

Approved: _____ Date 2-11-93

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on February 3, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Robert Krehbiel, Excused
Representative Kathleen Sebelius, Excused
Representative Steve Wiard, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Kenneth King
Richard Schodorf, Assistant District Attorney, Wichita
Kansas
Jim Coder, Assistant Attorney General
Mark W. Stafford, Assistant Attorney General

Others attending: See attached list

The Chairman asked Representative Don Smith to give a report of the Sub-Committee in regard the NCAA request for an extension.

Representative Smith reported the Sub-Committee recommends an extension until April 5, 1993 be granted to the NCAA to report back to the committee.

Representative Gilbert moved and Representative Smith seconded the NCAA be given an extension until April 5, 1993. The motion carried.

Richard Schodorf, Assistant District Attorney, Wichita, Kansas, requested a committee bill to protect consumers in regard health club businesses. (See Attachment #1)

Representative Lahti moved and Representative Boston seconded to accept Mr. Schodorf's request as a committee bill. The motion carried

The Chairman opened the hearing on HB 2115.

Representative King testified in favor of HB 2115 stating this bill was introduced to provide some financial protection to people who join health clubs. Most clubs require several hundred dollars up front to join, in recent years several of these clubs have gone out of business and as a result people have lost their money, and not been able to get a refund. (See Attachment #2)

Mark W. Stafford, Assistant Attorney General, stated the Consumer Protection Advisory Council supports the concept of HB 2115; however, there should be some period, say 90 days for a pre-payment contract, to the length of time for which a health spa may require prepayment. (See Attachment #3).

After discussion Representative Smith moved and Representative Lane seconded to move HB 2115 out of committee favorably. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
Statehouse, at 1:30 p.m. on February 3, 1993.

The Chairman opened the hearing on HB 2124.

Jim Coder, Assistant Attorney General, State Fire Marshal Department, testified in behalf of the State Fire Marshal, stating HB 2124 would allow the Fire Marshal to charge administrative fines for violations of the Fire Prevention Code which would allow another tool to enforce the Code and provide fire safe environments for the citizens of Kansas. (See Attachment #4).

After discussion, Representative Cornfield moved and Representative Weinhold seconded to amend the bill to reduce the fine (line 14) to \$1,000. The motion carried. Representative Boston requested to be recorded as voting "NO".

Representative Weinhold moved and Representative Wilk moved to change line 14 to read: "Kansas Protection Act"...and remove"provision of this". The motion carried.

Representative Boston moved and Representative Cornfield seconded to move the bill out unfavorably. The motion failed.

Representative Cornfield moved and Representative Boston seconded to reduce the fine to \$100. The motion failed.

Members of the committee discussed the bottom line of this bill is public safety and most members were in favor of the \$1,000 fine.

Representative Cornfield moved to withdraw her motion for reducing the fine to \$100. The second would not agree to withdrawing the motion.

The Chairman called for a vote on the motion of lowering the fine to \$100 from \$1,000 and the nays prevailed. The motion failed.

Representative Standifer moved and Representative Empson moved to move HB 2124 out of committee favorably as amended. The motion carried. Representative Boston and Representative Rock wished to be recorded as voting "NO".

The meeting adjourned at 3:15 PM.

The next meeting is scheduled for February 4, 1993.

Date:

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

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 3, 1993

TO: Chairman and Members of House Committee On Federal and State
Affairs

RE: Comments of Assistant District Attorney, Richard Schodorf

You will find attached a copy of a legislative proposal which will soon be submitted for your consideration. We feel that it is important the you understand the history of the problem and the need for legislative action to protect both consumers and health club businesses.

The deceptive practices employed by some health club companies have always been a problem for consumers, law enforcement agencies and the health club industry as a whole. This problem is not limited to Kansas but exists nationwide. However, Kansas is one of only thirteen states that has yet to pass legislation providing its citizens with protection in this area.

During the spring of 1992 a task force was formed consisting of all but one of the for profit health clubs in Sedgwick County as well as the YMCA and YWCA. This task force studied laws from jurisdictions throughout the United States and also called businesses and law enforcement leaders in other states to determine the effectiveness of their statutes.

After four months of intensive work the task force agreed on a comprehensive proposal which will protect both consumers and the health club industry. The most important parts of the proposed legislation can be summarized as follows:

1. A 3-day right to cancel--Consumers who have been high-pressured into signing a health club contract will have 3 days in which to cancel any agreement that they have signed.
2. Maximum Pre-payment--A health club cannot require more than 60 days advance payment for services unless the consumer signs a statement forgoing this right. This provision would prevent a health club from collecting on multi-year memberships then leaving town.

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3. Pre-opening Sales--Any monies collected by a health club organization prior to the scheduled opening of the facility must be placed in escrow.
4. Buyer's Bill of Rights--Including the right of the consumer to cancel memberships under certain conditions.

During the past decade, thousands of Kansas citizens have been victimized by deceptive practices conducted by fly-by-night health non-profit health club organizations as the best way of offering consumer protection and business viability.

House Bill 2115, submitted by Representative King, is a bold effort to address the problems involved in this industry. We salute Representative King for his initiative and thank him because without his notification we would not have been aware that the committee was considering this type of legislation. We have discussed with Representative King our reservations that House Bill 2115 could cause the rates paid by consumers to actually increase because health clubs would always be in a position of collecting in arrears.

Representative Hill expressed his interest of possibly combining our two bills and make one bill that will not only protect consumers but also one that will be supported by the health club industry. We are receptive to this suggestion and we hope final action on this bill will be delayed until hearing can be held on our proposed legislation.

We apologize for any inconvenience this may cause the committee, but the legislator who agreed to introduce our bill became busy and forgot. Thank you for your consideration.

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**LEGISLATION PROPOSED
BY
DISTRICT ATTORNEY'S TASK FORCE**

Section 1 Statement of Purpose

The purpose of this Act 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 Act should be construed broadly in order to provide the public with ample protection.

Section 2 Definitions As Used in This Act

- (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 non-profit organization or provide the buyer with health and fitness services.
- (c) "Health Club" means and includes any person, firm, corporation, organization, club or association engaged in a program of physical exercise, which includes the use of one or more of a sauna, whirlpool, weight lifting room, massage, steam room or exercising machine or device, or exercise rooms, or engaged in the sale of the right of privilege to use exercise equipment or facilities, such as a sauna, whirlpool, weight lifting room, massage, steam room or exercising machine or device or exercise rooms. The term "Health Club" shall not include the following:
 - 1. Any private club owned and operated by its members;
 - 2. Any organization solely operated for the purpose of teaching a particular form of self defense such as judo or karate;
 - 3. Any facility owned or operated by the United States;
 - 4. Any non-profit public or private school, college or university.
- (d) Non-Profit Organization - any not-for-profit organization which, in addition to its normal programs serving community needs, offers facilities for physical exercise, which includes the use of one or more of the following; a sauna, whirlpool, weight lifting, room, massage, steam room or exercising machine or device, or exercise rooms, or engaged in the sale of the right or privilege to use exercise equipment or

facilities, such as a sauna, whirlpool, weight lifting room, massage, steam room or exercising machine or devise or exercise rooms.

- (e) 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.
- (f) Seller - a person or any entity that solicits for the purpose of providing health club services.
- (g) 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.
- (h) Unopened facility - a health club or non-profit organization that is not fully constructed, open and available for use when the seller enters into a contract for health club services with a buyer.
- (i) Usage fees - the fees charged by a club or organization 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 and non-profit organizations shall file a registration statement with the Secretary of State of the State of Kansas. No health club or non-profit organization 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 voidable at the election of the buyer.
- (b) Each separate location where health club services are offered shall be considered a separate health club or non-profit organization and file a separate registration even though the separate locations are owned and operated by the same owner.
- (c) The registration statement shall contain the following:
 - (1) Name and address of health club or non-profit organization;
 - (2) Names and addresses of officers, directors, and majority stockholders of health club or non-profit organization, and parent company, if such company exists;

- (3) Approximate size of the facility;
 - (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 against the health club or non-profit organization, and any of its officers or directors within the last three years, or a notarized statement which states there has been no litigation filed within the past three years.
 - (8) The name and address of any bank or savings institution where an escrow account required under this Act is located.
- (d) The registration statement must be updated annually. Except that a health club or non-profit organization which changes any of its locations or ceases to do business must, within ten (10) days, provide written notice of changes to the Secretary of State.
 - (e) A copy of the registration statement shall be kept at each facility location and be available for inspection by all current members and prospective members at their request.
 - (f) The Secretary of State may charge each club or organization that files a registration statement a reasonable fee to cover the cost of filing, not to exceed fifty dollars (\$50.00).

Section 4 Pre-opening sales

- (a) A health club or non-profit organization shall not enter into a contract for health club services with a buyer more than six (6) months prior to the scheduled opening of the facility. If the scheduled opening is delayed, through no fault of the health club or non-profit organization, the contract may be extended at the option of the buyer.
- (b) All payments received by a health club or non-profit organization 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 facility.

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- (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). Upon the expiration of said fifteen (15) operating days, the seller may deposit the remaining escrow funds into its operating account.
- (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 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 material 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 canceling the contract, as described in section 5(a).
- (e) If a buyer notifies the seller of their intent to cancel the membership contract, the seller, according to the procedures described in section 5(a), shall notify the seller. The seller 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.

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 or non-profit organization moves to a new location more than 5 miles from the previous site or substantially changes operation of the facility so that the change materially impairs the buyer's use and enjoyment of the health club or non-profit organization.
- (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 facility in which they are a member, and is unable to transfer the contract to a comparable facility within five (5) miles of the buyer's legal residence or place of employment.
- (4) A buyer may cancel the contract if the buyer becomes permanently disabled. A buyer is permanently disabled if they are either mentally or physically disabled for a period of time greater than six (6) months.

The buyer must provide 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.

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 return

receipt U.S. mail. The burden of proving that the buyer has canceled the contract is on the buyer.

If a buyer cancels a contract according to section 5(a)(1), they shall be entitled to a total 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 or non-profit organization 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 their 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 their contract for health club services, according to 5(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 24 months. If the buyer cancels the contract after 24 months, they shall be entitled to a pro rated refund of pre-paid, but unused, membership fees. The contract may not contain an automatic renewal clause. Renewal contracts shall be governed by the limitations set forth in this section. 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) Except as provided in sub-section 6(e) no seller shall require a buyer to pay more than two (2) months payments in advance of the time of the actual use of the facilities.
- (e) The seller may accept more than two (2) months payments from the buyer in advance of the time of the actual use of the facilities only if the seller has provided the buyer with a statement to be signed by the buyer informing the buyer that under Kansas law the seller cannot require more than two (2) months payments in advance of the use of the facilities.

- (f) The notice statement to be provided by 6(e), to be effective, shall contain substantially the following language:

NOTICE TO BUYER

KANSAS LAW WILL NOT ALLOW THIS SUPPLIER TO REQUIRE YOU TO PAY MORE THAN TWO (2) MONTHS PAYMENTS IN ADVANCE OF THE TIME OF ACTUAL USE OF THE FACILITY. HOWEVER, THE BUYER MAY ELECT, FOR FINANCIAL OR OTHER REASONS TO ENTER INTO AN AGREEMENT CALLING FOR PAYMENTS OF MORE THAN TWO (2) MONTHS SHOULD THEY SO DESIRE. _____ (NAME OF BUYER).

- (g) A contract which does not comply with the provisions of this act shall be voidable at the option of the buyer.
- (h) Any contract entered into by the buyer with 30 days of closing of a health club or non-profit organization 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:

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, CERTIFIED OR REGISTERED MAIL, WRITTEN NOTICE TO THE SELLER. 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:

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 non-profit organization 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 facility;

If you move your legal residence or your place of employment more than twenty-five (25) miles from the facility in which you are a member and are unable to transfer the contract to a comparable facility within five (5) miles of the buyer's legal residence or place of employment;

If you die or become permanently disabled.

After the first twenty-four (24) months for any reason with proper notice.

- (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 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 six (6) 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 opened and available for use, we will mail or personally deliver to you an invitation to inspect the facility. You will have ten (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 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, their 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, non-profit organization 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 or non-profit organization will provide to buyers; and/or
 - (4) Utilize any deceptive acts or practices whether or not any person has in fact been misled.

Section 9 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 relieve the seller or their assignees or the contracts subject to said sections from compliance with all other applicable provisions of law.

KENNETH R. KING
REPRESENTATIVE, SEVENTY-SEVENTH DISTRICT
BUTLER COUNTY



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FINANCIAL INSTITUTIONS
& INSURANCE
VICE-CHAIRMAN: TRANSPORTATION
VICE-CHAIRMAN: JOINT COMMITTEE ON PENSIONS,
INVESTMENT & BENEFITS

HB 2115

February 3, 1993

Testimony Before the
Federal and State Affairs Committee

by

Kenneth R. King
Representative, 77th District

Mr. Chairperson and members of the committee:

HB 2115 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.

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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
TELECOPIER: 296-6296

Testimony of
Assistant Attorney General Mark W. Stafford
On Behalf of Attorney General Robert T. Stephan
Before the House Committee on Federal and State Affairs
RE: 1993 House Bill No. 2115
February 3, 1993

Mr. Chairman and Members of the Committee:

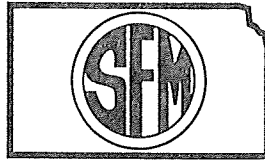
Thank you for the opportunity to appear on behalf of Attorney General Bob Stephan and his Consumer Protection Advisory Council supporting legislation which regulates the health spa industry. While House Bill No. 2115 does not go as far as past years' bills which were more comprehensive, it is a step in the right direction.

Prohibiting prepayment for services may be an effective tool to prevent consumer injuries arising out of "lifetime" health spa contracts. If a health spa closes its doors, the contract right does not last a lifetime.

There is legitimate concern that health spas will have difficulty collecting past due accounts if prepayment is prohibited. As an alternative, we suggest a limitation to the length of time for which a health spa may require prepayment. For example, allowing a spa to collect monthly membership fees as a precondition to using the facility is not unreasonable.

Whichever approach is adopted, the Attorney General requests an addition to House Bill 2115 stating that a violation of Section 2 of the bill is an unconscionable act or practice in violation of the Kansas consumer protection act. The remedies provided elsewhere in the act will be clearly applicable, and the new provision will be enforced more effectively.

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"Where Fire Safety Is A Way Of Life"

Kansas State Fire Marshal Department
700 Jackson, Suite 600
Topeka, Kansas 66603-3714
Phone (913) 296-3401
FAX (913) 296-0151

Joan Finney
Governor

Edward C. Redmon
Fire Marshal

TESTIMONY OF JIM CODER
ASSISTANT ATTORNEY GENERAL
STATE FIRE MARSHAL DEPARTMENT
BEFORE HOUSE FEDERAL & STATE AFFAIRS
FEBRUARY 3, 1993
HB 2124

On behalf of the State Fire Marshal I want to thank the committee for introducing this bill and for holding this hearing.

House Bill 2124 would allow the Fire Marshal to charge administrative fines for violations of the Fire Prevention Code. This bill is drafted almost verbatim from the administrative penalty statute of the Corporation Commission, K.S.A. 55-164.

This bill would provide one more tool to enforce the Kansas Fire Prevention Code and to provide fire safe environments for the citizens of Kansas. Under current law, violations of the fire prevention code are class B misdemeanors. It is extremely difficult to convince county attorneys to spend much time and/or effort on misdemeanor cases. It is hardly cost effective for me given our current budget to travel to the far reaches of the state to do such prosecutions. An administrative penalty such as what is proposed would provide us one more option to obtain compliance with the Kansas Fire Prevention Code.

I would like to provide you some examples of how the State Fire Marshal's office would view the operation of such a tool. We license several entities such as companies that service fire extinguishers. If a licensed company doesn't follow the codes for servicing the extinguisher our only option at the current time would be to revoke their certificate to do business. In order to justify putting someone out of business, the violation must be very egregious. There is a whole lot of room between where the code is violated and the nature of violation which warrants revocation of a license. This bill would fill in that area. This fact situation arose last fall. An employee of a licensed company didn't follow proper procedures in servicing multiple portable extinguishers. The fire prevention division of our office proposed to revoke the company's license. The company admitted the problem, and fired the employee. They were willing to pay a monetary fine, but fought giving up their license. The Fire Marshal ended up not revoking the license but felt uncomfortable at only slapping the company's hand for a serious violation.

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Testimony

Another instance that this could be used is where a facility substantially meets the fire codes, but chains exit doors shut. Our inspector can make them unlock the door on the spot. We can issue an order telling them not to chain doors, but the minute we aren't around the chain will in all likelihood return. By making violations like this have a financial impact, it might raise their importance in the eyes of a facility operator.

We foresee implementation of this primarily through the regulation process. Most of the penalties will be spelled out in regulation form. We intend to use this judiciously, where an economic deterrent is the most appropriate response.

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