

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans at 1:30 p.m. on February 23, 1995 in Room 423-S of the State Capitol.

All members were present.

Committee staff present: Norman Furse, Revisor of Statutes
Bill Wolff, Legislative Research Department
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
Representative Kenneth King
Deputy Attorney General C. Steven Rarrick
Denny Burgess, Kansas Health Club Association
Tia Willows, Bally's Health & Tennis Centers

Others attending: See Guest List, Attachment 1.

The minutes of the meetings held on February 16, February 21, February 22, and February 23, 1995 were approved.

HB 2459 - Consumer protection; spas

The hearing on **HB 2459** was opened. Representative Kenneth King, sponsor of the bill, testified that the bill was requested by some people who have been hurt by health clubs going under. It is being introduced for financial protection of those who join clubs (see Attachment 2).

Representative Freeborn asked if this bill will preclude the payment in advance for gymnastics or aerobic classes. Representative King stated the bill specifically excludes businesses primarily operated for teaching dance or aerobic exercise.

C. Steven Rarrick, Deputy Attorney General for Consumer Protection, appeared on behalf of Attorney General Carla Stovall. He testified that the need for the bill is demonstrated by the numerous complaints received by the Attorney General's office regarding the problems of health spas going out of business, leaving consumers with worthless, albeit expensive long term memberships. He offered an amendment to the bill that states that any violation of Section 2(a) is an unconscionable act or practice under the Kansas consumer protection act so that the law will be easier to enforce by the Attorney General's office or local district attorneys (see Attachment 3). He requested the support of the members for the bill with their amendment.

Representative Henry asked how the amendment made it easier to enforce. Mr. Rarrick answered that without it, it has to be proven that the state has jurisdiction, requiring more proof. Without this language, the prosecutors have no teeth for prosecution. Representative Rutledge suggested changing section 2 by adding that prepayment shall not be accepted for periods of more than 6 months or one year, whichever the committee may decide. Mr. Rarrick answered that the Attorney General has no problem with payments for six months; but is opposed to a longer period of time.

Chairperson Mayans asked if the definition of a health spa included private clubs or non-profit organizations. He wondered if the bill would apply to someone who may buy into a private organization as a partner. Mr. Rarrick replied that private clubs owned and operated as a club are outside the scope of this bill.

Representative O'Connor asked if causing the spas to establish escrow accounts for fees paid in advance would be a solution. Mr. Rarrick replied the problem would be the oversight of such accounts--which would involve some state agency and ultimately involve the AG's Consumer Protection Division when not in compliance. The bill as written, prohibits prepayment in general. Representative Rutledge asked if bonding would be a solution. Mr. Rarrick answered if the prepayment term was six months, you would not need a bond. Only long-term members are the concern and bonding would be very high priced and perhaps

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S State Capitol, at 1:30 p.m. on February 23, 1995

ineffective.

Mr. Rarrick said the AG's concern is the consumer getting ripped off. It is not a small issue as, for example, over 200 filed complaints on a Kansas City corporation, and 60 are on file concerning a Topeka organization. It appears to be an industry problem.

The hearing was then opened to hear opponents of **HB 2459**. Denny Burgess, representing the Kansas Health Club Association, testified, in opposition to the bill, that the bill would drive up the costs to consumers if the clubs could not sell long term memberships (see Attachment 4).

Tia Willows, representing Bally's Health and Racquet Club of Overland Park, testified in opposition to **HB 2459**, stating that the bill would place their business in jeopardy, limit services and choice of facilities (see Attachment 5).

Representative Merritt asked Mr. Burgess if efforts have been made to solve the problems within the industry. Mr. Burgess answered that the ones causing the problem do not join the association. Representative Geringer asked Ms. Willows how many lifetime memberships have been sold by Bally's. She replied none, that memberships for \$549 are financed for 36 months (a three-year contract). Representative Geringer asked if it would be advisable to grandfather existing lifetime memberships into the bill. Mr. Rarrick stated he had no opinion on that at this time. Representative Geringer asked if lifetime memberships are allowed in Kansas. Mr. Furse replied that they are not prohibited; it is simply a contractual arrangement between the parties.

The hearing on **HB 2459** was closed.

HB 2323 - Ambulatory surgical center defined to include facilities operated for the purpose of performing termination of human pregnancies

Chairperson Mayans asked the committee to consider action on **HB 2323**. Representative O'Connor moved, seconded by Representative Wells, that **HB 2323** be passed. The Chairperson asked if there were any comments. Representative Haley, in discussing the possibility of increased costs and delays for women seeking abortions, stated he wished that the committee would show compassion and not further burden those who make the difficult decision to obtain an abortion. He hoped the motion fails. Representative Merrick stated that he did not believe increasing the cost of abortion was the issue; but it is a safety issue for women. Representative Kirk stated she is opposed the the bill. Many physicians and dentist offices perform invasive procedures, like biopsies, laser treatments for eyes, oral surgery, D and Cs, and they are not defined into the bill. She said if you are talking about safety, then be honest and make all invasive procedures be done in ambulatory surgical centers. Any other argument is a spurious one. When you increase regulation, costs go up. Representative Goodwin, in response to Representative Freeborn's concerns, said she had visited with several people who are interested in this bill and other bills who have stated that to come before this committee is intimidating and they do not want to come before it.

A call of the motion was made. On voice vote, the committee voted that **HB 2323** be passed. The following members requested that their "No" vote be recorded: Representatives Greta Goodwin, David Haley, Nancy Kirk, Joel Rutledge, and Jonathan Wells.

The meeting was adjourned at 2: 20 p.m.

The next meeting is scheduled for March 7, 1995.

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE
GUEST LIST
FEBRUARY 23, 1995

NAME	REPRESENTING
LIA Willows	Bally's Health Clubs
Denny Burgess	Kansas Health Club Assn
Joe Furjanic	KCA
Rich Gethrie	Health/Midwest
C. STEVEN RARICK	ATTORNEY GENERAL
Nancy Lindberg	AG
Nathalie Schauf	KMA
Clita Penyer	Right to Life of Mo.
Penny Jarman	PCAL
PHILIP HURLEY	PATRICK J. HURLEY & CO.
GARY Robbins	Ks Optometric Assn
John Federico	Pete McGill + Assoc.
Erin Merritt	Guest - Rep. Merritt
KEITH R LANDIS	CHRISTIAN SCIENCE Comm
Doug Ryan	NEK Rural Health
Ken King	
Douglas Johnston	Planned Parenthood
J. Thomas	Eagle

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE
GUEST LIST
FEBRUARY 23, 1995

NAME	REPRESENTING
Pat Goodson	TTL
Corey Neill	Page
Robert Caplinger	Page
Ruth Rogers	Deyoshi Mother
Michelle Peterson	K. Gov. Consulting

KENNETH R. KING
REPRESENTATIVE, SEVENTY-SEVENTH DISTRICT
BUTLER COUNTY
ROUTE 1
LEON, KANSAS 67074-9803
(316) 775-5340

STATE CAPITOL BUILDING—431-N
TOPEKA, KANSAS 66612-1504
(913) 296-7644



TOPEKA
—
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: TRANSPORTATION

MEMBER: JOINT COMMITTEE ON PENSIONS,
INVESTMENTS & BENEFITS
ECONOMIC DEVELOPMENT

STATE CO-CHAIRMAN: AMERICAN LEGISLATIVE EXCHANGE
COUNCIL (ALEC)*

* ALEC IS A 501(C)(3) ORGANIZATION DEDICATED TO ADVANCING POLICIES WHICH EXPAND FREE MARKETS, PROMOTE FREE ENTERPRISE AND ECONOMIC GROWTH, LIMIT GOVERNMENT AND PRESERVE INDIVIDUAL LIBERTY.

HB 2459

February 23, 1995

Testimony Before The
House Health and Human Services Committee

by

Kenneth R. King
Representative, 77th District

Mr. Chairman and members of the committee:

HB 2459 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.

I would ask that you favorably pass HB 2459 from committee.

I will be happy to stand for questions.

HOUSE H&HS COMMITTEE
2 - 23 - 1995
Attachment 2



State of Kansas

Office of the Attorney General

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

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Testimony of
C. Steven Rarrick
Deputy Attorney General, Consumer Protection Division
Office of the Attorney General
Before the House Health & Human Services Committee
RE: House Bill 2459
February 23, 1995

Chairperson Mayans and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to testify in support of House Bill 2459. I am the Deputy Attorney General for Consumer Protection.

The Attorney General supports the concept proposed by House Bill 2459. Expensive prepaid "lifetime" or long term memberships to health spas are simply valid for the lifetime of the health spa, not the lifetime of the consumer. The need for legislation in this area is demonstrated by the ongoing and longstanding problem of health spas going out of business, leaving consumers with worthless, albeit expensive, lifetime or long term memberships. Numerous complaints regarding this problem have been received by the Attorney General's Office and by local district attorneys. In the past 5 years, Wichita alone has had 7 health spas close their doors, some less than six months after opening.

With the current state of the law, our ability to assist these consumers is quite limited because we are not contacted until after the health spas have closed their doors, and more often than not, after they have filed bankruptcy or simply disappeared. Prohibiting or limiting the prepayment of services, with our proposed amendment, will allow our office and local district attorneys to protect consumers before health spas go out of business.

Attorney General Stovall requests that H.B. 2459 be amended to state that any violation of Section 2 (a) is an unconscionable act or practice under the Kansas consumer protection act. By making this a per se unconscionable act or practice, the law will be easier to enforce by the Attorney General's Office and local

HOUSE H&HS COMMITTEE
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Attachment 3-1

district attorneys. As a result, we are submitting the following amendment to New Section 2: "Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act."

Again, thank you for the opportunity to voice our support of the bill. We request your approval of the bill with our suggested amendment.

- 1 (h) "Services" includes:
- 2 (1) Work, labor and other personal services;
- 3 (2) privileges with respect to transportation, hotel and restaurant ac-
- 4 commodations, education, entertainment, recreation, physical culture,
- 5 hospital accommodations, funerals and cemetery accommodations; and
- 6 (3) any other act performed for a consumer by a supplier.
- 7 (i) "Supplier" means a manufacturer, distributor, dealer, seller, les-
- 8 sor, assignor, or other person who, in the ordinary course of business,
- 9 solicits, engages in or enforces consumer transactions, whether or not
- 10 dealing directly with the consumer.

11 (j) "Health spa" means a business, primarily involved in the sale of
 12 memberships, that provides the members instructions in a program of
 13 physical exercise or provides the members use of the facilities of the health
 14 spa for a program of physical exercise. The term does not include an
 15 organization that is tax exempt under 26 U.S.C. 501 et seq., a private club
 16 owned and operated by its members, an entity primarily operated for the
 17 purpose of teaching dance or aerobic exercise, an entity primarily engaged
 18 in physical rehabilitation activity related to an individual's injury or dis-
 19 ease, an individual or entity engaged in an activity authorized under a
 20 valid license issued by this state or an activity conducted or sanctioned
 21 by a school operating under the education code.

22 New Sec. 2. (a) Any supplier who operates a health spa shall not
 23 accept prepayment for services. Payment shall be received by such sup-
 24 plier after the consumer has been provided the service.

25 ~~(C)(b)~~ This section shall be part of and supplemental to the Kansas con-
 26 sumer protection act.

27 Sec. 3. K.S.A. 50-624 is hereby repealed.

28 Sec. 4. This act shall take effect and be in force from and after its
 29 publication in the statute book.

(b) Any violation of this section is an
 unconscionable act or practice under the
 Kansas consumer protection act.

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Bally's®

HEALTH & TENNIS CORPORATION

Bally Health & Racquet Club
6700 West 110th Street
Overland Park, KS 66211
(913) 491-0200

February 23, 1995

Health and Human Services Committee
Reference : House Bill #2459

Mr. Chairman and Members of the Committee,

As representative for Bally's Health and Tennis, I, Tia Willows, appear today to oppose House Bill # 2459. Bally's Health and Tennis Corporation has been in business for almost 35 years. We have done business in the state of Kansas since January of 1987.

Our business is a fixed cost business. Regardless of the number of members who show to workout, we absorb the facility cost, utility cost, equipment cost, advertising cost and staffing cost. Without knowing what revenue to expect, we are very concerned our business is at risk if House Bill #2459 were passed.

As of November 1994, we have 16,795 members and last year saw just under 1 million workouts at our Overland Park facility. We experienced 3 total agency complaints. 2 Attorney General and 1 Better Business Complaint, all of which were handled.

Not only would our business be in jeopardy, the consumer would be adversely affected as well. House Bill #2459 will inevitably drive cost to the consumer up, limit services available and limit choice of facilities.

Thank you for your time.

Tia Willows



Area Director
Bally's Health & Tennis

HOUSE H&HS COMMITTEE
2 - 23 - 1995
Attachment 4

BURGESS & ASSOCIATES

Suite 1100 - 800 SW Jackson - Topeka, Ks. 66612
(913) 234-2728 Fax (913) 233-7991
Governmental Relations - Legislative Consulting

Testimony
before the house
Health and Human Services Committee

HB 2459

Presented by Denny Burgess of Burgess & Associates for the
Kansas Health Club Association
February 24, 1995

Mr. Chairman and members of the committee:

I am Denny Burgess representing the Kansas Health Club Association. I am appearing in opposition to HB 2459.

We appreciate the attempt 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. We believe that this bill will create an undo hardship on clubs. We are afraid the effect of this bill, though not the intent, could be to raise the price of health club services and make them less affordable for the consumer.

This bill prohibits payments in advance of services. 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. If this bill were to become law it would drive up the cost of exercising because clubs could not spread these costs over the length of the membership. Many health clubs 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.

Thank you for the opportunity to testify on House Bill 2459.

HOUSE H&HS COMMITTEE
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Attachment 5