar support would be recommended by the Governor.

PH+LW
2-20-92
Att # 11
2-2

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1578

(913) 296-2436
FAX (913) 296-0231

JOAN FINNEY, GOVERNOR
GLORIA M. TIMMER, Director

February 11, 1992

The Honorable Carol Sader, Chairperson
Committee on Public Health and Welfare
House of Representatives
Third Floor, Statehouse

Dear Representative Sader:

SUBJECT: Fiscal Note for HB 2740 by Representatives King
and Shallenburger

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2740 is respectfully submitted to your committee.

HB 2740 pertains to the regulation of health spas under the
Kansas Consumer Protection Act. The bill defines "health spa"
as a business primarily involved in the sale of memberships
that provides the members instruction in a program of physical
exercise or provides the members use of the facilities of the
health spa for a program of physical exercise. Exclusions from
this definition are noted in the bill.

Provisions of the bill prohibit any supplier who operates a
health spa from accepting prepayment for services.

According to the Office of the Attorney General, HB 2740
would have no fiscal impact.

Sincerely,

A handwritten signature in black ink that reads "Gloria M. Timmer".

Gloria M. Timmer
Director of the Budget

cc: Neil Woerman, Attorney General's Office

4668

PHW
2-20-92
Attn # 12