

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Vice Chairperson Lisa Benlon at 1:30 p.m. on February 16, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Clyde D. Graeber, Chairperson, Excused
Representative Kathleen Sebelius, Excused
Representative Carolyn Weinhold, Excused

Committee staff present: Mary Galligan, Legislative Research Department
June Evans, Committee Secretary

Conferees appearing before the committee: Richard Schodorf, Assistant District Attorney, Wichita
Mark Stafford, Assistant Attorney General
Mark Fisher, President, Exertech Swim and Fitness Center
Wichita
Todd Erickson, personal trainer, Wichita
Rebecca Charay, YWCA
Tom Burgess, Association of Physical Fitness Centers
Keith Hertling, Popeye's Cardio Fitness Center

Others attending: See attached list

Vice Chairperson Lisa Benlon opened the hearing on HB 2262.

Representative Lahti moved and Representative Smith seconded to introduce a Substitute Bill for HB 2262. The motion carried.

Richard L. Schodorf, Assistant District Attorney, Wichita, briefed the committee on the differences between HB 2262 and Substitute HB 2262. (See Attachment #1)

Mark Fisher, President, Exertech Swim and Fitness Center, Wichita, testified in support of Substitute HB2262, stating legislation is needed to eliminate fly-by-nights, eliminate high pressure sales tactics and the consumer shouldn't pay for the facilities if they can not use them, i.e., should they move out of town.

Todd Erickson, personal trainer, Wichita, testified in support of Substitute HB2262 stating he had been an owner of a health club. He further stated that he had worked with Mr. Schodorf and Mr. Fisher on the Substitute Bill and felt it important to get away from the fly-by-nights as they hurt the legitimate industry. There is need for legislation to regulate. Mr. Erickson also stated that if he still owned a health club HB 2115 would be devastating as it would put small health clubs out of business

Rebecca Charay, testified opposing HB 2262, stating the YWCA would perhaps be adversely impacted by the passage of HB 2262 in its present form. The YWCA has always supported policy positions which call for consumer protection, this bill would have the unintended result of harassing the consumers of YWCA fitness services without providing them any more protection than they currently enjoy. (See Attachment #2)

Tom Burgess, representing the Association of Physical Fitness Centers, testified in opposition to HB 2262 in its present form stating there is no definition of payments, the bill effectively limits 36 month contracts and consumers request term memberships and the bill limits payments in advance of services to two months payment. (See Attachment #3)

Tia Williams, Bally's, Kansas City, stated Bally's was truly behind legislation to make legitimate by balance of both consumers and operators. In the Kansas City area, 40% of the members pay by prepayment.

Keith Hertling, owner and operator of Popeye's Cardio Fitness Center, testified in opposition to HB 2262 stating the bill should be amended. If there is a major problem with pre-payment this needs to be rewritten but approximately 25% of the consumers request prepayment.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
Statehouse, at 1:30 p.m. on February 16, 1993.

Mark W. Stafford, Assistant Attorney General, appearing in behalf of the Consumer Protection Advisory Council, stated they support HB 2262 as a comprehensive measure to protect consumers who purchase memberships in health clubs. Mr. Stafford suggested the following additions and amendments to HB 2262: 1. Change the word "Buyer" to "Consumer" in section 1 and throughout. 2. In Section 3 (a), add that a buyer may demand a refund plus interest if the contract is not extended. 3. Section 6(c), line 32 should establish a legal requirement or proscription, not merely a suggestion. 4. Add a new section outlining the remedies for violating the act, specifically: a. The attorney general, district attorney or county attorney may seek an injunction for failing to registration statement with the Secretary of State as required in section 2 or for failing to escrow the receipts as required in section 3(b). b. It is an unconscionable act or practice to enter into a contract before registering with the secretary of state as required by section 2, to fail to deliver a refund within 15 days when demanded or requested pursuant to section 3 or section 4(a), or to enter into a contract proscribed by section 5. c. It is a deceptive act or practice to fail to give any notice required by section 5 or section 6, or to violate the provisions of section 7. 5. The act is a part of and supplemental to the Kansas consumer protection act. (See Attachment #4)

Discussion followed:

A member felt this could be covered by the Consumer Protection Act.

Mr. Schodorf stated that people go in and set up fly-by-night clubs and make a living at doing this; going from state to state. Thirty-seven states have enacted legislation .

Mr. Schodorf and Mark Fisher, Wichita, stated they patterned this substitute bill for HB2262 from a bill provided by the Association of Physical Fitness Centers and felt it would be helpful to get together with the health club provders that opposed the bill and work things out that would be agreeable to all parties.

The hearing was closed on HB 2262.

Representative Cox moved and Representative Wilk seconded that the minutes of February 10 and 11 be approved. The motion carried.

The meeting adjourned at 3:15 p.m.

The next meeting will be February 17, 1993.

Date: 2-16-73

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

OFFICE OF THE DISTRICT ATTORNEY

EIGHTEENTH JUDICIAL DISTRICT

SEDGWICK COUNTY COURTHOUSE

535 N. MAIN

WICHITA, KANSAS 67203



NOLA FOULSTON
District Attorney

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

TO: Chairman and Members of the House Committee on Federal and State Affairs

RE: Comments of Assistant District Attorney Richard L. Schodorf regarding proposed health club legislation, Substitute House Bill No. 2262

The Consumer Fraud and Economic Crime Division of the Sedgwick County District Attorney's Office formed a task force that, in the spring of 1992, began work on a comprehensive legislative proposal which would address problems involving consumer fraud, deceptive practices, and unfair competition within the health club industry. The task force reviewed laws from 37 states across the United States. Members of the task force also contacted government officials and business owners to determine the effectiveness of various provisions of individual state law.

After four months of intense effort, the task force finalized a proposal to address the problems confronting consumers and health club business owners. The major problems can be summarized as follows:

1. Fly-by-night health clubs setting up in rented property and offering special rates on long-term contracts, only to leave town in the dead of night after collecting a substantial amount of the local consumers' money. This scenario has happened in all 3 of the state's largest cities--Topeka, Kansas City, and Wichita--in the past 2 years.
2. High pressure sales tactics designed to cajole consumers into signing agreements which, absent the high pressure, they would not have entered into.
3. The consumer's employer transfers him or her to a new location and the health club has no facility in the new town, yet the consumer is forced to pay on the health club contract; even though, he or she receives no benefit.

Fx 5A
2-16-83
Atch #1

TESTIMONY

RE: SUBSTITUTE HB 2262

PAGE 2

4. Length of some health club contracts which extend from 36 to 60 months and even life-time contracts. During lengthy contract periods, the level of services can deteriorate dramatically yet the consumer is tied into the original contract.
5. Deceptive advertising and promotions which can be considered gray areas under current law but which form unfair competitive practices and lure consumers into high pressure situations.

The task force sought to draft proposed legislation which would touch on each of the identified problem areas:

1. The proposed legislation allows health clubs to collect no more than 60 days in advance of the use of health club services unless expressly requested by the consumer. This period of time allows for the club to go through a normal billing cycle and allows consumers to have approximately one month grace time in paying their monthly dues. If the health club is not allowed to collect in advance for any services, they would essentially become debt collectors. We do not believe that this is in the best interests of either the consumer or health club. There can be no doubt that certain individuals would take advantage of the situation, use the facilities and refuse to pay. Health clubs would be forced to put consumers on a tighter billing cycle and consumers who regularly paid their bills would be subsidizing those who chose not to pay. The risk that paying consumers' rates would go up would be greatly increased.
2. The registration requirement will allow law enforcement officials to determine, in advance, names of the individuals who are responsible for the health club facilities. Oftentimes, names of dishonest health club operators are known and this will alert law enforcement agencies in advance of a possible scam.
3. The proposed legislation requires a 3 day cooling period in which the consumer can change his or her mind about entering to the health club contract.
4. The legislative proposal provides for consumer bill of rights which would allow the consumer to cancel the health club contract if the consumer moved to a new

F-5A
2-16-93
12

TESTIMONY

RE: SUBSTITUTE HB 2262

PAGE 3

location and the health club could not provide similar services in that location. The bill of rights also provides for cancellation in case of health problems.

5. The maximum contract period would be 24 months.
6. The proposed legislation contains a detailed truth in advertising section which clearly prohibits deceptive and unconscionable conduct.

After the proposed legislation was drafted, copies were sent to for-profit and non-profit health clubs. The response that we received was extremely favorable. In conclusion, we sincerely hope that this committee will give serious consideration to this proposal since it represents the efforts of both industry and government to protect the needs of both consumers and the health club industry.

FSA
2-16-83
13

LEGISLATION PROPOSED BY
DISTRICT ATTORNEY'S TASK FORCE
18TH JUDICIAL DISTRICT, KANSAS

Section 1 Definitions As Used in This Act

- (a) Contract for health club services or contract ("contract") - a term agreement by which a supplier agrees to provide a consumer with the right to use the facilities of a health club or non-profit organization and provide the consumer with health and fitness services for a specified time duration greater than one month.
- (b) "Health club" means and includes any person, firm, corporation, organization, club or association engaged in a program of physical exercise, which included 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 or 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, the State of Kansas, or any political subdivision thereof;
 - 4. Any non-profit public or private school, college or university.
- (c) 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 device or exercise rooms.
- (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.

FLSA
2-16-83
14

- (e) Term agreement - a contract by which a consumer agrees to enter into a contract for health club services for a specified time duration greater than one month.
- (f) Unopened facility - a health club or non-profit organization that is not fully constructed, open and available for use when the supplier enters into a contract for health club services with a consumer.
- (g) 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 2 Registration

- all added*
- (a) In connection with the opening or operation of any health club, it constitutes an unfair and deceptive act or practice within the meaning of K.S.A. 50-626, and amendments thereto for any supplier to fail to file a registration statement in compliance with this section with the Secretary of State of the State of Kansas.
 - (b) No health club or non-profit organization shall enter into a contract for health club services with a consumer, unless a current registration statement is on file with the Secretary of State. 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 consumer.
 - (c) 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.
 - (d) 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.
- (e) 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.
- (f) 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.
- (g) 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 3 Pre-opening sales

- (a) A health club or non-profit organization shall not enter into a contract for health club services with a consumer 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 consumer.
- (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 consumers. 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.
- (c) The funds deposited in the escrow account shall remain the property of the consumers whose funds have been deposited and shall be subject to full refund, plus interest earned, to

those consumers 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 supplier 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 consumers, until fifteen (15) operating days after notice was sent to the consumer as required in section (d). Upon the expiration of said fifteen (15) operating days, the supplier 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 consumers, the supplier shall mail or personally deliver to each consumer a written notice that informs the consumer of each of the following:
1. The facility is available for inspection and use;
 2. The consumer 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 supplier, or any advertisement by the supplier;
 3. If the consumer determines that the facility does not substantially conform with the written contract, any written material provided by the supplier, or any advertisement by the supplier, the consumer 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 4(a).
- (e) If a consumer notifies the supplier of their intent to cancel the membership contract, the supplier, according to the procedures described in section 4(a), shall notify the supplier. The supplier shall make an appropriate refund to the consumer within fourteen (14) days after the health and fitness facility receives written notice of the consumer's cancellation.

Section 4 Consumer's Rights

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

1. A consumer may cancel the contract for any reason until midnight of the third business day after a membership contract is signed and delivered to the consumer. If the consumer cancels the contract, the supplier shall refund all amounts received, within fifteen (15) business days of receipt of notice of cancellation. The supplier may increase the number of days within which the consumer may cancel.
2. The consumer 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 consumer's use and enjoyment of the health club or non-profit organization.
3. A consumer 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 consumer's legal residence or place of employment.
4. A consumer may cancel the contract if the consumer becomes permanently disabled. A consumer is permanently disabled if they are either mentally or physically disabled for a period of time greater than six (6) months.

The consumer must provide the supplier 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 consumer.

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

5. In the event of the consumer's death, the consumer's estate is not responsible for any future payments and the contract shall be considered void.
6. To cancel a contract, a consumer must notify the supplier 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 consumer. If the consumer fails to provide all documentation, the supplier may cancel the contract or give the consumer thirty (30) days to provide the

FSA
2-16-83
18

documentation. Such notice must be delivered in person or by return receipt U.S. mail. The burden of proving that the consumer has canceled the contract is on the consumer.

If a consumer cancels a contract according to section 4(a)(1), they shall be entitled to a total refund for all fees collected. When a consumer cancels a contract according to §(4)(a)(2)-(4) the consumer 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 consumer and supplier to the contrary. If there are substantial changes in the facilities or services offered as a result of the transfer, the consumer may cancel their contract for health club services, according to 4(a)(6).

Section 5 Contracts for Health Club Services

- (a) All contracts for health club services shall be in writing and shall constitute the entire agreement between the supplier and the consumer.
- (b) No health club or non-profit organization shall accept or receive any payment for health and fitness services from a consumer unless the consumer has signed a fully executed copy of the contract and it has been delivered to the consumer. If the consumer 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 consumer 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 consumer will continue as a monthly member.
- (d) Except as provided in sub-section 5(e) no health club or non-profit organization shall require a consumer to pay more than two (2) months payments in advance of the time of the actual use of the facilities.

- (e) The health club or non-profit organization may accept more than two (2) months payments from the consumer in advance of the time of the actual use of the facilities only if the supplier has provided the consumer with a statement to be signed by the consumer informing the consumer that under Kansas law the supplier cannot require more than two (2) months payments in advance of the use of the facilities.
- (f) The notice statement to be provided by 5(e), to be effective, shall contain substantially the following language:

NOTICE TO CONSUMER

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 CONSUMER 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 CONSUMER).

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

Section 6 Contract Provisions

In connection with a contract for health club services, it shall constitute an unfair and deceptive act or practice within the meaning of K.S.A. 50-626 and amendments thereto, for any health club or non-profit organization to:

- (a) Fail to set forth in a term agreement for health club services the following information:
 - 1. The name, the business address, and the telephone number of the supplier; and the name and residence or business address of the consumer;
 - 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 consumer.

- (b) Fail to set forth in a term agreement for health club services the following written notice in at least ten point bold type in capital letters:

CONSUMER'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 SUPPLIER. 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) Fail to set forth in a term agreement for health club services 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 or 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 consumer'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 consumer'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) Fail to set forth in a term agreement for health club services involving an unopened facility the following statement in a least ten point type:

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 supplier, 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.

- (e) Fail or refuse to honor any valid notice of cancellation provided for in this act within ten (10) business days after the receipt of such notice.

SECTION 7 Truth in Advertising

It shall constitute an unfair and deceptive act or practice (whether or not any person has in fact been misled) within the meaning of K.S.A. 50-626 and amendments thereto, for any supplier 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 consumers.

Section 8 Common Law Rights Preserved

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

Section 9 Supplemental to Kansas consumer protection act

This act shall be part of and supplemental to the Kansas consumer protection act.



Member Agency
United Way of
Greater Topeka

225 SW 12th Street
Topeka, KS 66612-1345
913-233-1750

February 16, 1992

Testimony on HB 2262 Consumer protection; health spas

The Topeka YWCA would be directly, and perhaps adversely impacted by the passage of HB 2262 in its present form.

While the YWCA has always supported policy positions which call for consumer protection, this bill would have the unintended result of harassing the consumers of YWCA fitness services without providing them any more protection than they currently enjoy. We do not oppose the concept behind the bill and recognize that some fitness organizations have engaged in questionable business practices from which some consumers might need protection. Therefore, we will offer several suggestions which might make the proposed legislation more acceptable to our members while protecting others who might be at risk.

1. Is the YWCA a health club under this bill's definition? The answer is yes. We would fall under its provisions.

Our organization is composed of members who join to participate in a variety of services, of which health and fitness is one. Our largest program is licensed child care and other youth services. (Brochure is attached.) The organization is governed by a board of directors, elected by the membership and is a 501(c)3 nonprofit organization. Anyone may be a member and no one is denied service because of inability to pay; fees are adjusted based on ability to pay. The agency is funded in part by United Way of Greater Topeka. We have been providing health and fitness programs for women and their families in Topeka since 1887 - almost 106 years.

2. The reporting requirements under section 2 are burdensome because we already submit an annual statement to the Secretary of State as well as make all of the information listed in section 2 (c) available to a variety of sources, except for (7) pending litigation, of which none exists.

We would be happy to add this information to our annual filing with the Secretary of State, but see no reason to duplicate this requirement. Additionally, all this information is contained in our program brochure which is given to each member at the time of joining.

FILED
2-16-93
ATCH #2

3. We do not object to any of the provisions in section 3, pertaining to contracts issues prior to the opening of a facility.

4. The right to cancel provisions in section 4 are already included in current YWCA policy and we do not object to having them in this bill.

5. Section 5, however, would create a problem for YWCA members. To limit the prepaid services to no more than two month's in advance would substantially change the way we market and the way our members prefer to purchase services. We do not have "contracts" with our members. They simply fill out an application form, are given a membership card and begin using the facilities. Under the provisions of this section, we would have to institute a written contract procedure, include the warning at the bottom of page 5, and then begin trying to explain why the state of Kansas will not allow them to purchase a Summer Special for family recreation as they have done in the past.

We propose that line 26, p. 5, be amended to read:

...no seller shall require a buyer to pay more than 12 months' payments in advance of the time of the actual use of the facilities.... Lines 28 - 41 and lines 1-3 on the next page should be deleted.

In summary, we have three problems with this bill.

a. Registration requirements are duplicative for agencies such as the YWCA, are expensive and the information is already available to the public.

b. The requirements for written contracts will cause us to change our enrollment procedures substantially, requiring more paper documents to be exchanged, but the policies protecting the consumer are substantially the same as the ones we have in place currently. We would prefer to be able to give that written information to members in our printed materials as we do now.

c. The restriction on accepting prepaid plans no more than 60 days in advance will seriously change our marketing efforts and probably will irritate our members. A more realistic restriction would be 12 months since this is the usual practice of most established clubs to offer an annual membership, but with opportunity for refunds under certain circumstances.

FLSA
2-16-83
22



Topeka YWCA Registration Form
Primary Member

Please Print

(List the person to receive billings, mailings, renewals notices, etc.)

Name: _____
Last First M.I.

Address: _____
Street City Zip County

Internal Use Only:

Date: _____

Member No. _____

Receipt No. _____

Employer Code _____

Plan No. _____

Expiration Date: _____

Census Tract Location _____

Sex: _____

Date of Birth _____

Home Phone: _____

Business Phone: _____

Employer: _____

Extension: _____ Signature: _____ Staff Initials _____

The YWCA has two types membership: **basic** and **activity**. The basic membership is a single membership; an activity membership includes family members. **You must fill out a separate information form for each family member for whom you wish a membership card.** Family members must live in your household.

Check Membership Type:

BASIC MEMBERSHIPS

____ Adult (\$47.25) Please add
____ Senior (\$31.50) 5.9% sales
____ Teen (\$15.75) tax to all.

____ NEW ____ RENEWAL

ACTIVITY PLAN MEMBERSHIPS

____ Health Arena Plan
____ Aquatics Plan
____ Combination Plan

____ 3 Month ____ Annual ____ Bank Draft*
Number of additional cards to be issued: _____

*Additional Form Required

Optional: Do you wish to make a contribution to help others use the YWCA?

* Sponsorship Fund (\$5-10) _____
* Sustainer (\$100 or more) _____

Would you like to be contacted about Volunteer Opportunities? Indicate area of interest.

____ Child Care ____ Clerical
____ Food Service ____ Committee Work

Please check the appropriate box(es) if you are enrolling you or a child in any of these program areas:

____ Childcare (preschool) ____ Latch Key/Summer Day Camp
____ Career Assistance Network ____ Sponsorship

Optional Demographic Information

The following information is used for statistical and affirmative action purposes and assists the YWCA in obtaining United Way and other government funding.

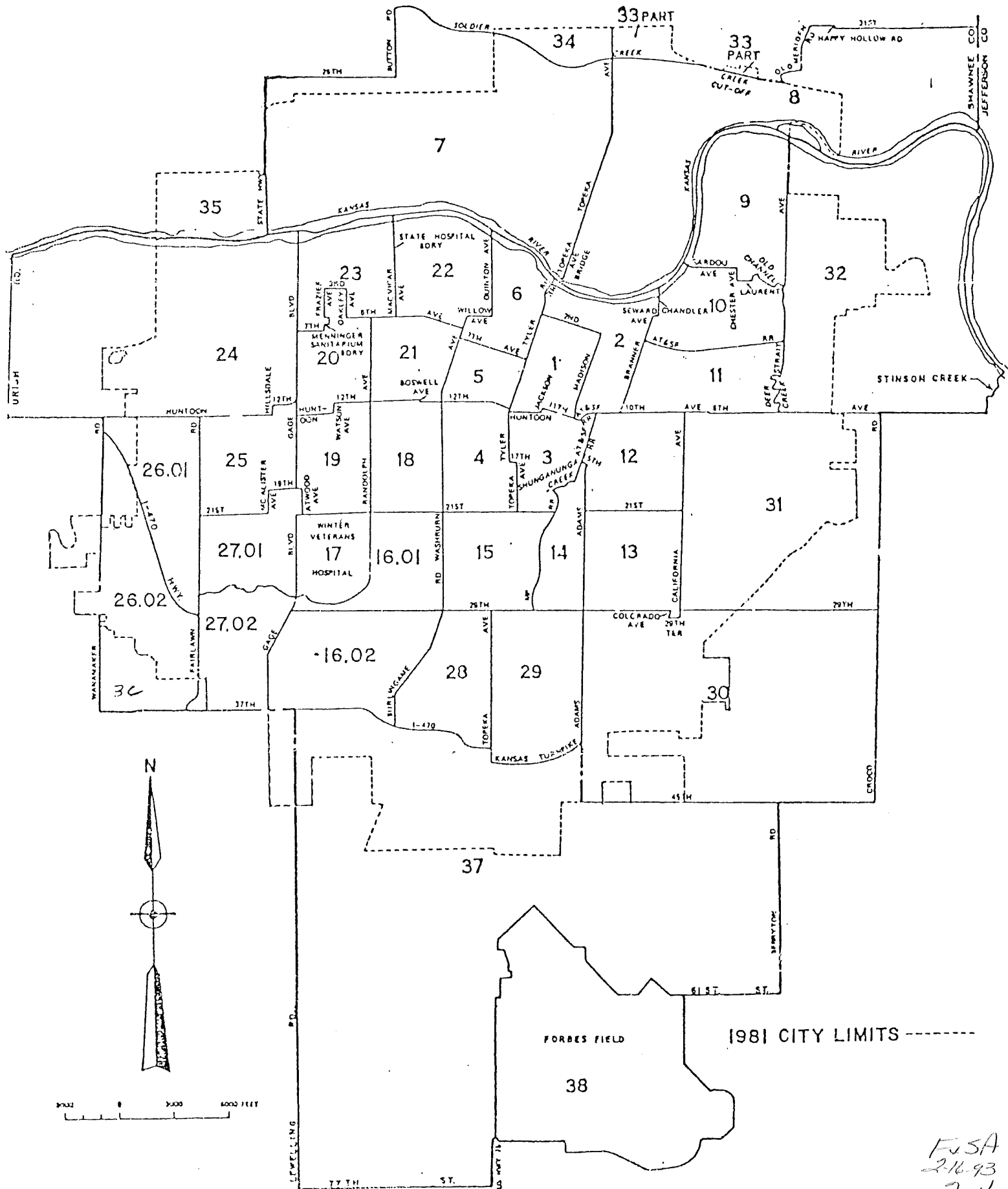
RACE: ____ American Indian ____ Hispanic ____ Caucasian ____ African American ____ Asian American

INCOME: Please circle the number of persons in your household and then indicate if your income falls below or above the amount. For example, with 3 persons in a household, is your family income above or below \$29,500?

No. in household: 1 2 3 4 5 6 7 8 ABOVE ____
Annual Income: \$22,750 26,000 29,250 32,500 35,100 37,700 40,250 42,850 BELOW ____

F-154
2-16-93
2-3

1980 CENSUS TRACTS IN SHAWNEE COUNTY



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2-16-93
24

TOPEKA YWCA

01/26/93

PAGE: 1

MEMBERSHIP TYPE ANALYSIS FROM 01/01/92 TO 12/31/92

Club #1

		3RD QUARTER 1/1/92-12/31/92	4TH QUARTER 7/1/92-9/30/92	JAN 10/1/92-12/31/92	JAN 1-26/93
MEMBERSHIP TYPE	COUNT	COUNT	COUNT	COUNT	
35 Staff Dependent	46	6	39	5	
40 Basic Adult Female	403	100	79	13	
42 Teen Male/Female	40	10	4	1	
44 Senior Male/Female	109	26	38	7	
46 Adult Male	74	18	19	2	
48 STATE EMPLOYEE BASIC	10	2	7	2	
80 Aquatic Annual Corporate	5	2	1	0	
81 Aquatic Bank Draft Corp.	7	3	4	4	
82 Health Arena Annual Corp.	17	3	5	6	
83 Health Arena Bnk Drft.Crp	110	35	22	18	
84 Combination Annual Corp.	35	8	11	1	
85 Combo Bank Draft Corp.	230	68	87	39	
86 Aquatic 3-Month Corp.	5	2	2	1	
87 Health Arena 3-Month Crp.	63	15	15	8	
88 Combination 3-Month Crp,	76	10	11	14	
89 Health Arena 3-Month	221	59	70	24	
90 Health Arena Annual	19	3	6	1	
91 Health Arena Bank Draft	155	33	36	15	
92 Aquatic 3-Month	50	10	11	1	
93 Aquatic Annual	13	8	2	2	
94 Aquatic Bank Draft	16	6	3	3	
95 Combination 3-Month	955	240	407	90	
96 Combination Annual	122	39	41	8	
97 Combination Bank Draft	189	65	47	12	
CLUB TOTAL	2970	771	967	277	

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BURGESS & ASSOCIATES

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Governmental Relations - Legislative Consulting

Testimony

before the
House Federal and State Affairs Committee

Presented by Tom Burgess
of Burgess & Associates for the
Association of Physical Fitness Centers
Tuesday February 16, 1993

House Bill No. 2262

Madam Chairman and members of the committee:

I am Tom Burgess representing the Association of Physical Fitness Centers in opposition to HB 2262 in its present form.

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

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

- (1) There is no definition of payments. Would this bill keep the clubs from charging an initiation fee or processing fee?
- (2) 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. This bill effectively limits 36 month contracts.

FSA
2-16-93
Atch #3

(3) The bill limits payments in advance of services to two months payments. Why not make that 6 months. 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 cancelled. 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 could subsequently close.

Thank you for the opportunity to speak on House Bill 2262.

F&SA
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32



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

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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. 2262

February 16, 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. We support House Bill 2262 as a comprehensive measure to protect consumers who purchase memberships in health clubs.

We understand that this bill is intended to be part of the Kansas consumer protection act. In order to make the bill more easily enforced, we request the following additions and amendments:

- 1) Change the word "Buyer" to "Consumer" in section 1 and throughout.
- 2) In section 3(a), add that a buyer may demand a refund plus interest if the contract is not extended.
- 3) Section 6(c), line 32 should establish a legal requirement or proscription, not merely a suggestion.
- 4) Add a new section outlining the remedies for violating the act, specifically:
 - a. The attorney general, district attorney or county attorney may seek an injunction for failing to registration statement with the Secretary of State

F & SA
2-16-93

Atch #4

as required in section 2 or for failing to escrow the receipts as required in section 3(b).

b. It is an unconscionable act or practice to enter into a contract before registering with the secretary of state as required by section 2, to fail to deliver a refund within 15 days when demanded or requested pursuant to section 3 or section 4(a), or to enter into a contract proscribed by section 5.

c. It is a deceptive act or practice to fail to give any notice required by section 5 or section 6, or to violate the provisions of section 7.

5) The act is a part of and supplemental to the Kansas consumer protection act.

Once again, thank you for the opportunity to voice our support of the bill. We request your approval of the bill with our suggested amendments.

Ex 5A
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4²