

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 6, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Paul Davis - Excused
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Jene Vickrey
Richard Sells, Lawrence Athletic Club

Hearings on **HB 2139 - diet programs, consumer protection & HB 2140 - physical fitness centers, consumer protection**, were opened.

Representative Jene Vickrey appeared as the sponsor of both bills. He stated that **HB 2139** would allow for a three day right of rescision and the right of the consumer to cancel the contract if the consumer provides a letter from a physician indicating that there is an adverse health risk. **HB 2140** has many of the same provisions but allows a health facility to lock in the first six months of a contract and then allows the consumer to pay month by month. Both proposed bills allow the termination of a contract if the consumer moves more than 25 miles away from the facility (Attachment 1).

Richard Sells, Lawrence Athletic Club, appeared as an opponent of **HB 2140** but believes there are some good provisions in the bill and that something like it is probably needed due to the fact that not all health clubs have the customers interest in mind. His club turns 10-15% of their clients over to a collection agency. They allow members to "sell" their membership when they are leaving town or no longer feel they need to continue at the club. They do have a 90-day buy-out policy. They provide contracts for the military which allows them to leave at anytime, their contracts are terminated. If and when they return they can rejoin the club at the same fee that they were paying before they left (Attachment 2).

Written testimony in opposition to **HB 2140** was provided by Wade Ferguson (Attachment 3)

Chairman O'Neal appointed a sub committee on the two previous bills. Representative Newton, Chair, Representative Long & Representative Rehorn.

Representative Swenson made the motion to approve the committee minutes from January 16, 23, 27, 28 & 29. Representative Owens seconded the motion. The motion carried.

The committee meeting adjourned at 4:30 p.m. The next meeting was schedule for February 10, 2003 at 3:30 p.m. in room 313-S.



TOPEKA

HOUSE OF
REPRESENTATIVES**Testimony on House Bill 2139, 2140**Submitted by: Rep. Jene Vickrey
6th District

Mr. Chairman and Committee Members:

HB 2139 and **HB 2140** would provide basic consumer protection for our constituents who buy these very important health services.

Last year, our Consumer Protection Division worked 71 files on the subjects of diet plans and health clubs. Issues ranged from outright misrepresentation and “over puffing” of products to health clubs moving away from the area and not reimbursing consumers their membership fees. As we all understand, 71 complaint files do not mean that every concern is a grievous act, but it does indicate that some of these businesses have unscrupulous principles. The health club bill would require contracts be in writing and allow a 3-day right of rescision. Also included is the opportunity for the member to drop the membership if they are transferred to a new job and the health club cannot offer comparable services within 50 miles. Additionally, the contract can be cancelled due to death or disability. The customer’s estate is only liable for allocation of the period of time before death or disability. Of course, the health club has the right to require and verify reasonable evidence. Finally, customers are free to sign contracts for any length of time but the initial deposit or payment cannot exceed six month’s charges for services. These are all simple good business practices that all reputable businesses support.

The diet plan bill contains similar protections: the 3 day right of rescision, right to cancel the contract if the consumer provides a letter from a physician of indication that there is an adverse health risk or the consumer relocates more than 25 miles from a participating facility.

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Attachment: 1

Richard G. Sells
3201 Mesa Way
Lawrence, Kansas 66049

RE: Concerns about House Bill 2140

My first question as I read this bill, was it proposed and written out of anger and emotion, was it really written to protect the consumer and his rights and did the person proposing this bill understand the reality of the health club business. Any businessman who takes advantage of a consumer to line his own pockets IS NOT A GOOD businessman and will probably not be in business very long. The community around your business is what makes your business work well but businesses need to be supported and protected as well or they also will not be around very long. With the proposed bill I feel that some of the proposed items work well for both parties (the consumer and the businessman) and others will make good businessmen turn into conniving crooks who will do anything to protect their business, and their investments.

In looking at the bill Section 1, it is self-explanatory and I have no concerns with this section.

Section 2 concerns me because a lot of the governmental and non-profit entities charge initiation fees, monthly fees, yearly fees, and seasonal fees for their services just as private, (mom and pop owned) physical fitness centers do. Why should this bill not apply to them? Are you opening up consumer rights issues, within these entities, that you may have to go back and change this bill later? Either makes this bill control all physical fitness entities or none of them.

Section 3, (a), (b), (c), (c)1 are fair claims for all and I have no concerns. (c) 2. I have major concerns with this sections. Please Read Section c. 2 My clubs are located in Lawrence, Kansas. I have three clubs, one in the north part of town, one in the east part of town and one in the south part of town. One of my members moves to Cedar Creek, which is north, and west of Olatha. Does this mean that because he/she did not move farther than 50 miles away from my east club that I can make him drive 35 miles, one way, back to Lawrence to work out at my club. YES it does but I do not feel that it is right on my part to make him do so. (EXPLAIN) the Lawrence Athletic Club offers several options of getting out of a membership. If a members wants or need to get out of a membership, he/she is allowed to sell or transfer his membership to another party. The member is out of their membership. Someone else has taken the membership over and has their

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own membership, of which they will never have to pay an enrollment fee, as long as they stay a member, because the first party has already paid it, the club has maintained a member and the membership. In doing this everyone is happy. We also offer a 90-day buyout. The member pays for 90 days of unused membership time and the membership is canceled. This works like the \$175.00 buy out fee that the cell phone companies use in their contracts. Section 3, (d), (e), Section 4, Section 5, Section 6, I have no major concerns with these sections.

At this time I would like to look at consumer/prospective members and their responsibilities toward purchasing a health club membership.

Any good health club will and should offer several different types of memberships, **single, couple, family, senior citizen, student, corporate, out of town members**. Also several different time frame with their memberships, **month, 3-month, 6 month, and year**. At the Lawrence Athletic Club we offer over 39 different types and time frames of memberships at three locations.

In offering many different types of memberships the consumer can pick and choose and get the membership that best fits their needs. Do they do this, sometimes and sometimes they do not. Most consumers want to get the least expensive membership that they can. To do so they sometimes purchase longer-term membership to get a cheap or less expensive price. Even knowing that they cannot or will not use the entire membership time length. Example: They may know that they are moving in 6 to 8 months but purchase a 12-month membership to get the lower price. Once they are ready to move should they be held responsible for the term of their contract or be released for \$50.00 as this bill suggests. Remember they could have purchased a 6-month membership and then add 1 or 2 month extensions to get the 6 to 8 months they really needed. At this point they would have been out of their membership agreement/contact and no problem would have come out of the membership. This procedure for purchasing memberships is a little more time consuming and cost a little more but does not have any repercussions at the end of the term of the shorter-term contracts. If they purchase a longer-term contract they will owe the club for 4 to 6 months of contracted time, that they will not use, at the time they move.

I feel that the need for a bill like 2140 is probably very likely, due to the fact that all health clubs are not run like we run ours. If a bill of this nature is to be proposed and passed I feel that the consumers as well as the health club

owners should be represented and the development of a bill that represents all involved with equal values and just repercussions and outcome to protect all involved is needed. I myself would be open to setting on a committee to help put together a bill like 2140, to achieve the best for all parties concerned so that no consumer is taken advantage of and no health club owner would be forced to become a conniving crook so as to make end meet.

Lawrence Athletic Club Membership Agreement

Name _____
(First) (M.I.) (Last)

Address _____
(City) (State) (Zip) (e-mail)

Home Phone # _____ Work Phone # _____

Social Security # _____ Birth Date _____ Gender **M** or **F**

Emergency Contact _____ Phone # _____ Relationship _____

New			Renewal			North		East		South		Gym			Pool		Platinum			
M	SEM	2SEM	1A	CA	FA	SA	IM	CM	EM	SM	SEN	SRA	CIA	CCA	CFA	CIM	CCM	CFM	HIGH	NC

Start Date _____ Expiration Date _____

Next Bill Amount \$ _____ (Plus Tax) Next Bill Date _____ Stop Bill After _____
 \$ _____ (Plus Tax) _____

If corporate account what company? _____ Do we bill the company? _____

Any other people you approve to be listed on your account are called "players" and must fill out a player form to be added to your account. Total # on your account _____

In House Billing (IHB) _____ or EFT? _____ VOID CHECK (attached)

Credit Card # _____ exp. _____

If payment will be done by EFT your signature below authorizes Checkfree Corporation to initiate debit entries to your account on the 1st day of each month for the amount of your monthly dues as defined below.

PAID IN FULL MEMBERSHIP

The amount paid IN FULL for _____ membership. (No monthly payments) \$ _____ (plus tax)

Annual Agreement paid in Consecutive Monthly Payments

I am paying a one time enrollment fee of \$ _____ (plus tax), a one time prorated amount of \$ _____ (plus tax) for the month of _____, and I agree to pay \$ _____ (plus tax) per month for a minimum of _____ consecutive months. I am making my first monthly payment today for the month of _____ leaving a minimum of _____ monthly payments of \$ _____ (plus tax)

1. If I have chosen EFT payments my signature on this agreement authorizes my bank to make payment by the method indicated and post it to my account. If no or incorrect EFT information is provided my method of payment will be changed to in house billing and my payment amount will change to correspond with in house billing pricing.
2. I understand that the monthly payment amount, plus tax, will be debited from my account on a monthly basis on the first day of each month.
3. This authority to remain in full force and effect until The Lawrence Athletic Club Checkfree Corporation, and the Bank have received notification in writing from me (Or either of us) of its termination in such time and in such manner as to afford The Lawrence Athletic Club, Checkfree Corporation, and the Bank a reasonable opportunity to act upon it.
4. I understand that my EFT agreement, if cancelled, does not release me from my obligation to fulfill my agreement with Lawrence Athletic Club and may cause an increase in my payment.

TOTAL AMOUNT PAID TODAY

Monthly or Annual Payment \$ _____ EF \$ _____ ProRate \$ _____ ATS \$ _____ Total \$ _____
The total amount paid today is a total of the above listing.

CASH	Check # _____	VISA	Master Card
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I have read the terms and conditions located on the **FRONT AND BACK** of this form. My signature binds me to the club policies, rules, and procedures that I have received. It is my understanding that I have a Pool or Gym membership. With this membership I understand that I am allowed to use the Pool or Gym area only. I understand that if I am caught using areas of the facility that are not included in my agreement with Lawrence Athletic Club, I will be forced to forfeit my membership. In such an event, all unpaid balances and dues shall become immediately due and payable to complete my contract agreement.

Member Signature _____ Date _____

This is a noncancelable agreement until dues and charges are paid in full.

Membership Rep. Signature _____ Date Signed _____ Accounting _____ Membership # _____ Date Entered _____

OVER

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POLICIES AND AGREEMENTS

- Member warrants, represents, and agrees that the member is in good physical condition, and that he or she has no disability, impalement, or ailment preventing him or her from engaging in active or passive exercise which will be detrimental to his or her health, safety, comfort or physical condition if he or she should engage or participate. Active and passive exercise includes supervised and unsupervised participation in all club programs, facilities and classes; use of all club equipment; and aerobic exercise led by an instructor. All physical conditions which are out of the ordinary and which would or may cause the member to be at risk from the use of membership facilities have been fully disclosed in writing the Lawrence Athletic Club.
2. MEMBERSHIPS ARE NONCANCELABLE UNTIL DUES AND CHARGES ARE PAID IN FULL, SUBJECT TO THE NOTICE OF CONSUMER RIGHTS.
 3. Member agrees to be responsible for the payment schedule as outlined.
 4. The Electronic Transfer transaction, as authorized, will be in my name, or Guarantor name.
 5. I have been informed and understand the terms and conditions.
 6. A late charge of \$10.00 per payment/period will be assessed if my periodic payments are late and/or there remains an unpaid delinquent balance due to partial payments, unpaid payments and/or unpaid late charges. ALL PAYMENTS ARE DUE BY THE 10TH DAY OF EACH MONTH.
 7. That I can be charged \$20.00 for returned checks and/or electronic returns due to insufficient funds, closed accounts, declines, etc.
 8. That my account may be sent to a credit reporting agency.
 9. That if I miss any periodic payment, I am in default and the entire balance of the contract automatically becomes due and payable, if applicable to your state laws.
 10. That I am responsible for court costs, private process service costs, prejudgment interest at 10% and attorneys fees and collection fees for the collection of any amounts due on this contract. Any court judgment shall bear post-judgment interest at the highest rate allowed by law. Everything that I have stated in this application is correct to the best of my knowledge. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.
 11. Monthly dues, pro shop charges, late fees, and any other charge assessed to the member by the club will be automatically billed to your bank checking account, VISA, or MasterCard account. All members must have one of these accounts with an authorization to bill on file at the club. After 12 months' memberships dues have been paid, member may cancel his/her membership by giving the club 60 days prior written notice (Not applicable on multi-year contracts). Monthly dues are not pro-rated upon cancellation. Unless such notice is delivered, the member continues to authorize regular bank or charge card billing at rates then in effect. If you cancel your membership, there is no refund of the enrollment fee.
 12. Failure to pay any amounts when due of either the enrollment fee or monthly dues may (at club's option) result in forfeiture of your membership. At such time, all unpaid dues shall become immediately due and payable. AFTER 12 MONTHS' MEMBERSHIPS DUES HAVE BEEN PAID, AND DUES ARE CURRENT, THE MEMBER CAN CANCEL HIS/HER MEMBERSHIP BY GIVING THE CLUB 60 DAYS WRITTEN NOTICE (Not applicable on multi-year contract).
 13. Guests will be charged a visit fee of \$10.00 and must register before using the club. Guests will need to give a drivers license or credit card in exchange for any item used or rented.
 14. Members will be required to present their membership cards upon entrance to the club. Members not presenting their membership cards will be charged a visitation fee of \$5.00. Lost or stolen cards will be replaced for a fee of \$10.00.
 15. Children under 16 are not permitted in the club without adult supervision and are not permitted in the locker rooms unless to use the rest room.
 16. Members and their guests agree to be responsible for any items loaned, rented, or made available for use. Any items damaged, lost, or not returned will be charged to the member or guest. Replacement costs will be determined by the club. Members acknowledge that the locker rooms are not safe storage of valuable items. The club is not responsible for any items lost or stolen or damaged on the club premises.
 17. Shirts must be worn at all times when in public view. Black soled shoes cannot be worn on racquetball, basketball or aerobics courts. Members and guests will be asked to vacate activity areas if not properly dressed. In keeping with a family club atmosphere, it is required that profane language not be used. Smoking and/or chewing tobacco is not permitted on the premises.
 18. All club members using the facility do so at their own risk, and the club shall not be liable for any damage arising from personal injuries sustained by any member or guest in, on or about the premises of said club. Member assumes full responsibility for any injuries or damages, which may occur to member in, on, or about the said fitness center, and does hereby agree to indemnify and hold harmless the club and associated facilities, their owners and employees, from any action or cause of action present or future, whether the same be known or unknown, anticipated, or unanticipated, resulting from or arising out of supervised or unsupervised participation in aerobic exercise and other club facilities and programs, or arising out of negligence of the club or any associated facilities, their owners and employees.
 19. No action, suit, or complaint, whether arising out of this contract or otherwise, may be maintained by member against the club, its successors or assigns, unless member shall have first given the facility notice in writing by registered mail of the happening or event that gave rise to the said action, suit, or complaint within 30 days after this occurrence.
 20. Management reserves the right to revoke a membership should the member not comply with the policies and agreements stated on this application or with posted club rules. In addition, member acknowledges the right of the club to add or delete or change equipment and/or programs, the location of equipment and/or programs and acknowledges the right of the club to establish or change hours of operation and holiday closings if applicable.
 21. In addition to the cost of the membership, member agrees to pay any and all taxes and assessments on dues, admissions, and the like hereafter levied or assessed by any government authority by reason hereof, and which are by law collectible from member.
 22. Management reserves the right to alter dues (increase or decrease) for each membership.
 23. Membership may be cancelled at any time at the sole discretion of management. Memberships may be terminated immediately for (a) violation of any rule or regulation of the club, (b) conduct which is prejudice to the welfare, good or character of the club, (c) failure to pay any charges due 60 days of billing date. Membership is subject to acceptance of this application by the club.
 24. All negotiations, considerations, and representations between the parties which are to be made part of this contract are incorporated herein. This document is intended to be final, complete, and an exclusive expression of the agreement between the club and the member. In addition, it is agreed that such terms which are included herein may not be contradicted or changed by evidence of any prior expressed or implied agreement or contradicted or changed by any prior or contemporaneous oral representation or agreement. If this agreement is to be altered or modified it must be done so in writing and signed by both parties.
 25. If for any reason any provision of this contract should be declared void or invalid, such declaration shall not affect the validity of the rest of this contract, which shall remain in force as if executed with the void or invalid provision eliminated.
 26. This contract shall be construed and enforced in accordance with the laws of the State of Kansas.
 27. Members are responsible for providing Lawrence Athletic Club with any change of address, telephone, employment... for billing purposes.

NOTICE OF CONSUMER RIGHTS

28. Consumers have the right to cancel this contract within 3 business days after receipt of a copy of the contract. Cancellation must be in writing, and delivered by certified or registered mail.
29. If Lawrence Athletic Club is closed for a month or more, the consumer is entitled to his/her choice of either an extension of the contract or pro-rated refund, except if the closing is the result of a natural disaster or an act of God and found not to be the fault of the facility, no matter the magnitude, in which case the choice of remedy belongs to the Lawrence Athletic Club.

February 6, 2003

Michael O'Neal
KANSAS HOUSE REPUBLICAN
Kansas House Committee on the Judiciary
Capital Office; Room 170-W
Topeka, KS

RE: Opposition to House Bill No. 2140

Dear Chairman. O'Neal and Honorable Members of the Judiciary Committee:

I am the current owner of Gold's Gym and our five locations in the Kansas City area. I have owned and operated two clubs in the State of Kansas with locations currently in Merriam and Olathe. I have owned or operated clubs for over 12 years in the Kansas City metropolitan area. I address this committee in regards to House Bill No. 2140 and offer my opposition.

While H.B. 2140 proposes numerous provisions designed to protect the Kansas Consumer. Nonetheless, the end result is to hinder and prohibit our ability to service the general public. I will specifically list below certain provisions that we are opposed to. Regardless of our opposition, the majority of this bill is currently contained within our current Contract for Membership which I have attached as Exhibit 1. A brief perusal of our contract would reflect that we currently have a less onerous provision for cancellation based upon relocation and also contains provisions for disabilities. These items are highlighted to ensure this committee that we are aware and cognizant of the need to provide a quality product that is intended to facilitate the success of our members.

Our main point of contention with the proposed Bill lies within Section 3(c)(1). This provision in effect undermines our ability to tailor a contractual agreement with our members that ensures their success. We are able to work with potential members to structure their financial commitment that will best suit their needs. We allow for discounts based upon payment in full and also provides for the consumer to explore other payment options that decrease their monthly obligation.

While Bill No. 2140 is designed to protect the citizens of Kansas from fitness centers accepting

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payments and failing to honor their obligations, the end result of this bill hampers the ability of legitimate businesses from staying competitive and offering a quality product. We are in the business of physical fitness. Gold's Gym is part of the larger picture of preventive health. Our members are significantly less likely to drain the health care coffers of the state. Our members are provided the framework and ensured the ability to maintain their health. The proposed bill provides undue regulations that will hinder quality businesses from providing the best services available.

Please rethink the need and effects of Bill No. 2140. We present today to answer any and all questions possible to ease any concerns and demonstrate that the regulations proposed will harm the Kansas consumer. Thank you for your time and consideration.

Very truly yours,

Wade Ferguson