

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

FILED  
1999 AUG 14 PM 3:18  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Office of the Attorney General TITLE NUMBER: 142

CITE AUTHORITY W. Va. Code § 46A-7-102(1)(e) and Code § 46A-6-103

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 13

TITLE OF RULE BEING PROPOSED: Health Spas

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Charles G Brown

DATE: August 14, 1989  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: Office of the Attorney General

FILED  
1989 AUG 14 PM 3:19  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation W. Va. Code § 46A-7-102(1) (e)  
and Code § 46A-6-103

2. a. Date filed in State Register with Notice of Hearing:  
July 12, 1989

b. What other notice, including advertising, did you  
give of the hearing?

Press Releases were issued announcing the Public  
Hearing and copies of the Proposed Rule were  
distributed to interested parties.

c. Date of hearing (s): August 11, 1989

d. Attach list of persons who appeared at hearing, comments  
received, amendments, reasons for amendments.

Attached X No comments received         

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)

August 14, 1989

f. Name and phone number of agency person to contact  
for additional information:

Robert J. Lamont, Director  
Deputy Attorney General  
Consumer Protection Division  
812 Quarrier Street, Sixth Floor  
Charleston, West Virginia 25301  
348-8986

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable.

b. Date of hearing: Not applicable.

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable.

d. Attach findings and determinations and reasons:

Attached Not applicable.

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AGENCY APPROVED PROPOSED  
LEGISLATIVE RULE AND SUMMARY

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August 14, 1989

TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 13  
HEALTH SPAS

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- |            |                                       |
|------------|---------------------------------------|
| Section 1. | General                               |
| 2.         | Definitions                           |
| 3.         | Surety bond                           |
| 4.         | Contract requirements                 |
| 5.         | Cancellation of contracts             |
| 6.         | Pre-opening sale of contracts         |
| 7.         | Unfair or deceptive acts or practices |
| 8.         | Violation of the rule; enforcement    |
-

TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 13  
HEALTH SPAS

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§ 142-13-1. General.

1.1 Scope - This legislative rule defines certain deceptive acts or practices and sets forth certain requirements for sellers and providers of consumer services by health spas in West Virginia, its counties, and all political subdivisions.

1.2 Authority - W. Va. Code § 46A-7-102(1)(e) and Code § 46A-6-103.

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - Not applicable.

1.6 Penalties - Except as otherwise indicated, a violation of this rule constitutes a violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-104 and any person violating the provisions of this rule or the provisions of the West Virginia Consumer Credit and Protection Act shall be subject to a civil penalty in the amount of Five Thousand Dollars for each transaction or occurrence of a repeated and willful violation.

1.7 Construction - This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act, W. Va. Code 46A-1-101 et seq.

1.8 Severability - If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

§ 142-13-2. Definitions.

2.1 "Business day" means all days except legal federal or state holidays and Sundays.

2.2 "Contract" means an oral or written agreement by which one becomes a member of a health spa.

2.3 "Department" means the office of the attorney general of West Virginia.

2.4 "Facilities" means equipment, physical structures, improvements to leasehold premises, and other tangible property, real, personal, or mixed, used by a health spa at each location to conduct its business including, but not limited to, saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment.

2.5 "Health spa" means a business primarily involved in the sale of memberships that provides the members instruction in a program of physical exercise or provides the members use of the facilities of the health spa for a program of physical exercise regardless of whether or not the business has wet areas, such as a pool, whirlpool, or steam room. The term does not include an organization that is tax exempt under 26 U.S.C. 501 et seq., or a private club owned and operated by its members.

2.6 "Member" means a natural person entitled to the benefits of membership in a health spa.

2.7 "Membership" means the status under a contract between an individual and a health spa that entitles the individual to the use of services of facilities of the health spa.

2.8 "Person" means an individual, corporation, association, organization, partnership, business trust, trust, estate, and any other legal entity.

2.9 "Purchaser" means a person who purchases a health spa membership.

Attorney General  
Legislative Rule  
§ 142-13-2

2.10 "Seller" means a person who owns or operates a health spa or who offers for sale the right to use the facilities or the services of the health spa.

2.11 "Services" means programs, plans, guidance, or instruction that a health spa provides for its members, including diet planning, exercise instruction, exercise programs, and instructional classes.

§ 142-13-3. Surety Bond.

Except as hereinafter provided, each health spa registering to do business in this state shall post a surety bond in the amount of fifty thousand dollars, or the equivalent in cash or marketable securities, with the attorney general. The type of bond shall be designated by the attorney general. No surety bond shall be accepted for filing unless it is with a surety company authorized to do business in this state. The surety may cancel the bond at any time upon given thirty days' prior written notice to the attorney general. Any person who is damaged by any violation of this rule, any provision of the West Virginia Consumer Credit and Protection Act, or by the seller's breach of the contract for sale or any obligation arising therefrom, may bring an action against the bond to recover damages suffered and any other amounts allowable by law. The attorney general, in any action brought under this rule or any other applicable provisions of law, may likewise proceed against the bond. In no event shall the aggregate liability of the surety for all claims exceed the amount of the surety bond.

A health spa need not post a surety bond or other indicator of financial security under this section if it charges an application fee, initiation fee, or other initial charge no higher than twenty-five dollars, and either (a) limits its sale of long-term contracts to no longer than three (3) months, or (b) agrees to require advance payment of no more than one-third of the full purchase price of contracts longer than three (3) months and accepts monthly payments for the balance of the contract period spread out equally over the rest of the contract period.

Attorney General  
Legislative Rule  
§ 142-13-3

A health spa is required to send the attorney general's consumer protection division a letter thirty (30) days prior to opening indicating how it plans to comply with the options offered under this section.

§ 142-13-4. Contract requirements.

4.1 The health spa must deliver a fully completed copy of a contract to a purchaser before the contract is signed. The contract constitutes the entire agreement between the seller and the purchaser. The contract must be in writing and must be signed by the purchaser. If the health spa is not open at the time the contract is entered, the contract must clearly state the proposed opening date of the health spa. At the time of delivery the health spa must give the purchaser a written receipt for any payment made by the purchaser under the contract.

4.2 No health spa contract can be sold for a period of time greater than two years.

4.3 A contract may not require or entail the execution of a note or series of notes by the purchaser that when separately negotiated will cut off as to third parties a claim or defense that the purchaser may have against the seller.

4.4 Each contract shall state in at least 10-point boldfaced type:

4.4.1 "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

4.4.2 "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office.)"

4.4.3 "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE COMPARABLE FACILITIES WITHIN TEN MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN TEN MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY CANCEL THIS CONTRACT BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office.)"

4.4.4 "IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS.

(Address of the health spa home office.)"

§ 142-13-5. Cancellation of contracts.

5.1 A member may cancel a contract before the fourth business day after the date on which the contract is executed by notifying the health spa of the cancellation in writing. Written notification is considered given if the notification is mailed to the home office of the health spa and postmarked not later than midnight of the third business day after execution of the contract. The health spa shall refund all money paid to the purchaser exercising the right to cancel within seven days of the cancellation.

5.2 A member may cancel a contract on written notice by mail to the home office of the health spa if the health spa goes out of business and fails to provide comparable facilities within ten miles or moves its facilities more than ten miles from the location in which the member is enrolled. A member may cancel a contract in the same manner if the health spa fails to provide advertised services. If a contract is cancelled under this

subsection, the member is liable for an amount equal to the value of services received and facilities used under the contract up to the date of the cancellation, and if the member has paid money under the contract in excess of that amount the health spa shall promptly refund to the member the excess within twenty days of the cancellation.

5.3 A purchaser of a membership or the legal representative of a purchaser may cancel a contract if the member dies or becomes totally and permanently disabled after the date on which the contract takes effect. The purchaser remains liable for an amount equal to the value of services received and facilities used by the member under the contract up to the day on which the death occurred or the disability was incurred. The health spa shall make a pro rata refund of funds paid under the contract in an amount based on the time remaining in the contract term up to a maximum of 50 percent of the total contract amount. The health spa may require a purchaser or the purchaser's estate to provide reasonable proof of total and permanent disability or death.

§ 142-13-6. Pre-opening sale of contracts.

Health spas who solicit and sell memberships prior to fully opening for business and providing all promised services and facilities may not use membership fees collected to build facilities or obtaining equipment. Monies collected for memberships prior to opening and providing all promised services and facilities must be placed in an escrow account with an insured financial institution and may not be used by the health spa for operational expenses until it opens and provides promised services and facilities.

§ 142-13-7. Unfair or deceptive acts or practices.

It shall be an unfair or deceptive act or practice for a health spa to:

7.1 Offer special sales or discounts unless such special sales or discounts are made in writing and are made available to all prospective members who have not previously been members of the health spa.

Attorney General  
Legislative Rule  
§ 142-13-7

7.2 Make any misrepresentation to current members, prospective members or purchasers of membership contracts regarding:

7.2.1 Qualification of staff;

7.2.2 Availability, quality, or extent of facilities or services;

7.2.3 Results obtained through exercise, dieting, or weight control programs;

7.2.4 Membership rights; or

7.2.5 The period that a special offer or discount will be available.

7.2.6 Advertise that it is bonded by the state.

7.3 Fail to register to do business in this state.

7.4 Fail to either post a surety bond as required by section 3 of this rule or comply with the provisions of section 3 which allows a health spa an alternative to posting a bond.

7.5 Fail to notify the attorney general's consumer protection division of the option the health spa chooses under section 3 of this rule.

7.6 Fail to deposit funds required to be escrowed under section six of this rule.

7.7 Withdraw funds deposited in an escrow account pursuant to section six of this rule before the health spa opens for business and provides all promised services to consumers who have purchased memberships.

§ 142-13-8. Violation of the rule; enforcement.

8.1 Any violation of the provisions of this rule is an unfair or deceptive act or practice within the meaning of W. Va. Code § 46A-6-104. Any right, remedy or power set forth in this Chapter 46A may be used to enforce the provisions of this rule.

8.2 The rights, obligations, and remedies provided in this rule shall be in addition to any other rights, obligations, or remedies provided for by law or in equity.

8.3 The department may request, and the courts or administrator tribunals shall be empowered to order, any writs, orders, or other relief as may be necessary for the enforcement of the provisions of this rule, including, but not limited to, injunctive relief, restitution, civil penalties, costs, fees, expenses of investigation, affirmative disclosure, advertising or mailings.

TITLE 142  
WEST VIRGINIA LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 13  
HEALTH SPAS

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SUMMARY OF PROPOSED LEGISLATIVE RULE

The Consumer Protection Division of the Office of the Attorney General is proposing the rule in order to define certain deceptive acts or practices and set forth certain requirements for sellers and providers of consumer services by health spas in West Virginia.

The rule is divided into eight sections. The first section fulfills the requirements imposed by the Secretary of State and addresses construction, scope, and severability of the rule.

Section two of the proposed rule provides for definitions. Section three requires the health spa to obtain a surety bond or, in the alternative, for the health spa to exempt itself from posting a bond by choosing one of two options relating to the maximum length of contract offered or method of payment.

Section four defines the contract requirements which must be provided to the purchaser by the health spa. It limits health spa contracts to a maximum of two years and receives specific disclosures to consumers regarding cancellation and refund rights. Section five further defines the procedure for cancellation of said contracts and provision of refunds under section four.

Section six prohibits a health spa from using membership fees collected prior to opening for business for capital construction or acquisition. Rather, it requires such pre-opening income to be placed in an escrow account not to be used until the facility opens for business and provides all promised services.

Section seven defines the unfair or deceptive acts or practices. Section eight of the rule describes conduct which constitutes repeated and willful conduct for possible imposition of civil penalties under the Act.

For further information, please contact Robert J. Lamont, Deputy Attorney General and Director of the Consumer Protection Division, Office of the Attorney General, 812 Quarrier Street, Sixth Floor, Charleston, West Virginia 25301.

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STATEMENT OF CIRCUMSTANCES  
REQUIRING THE RULE

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TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 13  
HEALTH SPAS

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STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE

This Rule is necessitated by the number and variety of unfair and deceptive acts and practices by persons and firms in the health spa industry. These problems have been called to the attention of the Attorney General's Consumer Protection Division by the numerous complaints filed by consumers in recent years. In the past two years, the Consumer Protection Division has received 1,031 complaints regarding 25 health spas in various parts of the State. Several of these spas have gone out of business after becoming insolvent thereby leaving consumers who prepaid memberships stranded and unable to obtain refunds.

Litigation efforts in this area have been successful in obtaining injunctive relief, but have had mixed results in obtaining restitution to consumers or civil penalties. The rule is designed to either minimize consumer liability in the event of insolvency or assure that the consumer's claim will be protected in the event of insolvency through bonding and escrowing of pre-opening sales income.

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REPORT ON PUBLIC HEARING  
AND  
PUBLIC COMMENT PERIOD

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August 14, 1989

TITLE 142  
WEST VIRGINIA LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 13  
HEALTH SPAS

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REPORT ON PUBLIC HEARING AND PUBLIC COMMENT PERIOD

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The Public Comment Period with respect to the above-referenced legislative rule expired on August 11, 1989, and a Public Hearing on the proposed rule was held on that date, all pursuant to notice sent to the Secretary of State's Office for publication in the State Register on July 12, 1989.

The following individuals attended the Public Hearing conducted by Deputy Attorney General Robert J. Lamont:

Dana A. Bee	Representative, Fitness World
Jack L. Burnette*	Representative, Fitness World
Glenn Cox*	Representative, Fitness World
Joe Dearth*	Representative, Nautilus
Farron Doss*	Representative, New Horizons Nautilus
Kathy Hoover*	Director, Consumer Services, Office of the Attorney General
Mary Jeffrey	Representative, Fitness World
Chuck Knowles*	Representative, Tug Valley Nautilus

Sam Manos*	Representative, Fitness World
Pat Mike	Representative, Cosmopolitan
Domenick Posten*	Representative, The Spa Fitness Center
Kim Rider*	Consumer Representative, Office of the Attorney General
Robert Schulenberg*	Senior Assistant Attorney General, Office of the Attorney General
Robert E. White*	Representative, Nautilus
Ray Wiley*	Representative, Greenbrier Health Club

(NOTE: The asterisks denote those speaking at the Public Hearing.)

Comments received were generally favorable toward the proposed rule with the exception of the surety bond requirement. Several individuals expressed a concern about the effect such a requirement would have on existing businesses.

Other comments received stressed the importance of regulating use of monies received during pre-opening sales and the perceived unfairness of not applying the rules to non-profit institutions.

A transcript of the Public Hearing proceedings and copies of all written comments received are attached hereto.

For further information, please contact Robert J. Lamont, Deputy Attorney General, Director of the Consumer Protection Division, Office of the Attorney General, 812 Quarrier Street, L&S Building, Sixth Floor, Charleston, West Virginia 25301.

Route 1, Box 418-B  
St. Albans, WV 25177  
August 2, 1989

Charles G. Brown, Attorney General  
State of West Virginia  
Office of the Attorney General  
Charleston, WV 25305

Dear Mr. Brown:

In response to your letter of July 26, 1989, I would like very much to see legislative rules passed to regulate health spas. The only experience I have had with such a club was Living Well in Spring Hill. I was told when I joined that the instructors would be trained at Brigham Young College and would be experienced in health related fields. Later I saw an advertisement in the local newspaper for instructors for Living Well and it stated "no experience necessary." I also had trouble getting my membership card and therefore never really got to utilize the facility. With the help of your office I was able, after many months and much hassle, to obtain a refund for both mine and my daughter's membership.

I strongly feel that we need this rule passed to protect the unsuspecting public from being sold a "bill of good".

Thank you for all your help in clearing up my situation for me and good luck with the passage of your legislation.

Sincerely yours,



Wilma J. Lewis

**RECEIVED**

AUG 2 1989

**ATTY GEN. OFFICE**

RECEIVED

AUG 04 1989

C.P.D.

State of West Virginia  
Office of the Attorney General  
Charleston, W.Va 25305

August 2, 1989

Dear Attorney General Brown:

In response to your letter dated July 26, 1989 concerning a proposed legislative rule to curb abuses by the health spa industry. Please let me reiterate again my dissatisfaction with The Living Well Health Spa located in So Chas. I personally had to contact an attorney to discourage the threats made by collection agencies and phone calls to my place of employment.

I notified the Living Well establishment and returned their membership card and stated why I was voiding my membership; of course they felt my reasons were unacceptable. I discussed by letter to them the high-pressured sells pitch I received, when I went down, supposedly to collect 3 free weeks I had won, which I never received. The facility was over-crowded, they had obvisously sold more memberships than the facility could accommodate.

I have nothing but ill feeling towards this establishment for all the angish they put me through and I certainly hope that my complaint will keep others from going through this kind of treatment.

I am also sorry it will not be convenient for me to attend the hearing scheduled. I hope by sending this letter I will be kept informed of the status of the hearings. If I can be of further service please let me know.

Yours truly,

  
Mrs. D.A. Terrell

RECEIVED

AUG 07 1989

C.P.D.

July 31, 1989

Dear Attorney General,

I was very pleased to hear that someone was involved in the situation.

I would like to comment on the spa I attended. The Spa Lady or Divingwell fitness (they changed names during my membership.) were never on a schedule. They would start the classes at 7:30 pm some days, but because they became friendly with a few customers they would start classes whenever the customers wanted without notifying anyone else. The place changed names during my membership and they promised showers, lockers, new equipment and a whirlpool. After months nothing ever happened.

The next thing was I found out I was pregnant and my doctor advised not to lift until after the baby came. I notified the manager and she said no problem my membership would stop and start back after the baby.

After the baby came I called the fitness place and a person answered saying the spa had went out of business a few months earlier. I was never notified about the termination of the spa.

I like the way a supposed company can do that to a person. I notified my lawyer - Robert W. Bagler

604 Sixth St. Moundsville WV 26041. He wrote a letter to the spa and they were to reimburse me for the

-3-

amount I paid, I only  
received \$26.<sup>00</sup>. I think  
these people should have  
to pay everyone they ripped  
off back plus interest.

A law should be put into  
effect to protect people from  
people who run bad companies.

Thank You

Lisa A. Wilson

RECEIVED

AUG 07 1989

Dear Mr Brown

C.P.D.

Concerning the F.I.R.S.'s lady desaction of myself and many other members! I am a very upset consumer. I had joined in late 1987 with a deposit & payments. I went to pay in person one afternoon and the doors were locked! I want a total refund of my money! I only went there maybe 5 or 6 x to use the facility and that joke was gone.

I had written a ltr to Anthony LeLewy Jr. from reading in the paper that the women in Ohio received refunds due to that F.I.S., closing. He then said he forwarded my & sev. copies of receipts & cancel checks to you.

I am sorry I couldn't attend the meeting but my job interfered. I think this man or men should be punished by repaying every member every penny paid to them.

Thank You

Tori L Ludwig

Tori L Ludwig  
RD#2 BOX 205  
Wellsburg W  
26070

Belinda Patterson (Staley)  
5605 Shore Ave.  
Mentor, Oh 44060

RECEIVED  
AUG 7 1989  
C.P.D.

TO Whom it May Concern:

I am writing in regards to the letter I received to curb abuses by the health Spa Industry. Even though I live in Ohio now, a Spa in WV, known as Fitness Lady in Elm Grove, WV really took me, I feel before any club should be allowed to open there should be a thorough investigation into the person or persons wanting to open this business.

I'm out about \$640 dollars in which I will probably never see again, although another agency bought Fitness Lady, I don't live in WV anymore, I can't even transfer my membership because there really isn't a good club in the area I live in.

So yes I feel something should be done about the Health Spa industry.

to protect innocent people from losing  
a great amount of money.

Thank you  
Belinda Patterson

To whom it may concern:

I feel I paid by check in full for someone to take advantage of me and others because I was promised full use of spa for 1 year after completion. It was never done so I was ripped off. I will never join another one and am sure that feel the same way. It's not right something should be done to protect people from business like this. They took people money day after closing even. As they were well aware of closing the doors. Too much of this kind of thing happens here to too many people. So please make my comment

RECEIVED

AUG 09 1989

C.P.D.

known. Thank you  
P.S. Thank you for trying to do something about this.

Judy Lynne Lewis  
7 Ridgeman Rd.  
Whitby, N. Ont.  
26003

# ◆ The Spa Fitness Center ◆

119 Tolley Street  
Bridgeport, West Virginia 26330  
(304) 842-6904

Domenick D. Poster's

Response to  
Title 142  
Legislative Rule  
Attorney General

Series 13  
Health Spa

RECEIVED

AUG 11 1989

C.P.D.

In reference to the above mentioned legislative rule filed with the Secretary of State, we offer in the order of its presentation the following comments, insights, questions, and/or suggestions:

## S142-13-1. GENERAL

1.6 Penalties. In consulting with Jimmy Johnson, President of the Association of Physical Fitness Centers, who has dealt extensively throughout the United States with these issues, the amount of Five Thousand Dollars was high in comparison to other states.

Also, how will the unfair acts or practices be policed? We feel someone who understands the health spa business and/or someone elected by the health spas should be included in the "policing" of the spas. Representatives from health spas and a consumer protection representative could form a "policing" group to shop and investigate potential problem spas.

## S142-13-2. DEFINITIONS

2.5 "Spa" in its original meaning meant wet area or the use of baths such as whirlpool, swimming pool, steam, etc. Does this then limit those "gyms" which do not offer such a wet area? We feel all gyms with or without these spa areas be included.

## S142-13-3. SURETY BOND

Has anyone investigated the ability to acquire and the cost of such bonding? For example, in the state of New York, according to Jimmy Johnson, spas cannot obtain a bond and the state is unable to enforce them. Most clubs run on a small profit margin. Such extra cost could make survival even more risky.



# ◆ The Spa Fitness Center ◆

119 Tolley Street  
Bridgeport, West Virginia 26330  
(304) 842-6904

Poster's Response to Title 142 Legislative Rule

## S142-13-3. SURETY BOND cont.

Why \$50,000 bond? Especially why a \$50,000 bond on a club with a good track record?

Presales on a facility which has not officially opened could set aside an escrow account in lieu of bonding.

Most people pay on monthly basis. No need for bonding. In fact, the up-front expense of signing up a new member, paying consultants for evaluating and designing programs, and administrative costs are extremely high. For example, a \$200 one year membership will actually cost the club at least \$75 just to begin the programming. The cost in initial months of servicing a member is far greater than the final months of the membership. Actually clubs often lose money on members because of early exit, but paying on pro rata basis.

## S142-13-4. CONTRACT REQUIREMENTS

4.2 I feel we need long term contracts in order to be able to build first-class facilities and to budget the operations of such facilities over a long period of time. Long term contracts enable us to acquire and keep qualified staff throughout the year and offer them security for years to come. Long term contracts also enable us to offer lower monthly rate contracts to the consumer which enables more people to be able to afford a membership.

Also, please be aware there is a difference between lifetime memberships and renewal memberships and these two types of memberships are often confused.

## S142-13-5. CANCELLATION OF CONTRACTS

5.1 Seven days to refund all money to the purchaser exercising the right to cancel may be difficult depending on cash disbursement operation. It should at least state business days and possibly more realistic would be the twenty days as in 5.2 or no less than two weeks.

In summary, most unfair practices that really hurt the consumer seem to already be covered by existing laws. Perhaps the most effective and least expensive way to approach these problems would be to have club operators elect their own governing body to investigate offenses reported to your office.



Comments on the Proposed Legislative Rule

Health Spas

W. Va. Code 46A-6-103 & 46A-7-102(1)(e)

RECEIVED

AUG 11 1989

C.P.D.

My name is Kathy Hoover and I am the Director of Consumer Services in the Consumer Protection Division in the Attorney Generals office.

Our office has received a multitude of complaints from dissatisfied consumers regarding the sale of memberships and services by health spas. Our experience in dealing with complaints has led us to recognize the need for this rule.

During the past seven months alone our division has received and acted upon 126 complaints against health spas and fitness centers. In the 1988 reporting year we received 905 complaints giving a total of 1,031 complaints filed against health spas and fitness centers since December 1, 1987. These complaints were filed against 25 health spas operating in the State of West Virginia; 5 of which have gone out of business. This action affected 779 known consumers, leaving a debt of approximately \$138,348.79.

We attempt to resolve complaints through mediation. The

owners or managers of the health spas are advised of these complaints and encouraged to resolve them. Some are resolved successfully, however others are not. When a consumer remains unsatisfied or when mediation is inappropriate, we advise consumers of other alternatives available in resolving their complaints.

Currently the Consumer Protection Division has little leverage in negotiating the resolution of complaints filed against health spas. Allegations such as written promises not honored, inadequate or improper rights of cancellation given in door-to-door sales and where consumers become permanently or totally disabled are easily resolved successfully. Complaints that are difficult to resolve through mediation include:

- (1) Verbal Promises not honored -
  - a. the consumer can cancel a membership at any time with a full refund;
  - b. the facilities will include specialized equipment and services;
  - c. the availability of classes.
  
- (2) Misrepresentation in advertised services -
  - a. generally health spas have advertised services such as aerobic classes, Monday through Friday, every hour on

the hour when often times there are not enough members to attend all classes and the schedule is drastically reduced;

- b. name brand equipment is often used in advertising which is a false statement or many exercise machines are not in working order;
- c. misleading qualifications of staff including certified trained instructors and diet or weight loss specialist on staff during business hours.

(3) High pressured sales -

- a. consumers are told that they are offered a once in a lifetime deal which will not be offered tomorrow;
- b. if the consumer cannot make a quick decision, in many instances they are asked to write a post-dated check to be held by the health spa representative until a decision is made. In fact the check is sent through the health spas central office and cashed before the third business day and without the consumers consent. After this date it is too late to cancel.

(4) Misrepresentation of the length of memberships-

- a. a large percentage of complaints filed against one certain health spa concerned free memberships which were later converted to lifetime memberships.

Prior to the facility opening, representatives gave away free 1 - 3 months memberships. It specifically stated on the contracts that the free memberships would not begin until the facility was complete. Before the 3 month free membership expired, consumers were sold 1 to 2 year memberships at approximately \$150.00 each. Before these memberships expired they were converted to life-time membership for an additional cost of \$460.00 each. In fact the free memberships were never in effect because the facility was not completed. The fitness center closed its doors resulting in complaints and leaving consumers to repay thousands of dollars.

Our office has investigated a total of 6 health spas operating in West Virginia in the past five years. This subsequently led to lawsuits filed against 3 facilities. One of the most blatant unfair & deceptive practices alleged use of high pressured sales tactics through special offers and discounts to induce consumers in purchasing "free" memberships which were converted to lifetime memberships as I described earlier. The spa was never completed nor opened and no alternative facility was available and memberships could not be transferred. The owners have filed personal bankruptcy, with no real hope for consumers to recover their losses. Currently our

office is receiving complaints to assess the losses. To date we have received 172 consumer complaints against that company alleging losses totaling \$55,598.79.

The purpose of this rule is to stop deceptive acts and practices in the marketplace by health spas and to ensure protection for consumers. If a health spa operating in our state posts a surety bond in the amount of \$50,000, this will afford consumers the opportunity to recover monies if the business becomes insolvent. Also, the rule sets forth contract requirements and cancellation of such contracts. If these requirements are developed and implemented it would be a step toward easing consumer frustration, halting deceptive practices and enhancing the economy as a result.

RECEIVED

HEALTH SPA HEARING

AUG 11 1989

My name is Kimberly Pider and I have been employed by C.P.D. Attorney General's Consumer Protection Division in the capacity of a Consumer Representative for the last 2 years and 9 months. For approximately 8 months I have been assigned to strictly investigative work.

To give a brief history of myself I graduated from Marshall University in 1984 with a Bachelor's Degree in Criminal Justice and am currently working on my master's degree in the same field. In fact, I have completed all the required course work and only need to take the comprehensive examination.

I have been contacting other states which have regulations concerning this subject. Of the 50 states and Washington, D.C., approximately 37 have some type of regulation. I contacted 27 state agencies and of the 27 approximately 24 have laws or regulations while 2 of the 24 have pending legislation (PA, MI). (3 of the 27 have no regulation.)

Of the 37 states 21 actually have some type of "bonding" situation. What I mean is they either have a bond, or an escrow account, a certificate of deposit, a certificate of security, or some other form of financial security such as a Guaranteed Trust as utilized by CT. Two (2) of the states, TN and HI, have repealed their bond. Hawaii opted to limit the amount of advance money a spa could collect. For example: If they sell a 1 yr. membership, all monies may be collected up front. If they sell a 3 yr. contract, only 20% can be collected up front and the rest over the lifetime of the contract. A 3 yr. contract is the limit

in Hawaii.

Approximately 7 states have a sliding scale based either on membership or the amount of liability the spa owes. The scales generally range from \$5,000 to \$200,000.

It should be noted that New Jersey currently has a bond but legislation has been introduced to have it repealed. A senator in NJ has proposed instead to limit the sale of a contract to a 3 month period only.

Approximately 4 of the states I spoke with require a bond or an escrow account for spas which are planned or currently under construction.

I received a study from the State of Tennessee which lists every state and whether they require a bond or other type of financial security. I would like a copy of this to be entered into the record.

Of the 27 states agencies I spoke with, the majority strongly recommended some form of financial security be placed with the state to protect their citizens. Most stated if a bond had been repealed, as in the case of GA & TN, it was due to the fact the bond wasn't high enough to make full refunds to its citizens. In fact, I spoke with TN and they indicated the reason for repealing the bond was due to the inadequacy of the bond (wasn't enough).

Following is a list of recommendations:

- 1) A bond or CD be posted with the state in the amount of \$50,000 and the "bond" be required for each facility location. I also suggest the bond be required for as long as the facility exists and up to 12 months after a facility closes to ensure consumers are not taken advantage of. The bond should be placed in the State's

name.

- 2) For any planned or under construction facility, I recommend that all monies obtained through pre-opening sales be placed in an escrow account until the facility is open and fully operational. (In fact 14 of the 37 states with legislation require an escrow account or a bond.)
- 3) That an exemption clause be included to reduce any hardship which might result due to the bond. What I propose is this: -For any facility which collects up to 3 months dues on a contract be exempt. However, if this exemption is included, I strongly recommend an initiation fee limit be set at \$100 per contract. For example, if the spa sells a 2 yr. contract, it can only collect \$100 plus 3 months dues. At the end of the 3 months, it can only collect the next 3 months dues and so on until the contract expires.
- 4) My next recommendation is that at least one employee of the spa must be certified in CPR and be on the premises at all times while the facility is open for public usage.
- 5) I agree with the recommendation that a limit of a 2 yr. contract be sold. However, I believe language should be entered which states a facility may only sell one contract per person and a second contract can not be sold to that individual until his first contract expires.
- 6) I strongly recommend that no facility, existing or otherwise, be grandfathered.
- 7) If a facility is under construction and the contract gives a specific opening date, the contract can be cancelled and all money refunded if the facility doesn't open within 3 months of the specified date. If the contract doesn't specify a date, the facility must open within 12 months of the date the contract was entered into or a member may cancel with a full refund.
- 8) The definition of a health spa needs a better definition. For example, does this include karate schools, dance schools, symnastic schools, etc. What about racquetball and tennis clubs?

PUBLIC HEARING

OFFICE OF THE ATTORNEY GENERAL

SUBJECT: Proposed Legislative Rule - Health Spas (Series 13)

DATE AND TIME: August 11, 1989 - 9:00.a.m.

NAME:	REPRESENTING:	CHECK IF MAKING STATEMENT:
JECK BURNETT	FITNESS WORLD	✓
Glenn Cox	" "	✓
SAM MAROS	" "	✓
Robert E. White	Nautilus	✓
TERRON Doss	New Horizons Nautilus	✓
curknowling	Tug Valley Nautilus	✓
Dana A. Bee	Fitness World	
Mary Jeffrey	Fitness World	
RAN Wiley	GREENBRIER HEALTH CLUB	✓
Pat Miller	Cosmopolitan	
Domenick Posters	The Spa Fitness Center	-
Kim RIDER	A.G. OFFICE	✓
Robert Schulenberg	A.G. OFFICE	✓
JOE DEARTH	NAUTILUS	✓
Kathy Hoover	AG. OFFICE	✓

IN THE OFFICE OF THE ATTORNEY GENERAL  
FOR THE STATE OF WEST VIRGINIA AT CHARLESTON

IN THE MATTER OF:

PUBLIC HEARING

RE: Proposed Legislative Rule  
Health Spas (Series 13)

Attorney General's Office  
4th Floor Conference Room  
L & S Building  
812 Quarrier Street  
Charleston, West Virginia

Friday,  
August 11, 1989

The above-entitled matter came on for hearing  
at 9:03 a.m., before:

ROBERT J. LAMONT, Director  
Consumer Protection Division  
Office of the Attorney General  
State of West Virginia

APPEARANCES: JACK BURNETT  
GLENN COX  
SAM MANOS  
Fitness World

ROBERT E. WHITE  
Nautilus

FARRON DOSS  
New Horizon Nautilus

C.M. KNOWLES  
Tug Valley Nautilus

DANA A. BEE  
MARY JEFFREY  
Fitness World

N. JOAN THAXTON COURT REPORTERS, INC.  
7715 Sissonville Drive  
Charleston, WV 25320  
(304) 988-3970

RAY WILEY  
Greenbrier Health Club

PAT (Illegible)  
Cosmopoliton

DOMENICK POSTER  
The Spa Fitness Center

KIM RIDER  
Office of Attorney General  
State of West Virginia

ROBERT WM. SCHULENBERG III  
Senior Assistant Attorney General  
Antitrust Division  
812 Quarrier Street, Fifth Floor  
Charleston, West Virginia 25301

JOE DEARTH  
Nautilus

KATHRYN L. HOOVER  
Director Consumer Services  
Office of Attorney General  
State of West Virginia  
Charleston, West Virginia

P R O C E E D I N G S

MR. LAMONT: Good morning, ladies and gentlemen. My name is Robert Lamont. I am the Deputy Attorney General and Director of the Consumer Protection Division.

The purpose of this hearing today is to take public comment on the proposed Legislative Rule Series 13 of the Attorney General's Office, regarding Health Spas.

The purpose of this rule is to protect consumers against abuses that we have discovered. In the course of the last few years, we have received numerous complaints from individuals regarding health spas.

We believe it is necessary for us to take some sort of regulatory action. We have had litigation in the past that has had mixed success and we are interested in public comments on this, at this time, in light of the public's response to the proposed rules.

If anyone has listed a desire to make a public statement, I would like for them to come forward now.

May I have the list, please?

First of all, does anybody have any written statements to submit at this time?

Okay, Ms. Hoover, do you have a written statement? Okay, we will make that part of the record.

MS. HOOVER: Do you want me to just submit it?

MR. LAMONT: I will just take that.

Jack Burnett, does not wish to --

MR. BURNETT: Not at this time, I don't.

MR. LAMONT: Okay. Glen Cox?

MR. COX: Yes.

MR. LAMONT: Okay, Mr. Cox.

MR. COX: My name is Glen Cox, owner of Fitness World in Huntington.

The proposal looks pretty good as far as protecting the consumer. The only problem with it

is the surety bond, whether it becomes existing or a gym is going to open up as a new business.

I think, as far as the amount of bond goes, because I am a smaller club, versus a club that might do a half a million, to whereas, I might do a hundred thousand, I think they need to regulate that on the money stipulation on the bond.

I don't think it is fair for me to put up 50,000, when a guy is doing 10 times the amount of money to only put up 50,000 also.

MR. LAMONT: What would you suggest in the place of the proposal?

MR. COX: Well, I just think they need to -- if they are going to make us do that, I think that they are just going to have to figure out a difference in dollar value on the amount of money that the gym is doing at the time.

Will \$50,000 cover a club that is doing a half million dollars a year? It would sure cover mine, someone doing around 75 to 100,000.

So, I don't really think it is going to protect the consumer on a bigger club.

MR. KNOWLES: Are there any proposals here?

MR. LAMONT: These are the proposed rules right here (indicating).

Does anybody else want one?

MR. KNOWLES: One of the problems with the bonding --

MR. LAMONT: Excuse me, sir. What is your name? For the record, what is your name?

MR. KNOWLES: Knowles.

MR. LAMONT: Knowles? Mr. Knowles --

MR. KNOWLES: Yes, I am on there.

MR. LAMONT: You are on the list? Okay, K-N-O-W-L-E-S.

Any other comments, Mr. Cox?

MR. COX: I think it will do it on that. I just think that the bond is not right, because you are not protecting the person on a bigger club.

MR. LAMONT: So, you are suggesting that if

the club has a larger membership, it would have a larger bond?

MR. COX: Sure, because \$50,000 would not protect the guy who has, say, 500 members, whereas, I might have 100 or 150.

MR. LAMONT: What is the average cost of your membership per year?

MR. COX: My membership is \$189 a year.

MR. LAMONT: 189? Thank you for your comments. Do you have any others?

MR. COX: No.

MR. LAMONT: The next person on the list is Sam Manos.

MR. MANOS: I am Sam Manos. I am part owner in Fitness World of Barboursville.

The problem I see is, for instance, we had a club in Milton. The guy had been there six months to a year. He just opened it up and all of a sudden he just shuts down.

I think that is the problem right now,

whereas, Fitness World, we have been there for eight years or ten years. We have been established and not one time has it went out of business.

I think the problem is that we get too many people coming into the business that do not know what they are doing and that is what is giving us a bad name.

I think just starting out if the guy is, you know, Joe Blow, whoever he is, all of a sudden he wants to start the club, he goes and gets a little building and puts a club in and then in six months to a year he is out of business.

I think that is where the problem lies and that is where some kind of ground rules should be set on that. Whereas, if like us, we have been in business for eight years; we know what we are doing. I don't see us having to have a bond on us, because we haven't went out of business yet.

MR. LAMONT: Have you had a chance to read the proposed rules?

MR. MANOS: I have glanced through it, yes.

MR. LAMONT: Any other comments?

MR. MANOS: No, that is all.

MR. LAMONT: Thank you.

Robert E. White, from Nautilus. Mr. White, do you want to just have a seat up front and make yourself comfortable?

MR. WHITE: Sure. I have several comments. One is, the bonding mechanism is going to force clubs -- a lot of clubs do not have \$50,000 in collateral and they don't understand that when to obtain this bond, you are going to have to have \$50,000 to put in the bank to get a C.D.

Bonding companies are not going to bond these people, unless they have the cash or a larger amount in collateral, because banks do not take -- unless you have actual cash, they are going to require 70 to 75,000 in collateral to obtain the bond.

Second, it hinders clubs because they are going to be forced to -- they are competing against

YMCAs and YWCAs and all of these community centers that are set up that are supposed to be providing charitable services in the community that are really competing against health clubs these days.

It is adding an extra cost to the health clubs, an extra thousand dollars, two thousand dollars a year.

If you do it on a pro rata scale, which I think is fair if you are going to do it, it is going to be considerable for some of the clubs. You know, if you do a half million dollars, you are going to look at a 10,000 bond.

You look at a YMCA doing a half million dollars and they don't have to come up with the \$10,000 bond.

I think by eliminating the non-profits out of it, it is just making it harder on health clubs to compete.

I think, as a general rule, you would probably see a half dozen -- I mean, a dozen to

probably 20 clubs just shut down if the bond went into effect. They do not have the \$50,000 to put up.

As far as from a consumer standpoint, there are being more of them shoved out into the cold than there has ever been, because people would just get out of the business.

Now, I think if you want to regulate the future of the business, I think that is good. As far as new clubs opening; preventing pre-sales into the business; and doing some of the scams that have taken place; I think that it is necessary for regulation. I just don't think the regulation, as it is written at this point, is going to be good legislation, for the consumer, or the club owner.

MR. LAMONT: When you say "regulate pre-sales," what do you have in mind?

MR. WHITE: You know, I spoke with you once before. I came in when I found out about the ruling.

A lot of the bonding in Virginia and Maryland and so forth, if you do any type of pre-sales,

you have to escrow your money, and then, if you do not honor all of your verbal commitments, then your money does not come out of escrow.

For example, somebody might start selling memberships three months before the club ever opens its doors and that happens a lot of the time with your larger facilities coming in.

They use the money to open their facilities and then they do not come through with everything they promised. They will promise racket ball and then racket ball does not go in, but it hurts the existing facilities who are trying to compete.

I think, you know, a regulation as far as some type of pre-sales or the term of the membership. There are a lot of people selling lifetime memberships.

I have never known a club that has ever sold a lifetime membership that was in business five years after they started and we sell to over 400 clubs, being a Nautilus distributor.

There are some practices out there that are not good, but some of those are addressed in the proposed rule, but I think the bonding is bad. That is my main concern, is just the bond itself.

MR. LAMONT: Of course, the purpose of the bond requirement is because we have had a lot of experience with clubs who have sold long-term memberships and thereby taking a considerable sum of money from individual consumers and then they become insolvent and the consumer has no way to get a refund.

So the purpose of the bonding requirement is try to protect the consumer's investment, if you will, of a substantial sum of money in a long-term membership.

If memberships were reduced, if a club could not sell more than -- had the option of either posting a bond, or limiting itself to memberships of one to three month durations, so there is a minimum amount of consumers' money invested at any one time, do you think that would work to give them the possibility

of exempting themselves from the bonding requirement by limiting memberships to one, two, or three month periods?

MR. WHITE: Yes, but it would practically kill the fitness industry. If you can only sell up to three month memberships, a large portion of your business, you will see people -- they travel; they will not keep their membership up through the summer months.

So what you are going to have is, you are going to have an industry that is good from, say, October through April, and then through the summer months -- they lose money all summer. They would not be able to remain in existence. You have to be able to sell one year memberships.

I think, now, something you could propose writing into the contract where people could have seven days to think about it and cancel.

If people who are selling memberships that are really inexpensive -- like before Executive closed, they did \$69 a year, two years for \$125, or

something. When people are starting to sell memberships for two years for \$100 or \$125, consumers should be leary. I mean, they should be intelligent enough to be leary.

You should not bond businesses and put an extra tax burden on them, which we have already had this big tax increase this year, by requiring this bond.

I think you could do it by maybe having a smaller licensing fee and a more educational, you know, more articles in the papers to the public to inform them of the deceptive practices or whatever.

MR. MANOS: One thing we do, we have --

MR. LAMONT: Excuse me. This is Mr. Manos.

MR. MANOS: Okay. One thing we do, before anybody joins our club, we tell them to come in and work out for free for the first two times -- one, or two times.

We show them our club and we show them our facilities and then we give them our instructions,

what we are going to do and they want to do first.

Then they make a decision.

After two days, I think, if you are not really intelligent enough to know what you want to get in a workout, you know, we are telling you. I mean, that is why we should have rules that stipulate this.

That is like I said before. You get these clubs that just come in. They open up and, boom, they are shut down in six months to a year. That is what is giving us a bad reputation and that is what we are trying to prevent.

The bond, like us, we could not stay in business if we had to have that bond. It would definitely put us out.

Then, what are we going -- we have got 700 members, what are we going to do? You know, right there you are going to kill 700 members and where are they going to go? It makes us look bad. That is why the bond has definitely got to be out, or something else has got to be done with that.

MR. COX: Just like he --

MR. LAMONT: What is your name, sir?

MR. COX: Glen Cox. Just like he, Mr. White, also said, I believe that it is in there that non-profit organizations do not have to put up a bond, like YMCA. So, it doesn't really affect them at all. They just keep on putting us right out of business with this.

MR. LAMONT: Mr. White, do you have any other comments?

MR. WHITE: Not at this time.

MR. LAMONT: The next person on the list is Farron Doss.

Mr. Doss, did you have any comments to make?

MR. DOSS: I think all of this problem stands from maybe a lack of investigation possibly on you-alls part as far as clubs coming into the area in the past and opening up. This has happened in Logan. This has happened in Logon on two occasions.

Clubs came in and opened up and sold these memberships for a year. They have been in business for two months. They shut their doors. They go on to another city in West Virginia and do the same thing again.

Things like that should not happen, but it does.

Others might come from another state and has done the same thing in maybe Virginia. I am not saying this has happened so far, but they could open up in Virginia; shut down; take peoples' money; come into West Virginia and do the same thing.

There is not enough investigation on the clubs that do that. If things like that were stopped, it should make a big difference.

MR. LAMONT: Any more comments?

MR. DOSS: No.

MR. LAMONT: Thank you.

Mr. Knowles?

MR. KNOWLES: Yes. This whole issue may

revolve around this non-profit permit. Maybe I don't have to qualify for the bond.

I have a Nautilus Fitness Center in Williamson.

It has been on the Government -- it has been on several reports that West Virginia is the most overweight, most smoking, least breast feeding of all places in the country.

So, that right off the bat tells you it is difficult job to get people to buy a fitness center membership.

We grossed \$11,000 last year and had over \$3,000 in insurance alone. Now, liability where I am, flood insurance, and all sorts of things, so a bond would be just a -- you know, we are just a small club, very small.

It seems like maybe this bond for one or two years might be legitimate, like to see if somebody is going to stay in business for that amount of time.

Pam's Fitness Center, which opened in Logan, also opened in Williamson and it, of course, took everybody's money. So people in Williamson are leary of joining again because they are afraid it won't make it.

We have been in business about 14 months; lose money every month; didn't have anybody join this month.

So, just one more thing -- I put it in because there wasn't any place for me to work out. I put in 40 or \$50,000 into this place. It is really nice. I wish I had had it when I was younger.

But you have got competition. High schools provide their students with free workout places.

Like Bob said, in the summer, nobody joins because they have outdoor activities for exercise.

This may make it. It may not make it. We made a commitment. We told everybody we are going

to be there at least two years.

Maybe if you had something where that if the bond, if the people have lived in the community or a member of the community and open it, maybe they shouldn't have to have a bond, whereas, if they are out of the community or out of state and maybe just trying to rip people off -- I think if you live in a community, you are going to do your best not to take advantage of the people.

Life is a gamble. I would hate to see this Government intervention making sure that nobody is going to get taken, because everything is a gamble.

It seems like the consumer affairs should be able to educate clients what to look for in a viable business, what their record is, but this, another tax on me would just put me -- well, I am already non-profit, so I don't guess I would have to get this bond, but it is a nerve, seeing another tax we have to pay.

I don't think -- I think we should be

able to have a person sign something, because on our equipment you have to be doing something wrong to hurt yourself.

So having to buy all of this liability insurance, this is just another liability type insurance which makes it so the Nautilus owner doesn't make any money. It is just insurance and somebody else -- it makes it hard to do any good.

I guess that is it.

MR. LAMONT: Do you think that the presence of a bond would create more confidence in the public and, therefore, might generate more memberships?

MR. KNOWLES: No. We have got a lazy -- it is hard to sell memberships.

I offer blood cholesterol. I offer all sorts of fitness type things in my club and it is just hard to get people.

I have talked to people on the sidewalk and they say, no, I am too out of shape to come to work in a Nautilus.

So, it is for a very small -- in my community, there is only probably 20 people, Williamson only has 6,000. There is probably only 20 people that work out regularly. Lots of people have their Sole Flexes (phonetic). You know, there is lots of competition. So it is hard to make a go of it with a fitness center.

Mine is pretty much just -- I thought it would be something, an attraction, for the community to get other people in. I think it is a good idea to have a health conscious community and to have something in the community and I am putting it in -- I, luckily, have other jobs to support this, but I wouldn't want to put any more money in it.

In my contract, I have a thing that says if my lease on the building goes out, I have three months to find another place and if I don't find another place, then I will refund their money. I plan on standing good on that, but -- and everybody I know -- told, I am going to give it two years to see if it

starts making payments. So, then at the end of that time then we will see. I have been calling people telling them.

Nobody joined this past month. I had nearly \$1,200 in overhead I had to choke up. Another \$100 for a bond is just another \$100, because if this non-profit means -- you know, if you are not making it, you don't have to buy it, then that wouldn't affect the people, but I am definitely non-profit.

MR. LAMONT: Is there anyone else who cares to make comments today?

MS. RIDER: My name is Kim Rider. I am with the Consumer Protection Division of the Attorney General's Office.

I have been an employee here for almost three years. I have a Bachelor's Degree in Criminal Justice. I am currently working on my Masters.

We do have -- I am employed as a Consumer Representative, which means, I handle routine complaints that come in everyday.

For the last six months I have handled strictly investigations, and we have had a great deal of problems with health spa facilities coming in, taking the consumer's money, and then closing down, whether they leave the State or file Bankruptcy where we cannot get anything back for the consumers.

I have recently been in contact with several other different states that do have regulations. Thirty-seven states actually have some type of health spa rules. That also includes the District of Columbia.

I have spoken with 24 actual states that have some type of legislation. Of those, the majority -- I think it was actually 21 of the 27 I spoke with actually have some sort of bond, whether it be a bond just to have the facility open, or just in having like, for the planned or under construction facilities, they have a bond issue, or they have forced them to place all of their money in escrow until the facility is open and fully operational.

Two states have repealed their bond. The reason for repealing the bond that they have stated to me was simply because the bond was not enough to cover the costs of the closing of the facilities. So those were the reasons why two of them have changed.

Some have opted to limit the length of the membership that a club can sell. Such as, they can only sell three month memberships at one time. That way the most the consumer is out is for three months.

Hawaii, for example, if you sell a one year membership, they do allow you to take all of the money up front, but if you sell a three year contract, you can only make 20 percent down and then the rest of it in equal monthly payments.

Approximately seven of the states I spoke with have a sliding scale, with the bond ranging from 5,000 to 200,000, depending either on the membership or the amount of liability that the facility owes. That way they can be covered if it closes and the consumers are not out anything.

MR. KNOWLES: What do these memberships costs? I think we charge a lot less than, I think, the national average is.

MS. RIDER: Usually, around 250 for a year and some also have initiated what they call "initiation fees." What they do, they have like, up front, an \$800 initiation fee and then, after that, it is like \$36 a month, or \$12 a month, or whatever for the duration of their contract, whether it be two or three years.

The problem is, they charge that initial fee; they stay open for a year or a year and a half; close out. So, they have lost their \$800.

MR. KNOWLES: We don't have an initiation fee and we are \$179 a year.

MS. RIDER: Well, some clubs do charge an initiation fee; some do not; and that has been a response to the bonding issue.

So, one of my recommendations is to limit an initiation fee, if we do go to that, so that the consumers are not out a great deal of money and,

hopefully -- I will get to that in a minute, on what I recommend as an exemption.

MR. DOSS: You have done your research on all of the states that have got the bonds and everything. How many of these states are economically worse off than West Virginia?

MS. RIDER: Okay, I have spoken with Kentucky, Missouri, Mississippi, Louisiana. In fact, Louisiana is a lot worse off than we are. I have talked with a lot of southern states; Michigan, they are proposing legislation which is actually a little bit stronger than ours. They are economically about the same.

I have spoken with the range all across the U.S. I have spoken with Hawaii, Oregon -- where else? I said Kentucky; Virginia, Maryland, Pennsylvania, Ohio, South Carolina, North Carolina.

MR. WHITE: One of the problems you are looking at is the diversity though. I mean, you have Logan compared to Charleston.

Now, I can afford the bond here in Charleston. People in Logan, Lewisburg, Summersville, Madison, Wayne, Glenville, Buckhannon, these small communities, they are not making the money. They cannot afford it and they should not have to. It is just unnecessary.

It is unnecessary. We are licensed. You know, we pay taxes. We are licensed corporations or they do individual taxes and it is just another tax, the bonding. I just feel it is unnecessary.

You talk about closings and you can cite maybe four or five in the last 10 years. It is not a great number. It is not what has happened in the Washington, D.C. area where I have seen 120 clubs close in a year. You know, we are not talking really about a major problem.

You are talking about a few clubs that have closed, but as a general rule across the State, it has not been a major problem, because the health industry is not a big problem in the State. I mean,

there is just -- it is not a big business.

You look at the number of people in here that came to this hearing. Sure, you know, you are going to get a few complaints. You have a few people, you know, but how many people actually is that? There is not that many people in this State.

It is so spread out. It is hard enough to get any membership. Trying to talk about trying to sell a membership in Wayne and you have got four or five hundred people as members, or make a fitness center go in Summersville where the population is 3,500.

A lot of these people are like Chuck Bowles who put the centers in for the community. They are not making money to begin with and you are penalizing them by making them have a bond.

I just don't think it is fair.

MR. DOSS: Why can't people go on the reputation of a club? Especially, if someone owns -- I own a club in Logan and our family reputation is

fantastic. I mean, so far, it is doing good. People know us. They know what they are getting into. I mean, if it is --

MS. RIDER: Not everyone has that ability. When I joined my health club, I had absolutely no idea who those people were or where they were from. I took a risk. Since then, my management changed hands and I found out after I had renewed, which would not have made a difference as far as financing.

MR. DOSS: How long had the club been in existence when you joined?

MS. RIDER: The facility of my club, one year.

MR. MANDOS: See, that is what I said earlier, I said you have got to make a regulation or a rule where these people just come in, they don't have any idea -- like a guy up in Milton didn't have any idea. He was a steelworker. He just went up there; threw a gym together and he was out of business in six months.

Then we went up there and out of our goodness we said, "We will honor your members. Just as long as you give us a name, ~~we~~ we will honor your members, if they buy something off of us."

He didn't want to cooperate with us.

MS. RIDER: How long have you actually owned the facility that you --

MR. MANOS: We just took it over a few months -- we have had it, but it has been in business, Fitness World has been in business, like I said before, greater --

MS. RIDER: How long have you been running health spas.

MR. LAMONT: Excuse me. Could we have Ms. Rider complete her statement, please?

MS. RIDER: Of the states that I have spoken with, the majority all recommended strongly some form of financial security, whether it be a C.D.; an irrevocable letter of credit; a bond; or limiting the amount of membership.

They all have stated that the consumers do need to be protected. Those are some of the options that they gave.

Some have even indicated that our bonding -- they felt that the bond that we were asking for was not high enough to cover liability. Some, like I said, have a sliding scale ranging from 5,000 up to 200,000.

Right now, my list of recommendations would be: A bond or a C.D. posted with the State, because if you post the C.D., then any interest on the C.D. will go back to you and a bond is there as a guarantee. So that way, in effect, you are not out of money. You are at least going to be drawing interest on your money as opposed to the bond.

I also suggested that the bond be required for as long as the facility exists and is in operation and per facility location and I recommend that the bond be placed in the State's name.

For any planned or under construction

facility, I recommend that all of the monies obtained by the pre-opening sales be placed in an escrow account until the facility is open and fully operational.

In fact, 14 of the 37 states polled, or that have actual regulations, statute, rule, or whatever, actually require this.

I do recommend that an exemption clause be included to reduce the hardship which might result due to the bond for any facility which collects only three months' dues at one time, that they be exempt.

However, if the exemption is included in the rule, I recommend that the initiation fee be set at a limit of \$100 per contract.

My next recommendation is, at least one employee on the premises at all times be trained in C.P.R. This is at no cost to the facility. You can get certification through the American Red Cross and that actually helps save you on liability as well.

I agree with the two year contract limitation, but I also think that language should be

included that you can only sell one contract per person.

Some states ran into problems when they limited the contract and duration to two years that they were selling that person two and three contracts. So I recommend that they can only sell one contract per individual and cannot resell them another contract until it expires.

I recommend that no facility, existing or otherwise, be grandfathered from the bond exemption and I do think the definition needs to be better as to whether does that include like karate schools, gymnastic schools, dance, racket ball clubs, tennis clubs.

Most of the states that I have spoken with all agree with the bonding issue.

That is all.

MR. LAMONT: Thank you.

The next person on the list indicating the desire to make a statement is Mr. Domenic Poster of

The Spa Fitness Center.

Mr. Poster, good morning.

MR. POSTER: Yes. You know, I think health clubs, especially in West Virginia, work on a very marginal profit, if any profit. The extra expense that we would incur with bonding could increase our risk at survival.

I understand that there are some problems and usually they come from only a few clubs.

I hope that we could possibly, as an industry, and then as a consumer protection agency, combine and do something a little simpler, a little less expensive in regulating our industry with good operators and the concerns that need to be investigated along with the Consumer Protection Agency.

The bond is new to West Virginia, but being a representative of the Association of Physical Fitness Centers, headquartered out of Washington, D.C., appointed by Doctor Jimmy Johnson, we have studied this bonding for over 10 years. It now has been in long

enough that we can see the effects of it.

The earlier states, like California, New York, and so forth, are moving away from bonding. There are a number of problems that are associated with bonding and a lot of times they really do not attack the real problems of regulating the industry.

For instance, just right now, going on in New York, bonding is -- you cannot even get a bond, which renders the regulatory act completely unenforceable.

So here you have a law and you cannot get a bond, so you cannot enforce it.

I think the big problem a lot of times where we get hurt, you know, who is going to regulate the bonding agencies? Why would they want to give a bond to health spas in West Virginia, when you are talking about a difficult dollar anyway?

So, I think, that, you know, we would really limit any type of competition. We would really add risk to our survival and there should be simpler

ways to handle this.

Thank you.

MR. LAMONT: Is there anything in particular -- do you recognize that there is a problem with the spas that become insolvent and are not able to refund consumers' monies, consumers who have paid for long-term contracts? Do you recognize that that is a potential problem?

MR. POSTER: I see that the biggest problem in the pre-sales when someone comes in and really does not have a loan and tries to build the building and buy the land actually with pre-sales. I think that definitely they need a C.D. They need something up front before they actually start, or all of that money be put in escrow.

I know escrow is a lot of times, whether it be pre-sales, initiation fees, you know, a percentage of the escrow a lot of time has been more satisfactory in the states than an actual bonding.

So, I see pre-sales, and you know, I

think that is one thing about the Association of Physical Fitness Centers, seems like the same people pre-sell state-by-state and they go across the United States and I think these are the people that the Association gets a record on and tries to track down. Those are the people that leave the scars in the states that hurt good operators and I think those are the people that we are after, not us.

MR. LAMONT: Thank you.

Mr. Knowles?

MR. KNOWLES: Yes, along with this line of the three month membership, the club makes its money selling a year membership. Most people burn out on working out in a month or two months.

So, it is much cheaper if we offer them a year for \$179, versus a month for 35, or three months for 90.

Some people go with the three months and they are probably better off for it, but if this -- if we could sell the year membership and then get the

money, then have it. It would be fine with me if they had to pay every three months, along with her -- that way they would just be out, if the company went bankrupt they would be out just -- they wouldn't be out anything except a maximum of three months.

If there was some clause in there which would protect us that the State would go after the person; the State would refund our money if a person didn't follow-up on the nine months.

Say they bought a year membership; paid the first quarter; and then they quit coming and say, "No, I decided to quit." I see that all the time.

We do that. We allow people to make two or three installments. Half of them get tired of it and don't. Of course, they will avoid you on the street sometimes, you know, because this is a small community. It is no big deal to me, but we lose money that way.

Of course, this bonding probably means more paperwork.

The pre-sales are, for most people I concede, would be absolutely necessary to get the business going. I mean, they are making a gamble. They probably don't have it. Now, some people do. They have a lot of money and as a hobby or a side thing, sort of like me, they are going to put in a Nautilus thing there or a fitness center, but most of the people are going to need every bit of the pre-sales to go into the building, the land and the equipment. So putting that up in a C.D., although it sounds good on paper, it is not realistic.

So, this is not like a night club. This is some -- which is not really for the good of a person, maybe good emotionally, or psychologically. This is putting something in the community for the good, for their health. They are health clubs.

So it might be a lot if they are people in the community versus -- if it is a big business, I don't know the names of the big companies, but where they have in all states, maybe they are from out of

state bonded, and they are just going to see if it is going to work in Williamson. They put it in and if it doesn't make the money they expect, like a McDonald's or something, then they yank it out. Now, maybe they should be bonded, but those are just a couple more ideas.

MR. LAMONT: Are there any other comments anyone would like to make?

MR. WILEY: I have worked in clubs all across --

MR. LAMONT: Excuse me, could you first identify yourself, sir?

MR. WILEY: Ray Wiley.

MR. LAMONT: Ray Wiley.

MR. RILEY: I have worked with clubs all up and down the East Coast. I am from South Carolina originally and have clubs in North Carolina, as well as owned a club here in Charleston.

I don't think West Virginia has a problem with Clubs closing, you know, compared to

other states. Whereas, you have got much more population in the states of North Carolina, South Carolina and Virginia, but you don't have as big of problem with them closing.

I think that since this is a less populated state, you have a lot of people in this area, in this state here, when they have enrolled in a health club, typically, they are paying a lot less membership as opposed to other areas.

I think by requiring a bond for at least the existing clubs anyway, you are jeopardizing the business by requiring that. I think, you know, some of the clubs I am working with across the state here now, and then if you required a bond, you are going to be basically -- you know, where the club is up and running and maybe not being on a high profit margin, requiring a bond, you know, I think you are going to put him in a financial state just by requiring that to clubs in existence now.

I really don't see too big of a problem

opposed to a couple of other states, like South Carolina. South Carolina started a bond just two years ago, a \$25,000 bond for all new health clubs, none with the existing health clubs.

I know, doing that, you know, I don't know exactly the results of that so far.

I know that a couple of clubs that I am working with there as well, I feel like they are having a problem, or the ones I am working with, as far as the new ones, that usually the individuals who start up a health club, they have a little bit of funding, but they cannot start a health club without having to jeopardize the business and rely on memberships to pay for the construction of the facility.

So, you know, I think the bonding, in looking at it and as far as considering it for new health clubs, I don't know if this could be done, but for the newer clubs, I think that is more realistic than for existing health clubs.

MR. LAMONT: Thank you. Anyone else care to

make a statement?

Mr. White?

MR. WHITE: One comment. I think it really comes down to how many clubs would it put out of business if you put a \$50,000 bond in? I think it would be significant. I think it would really hurt consumers and I think how many clubs would open in the future if you put a \$50,000 bond in. I think it would be hardly any. I think you would kill any new growth in this industry to amount to anything.

I think basically what it would do is turn it back over to your non-profits and your non-profits are not supposed to be in the health club business to begin with.

You know, they are supposed to be set up for people who cannot afford a health club membership, such as your South Charleston Rec Center and so forth, your community centers. They are supposed to be set up for charitable purposes.

Basically, you know, they are selling

memberships and if you put the bond in, you are going to put numerous clubs, numerous consumers -- you are going to put club owners out of business and you are going to put consumers out on the streets and I don't think you are going to have any growth in the industry at all.

You know, I moved 80 percent of my operation out of state, because there is no business here anyway. You cannot make money here. I have to go to D.C. to make it.

MR. LAMONT: Mr. Doss, go ahead.

MR. DOSS: I think basically what you are doing, you are going to open the state up for larger, nationwide corporations. The larger fitness centers are going to come in.

You take a small town like I am from, they are not going to come in that area and open up a club.

I am not going to name any names, but some of the larger centers that you read about in all

of the magazines and stuff, they can come to the larger cities in West Virginia and possibly open up and do good, but as far as small towns go, they are not going to enter that.

So you are just going to wipe away the chances for people to come in and have a nice facility to work out in and everything.

It is like with me, before someone joins my facility, they get supervised workouts for a week. It is not just two or three. They can go through five or six times. By that time, they pretty much know what they are getting.

If they get a chance to know the facility and there is no obligations to that. They don't pay a cent for that. That is their time; taking them through; showing them what they are going to be doing and what they are getting into.

They should know by then. They should know. That gives them a chance to learn our personnel or basically what the center has to offer them.

If it goes with this bonding, you are going to shut down a lot of clubs just like that. A lot of small areas are not going to have this to offer.

MR. LAMONT: Mr. Poster?

MR. POSTER: In reference to the contracts, the long-term contracts, I feel that long-term contracts, at least for two years are necessary to develop a security base.

In order to have a first class facility, you need that type of growth. In order to retain good qualified people, they want that type of security too. You can't hire them month-to-month or a seasonal situation. They want to be hired the whole year and guaranteed something there.

So, knowing when we do -- when we get a member in, I think, a lot of times we forget about, you know, we have a lot of money invested in that initial membership.

Most clubs will do an evaluation of the person. It may take an hour. The next visit do

an exercise program. So you will have a qualified person with that person.

For instance, if you went to a physical therapist, it may cost you \$75 for the first evaluation.

By the time we get that person on the books, and the bookkeeper handles it, and the receptionist handles it, the trainer handles it, then and it is two days later or three days later, we at least have \$75 up front in that person.

So, it may take us three months to six months to recover our initial investment in that person. If we do not have a long-term membership, then how are we going to recover that unless we have a big up front cost to the consumer, which will certainly limit our market area and the people that can join?

So, I don't think we will be protecting them so much in that way.

MR. LAMONT: So, are you opposed to the proposed limit of contracts to two years?

MR. POSTER: I think two years is, yes, that is reasonable. That is reasonable.

I think the only thing that we -- as long as they have an option to renew it. In other words, we sell a two year contract with a \$100 renewal fee. The consumer likes that. I hope that we are able to continue that and it doesn't get mixed into the lifetime memberships where it sometimes gets confused with renewal and lifetime.

MR. LAMONT: How does the renewal fee work?

MR. POSTER: It is their option to renew it at the end of two years if they would like to continue.

MR. LAMONT: For \$100?

MR. POSTER: For one year.

MR. LAMONT: So, it is \$100 a year thereafter?

MR. POSTER: Yes, each year.

MR. LAMONT: Is there any other comments from anyone?

Mr. Riley?

MR. RILEY: Yes, I also just wanted to make a short statement that the national average as far as health club membership rates in several reports, this area has a significant amount lower than other areas.

I feel like for a membership to sell for a year, two years, or whatever it may be, the individual is paying a lot less than he would be paying anywhere else, I think, for the service that he is getting provided in this area.

Because there is not many large chains in this state that are where -- I think, that may be where you have more problems as opposed to individually owned health clubs, you know, where they look to provide the service, because they know that they are in their home town usually and if, by chance, they don't provide the service, obviously they won't be in business much longer.

But I think primarily the club rates here are a significant amount lower. As a matter of fact, just on the general, I feel like it is almost

half as much as some reports that have been issued on an annual basis.

I think that needs to be taken into consideration as well. The people in the area here have, per capita, have a lot lower income than most other states. Whereas you have got Maryland who has the \$200,000 bond, but then again, Maryland is one of the highest income states in the Union. When you are talking about West Virginia, you are speaking of a lot lower income.

MR. LAMONT: Thank you.

Your name, sir?

MR. BURNETT: Jack Burnett.

MR. LAMONT: Jack Burnett, for Fitness World?

MR. BURNETT: Fitness World.

I think one thing that might help both the health clubs and the consumer would be to regulate how the payment is made, not necessarily the term of the contract, but the way it is paid for.

If you haven't paid for two years up

front, you are not going to lose anything.

If you have a steady cash flow, if I have got 500 members making me a \$20 a month payment all year, I have a steady cash flow. I don't get in trouble in the summer when I can't sell memberships. I have that money to count on. So, I am going to be more stable. The consumer is not going to lose anything, because he is paying by the month and the initiation fee is fine, which, like he said, you do need that, because you have got a big investment in a person up front.

But if you are making monthly payments, you do not stand to lose very much money, you know, 20 bucks at the most.

Also, it is going to make our financial picture look a lot more stable, because we have that much money to count on each month. Even in the summer when you can hardly give a membership away, you still have people on a yearly basis paying by the month. It will stabilize everything.

MR. LAMONT: Are you suggesting that a rule be implemented that would prohibit advance payments and require monthly payments for contracts, regardless of their length?

MR. BURNETT: Yes, that is basically what I think, because --

MR. LAMONT: How much of an initiation fee do you think is necessary?

MR. BURNETT: You could set it -- I don't know the figure right now, but you could set it as a percentage of the total sale price.

If you sell a membership for \$250 -- okay, this is the way we work: \$250 will buy you a year. If you want to finance that with us, it is \$75 down and \$19.95 a month.

So the most you could stand to lose at any one time would be \$75 when you first joined. That limits your risk as a consumer and it stabilizes us, because we know we have 11 more payments coming in.

We know how much money is coming in

each month.

I know if my overhead is \$5,000 and I have only got enough \$20 payments coming in to add up to \$4,000, I know where I am -- see? Or if I know I can count on \$6,000 a month, I know where I am and I am not wondering if I am going to be able to sell a membership today to make my rent payment tomorrow.

I think the bond is a terrible idea. It would just run -- it would wreak havoc on the industry in the whole state, whereas, what I recommend would stabilize things a lot.

MR. LAMONT: Mr. White?

MR. WHITE: I have got a comment. It wouldn't work. There is only a 30 percent collection rate on payments. It just wouldn't work.

Bank One in Columbus buys paper on health club memberships. They pay you 60 cents on the dollar and they only do it for large clubs and they don't take everybody.

They pre-screen people. You have to be

able to go through a credit bureau in order for Bank One to accept the paper.

Lifestyles discount their paper to Bank One and they only give them 60 cents on the dollar. You are just not going to make it -- clubs can't, you know. Payments just wouldn't work.

MR. BURNETT: I haven't had a problem with it, but I guess some people do. I haven't had one.

MR. LAMONT: Mr. Poster?

MR. POSTER: My operating costs a month \$30,000. If I don't utilize every sales tool out there, whether it be selling to banks; whether it be cash payments up front because the consumer doesn't like to pay a bank payment or the interest; and even possibly in-house financing, if I don't take advantage of all that, it gives me, you know, stability, because I have that cash flow of Visa and cash payments up front.

I can increase my cash flow by selling -- if you have a good reputation, selling to the bank

like a dealer and you can keep -- with a decent down payment, you can keep some of the contracts in-house and that gives me a variety of my money coming in.

But to have a nice facility, if you have a little gym, then you might be able to do it on \$20 a month, but we have to raise \$1,000 a day to provide that community with that facility.

MR. LAMONT: Thank you.

Anyone else have any comments to make?

Yes?

MR. SCULENBERG: Yes, my name is Robert Schulenberg. I am the Senior Assistant Attorney General currently assigned to the Antitrust Division of the Office of the Attorney General of the State of West Virginia.

Prior to my appointment in the Antitrust Division, I was an Assistant Attorney General, and then a Senior Assistant Attorney General in the Consumer Protection Division of the Office of Attorney General of the State of West Virginia.

Part of my duties there involved interviewing and investigating violations of the West Virginia Consumer Credit Protection Act in the health spa business and the health spa industry.

Interestingly, as the summary of the comments I have heard, there is a question which rises to constitutional proportions when a suggestion is raised that local people need not post a bond, while those people coming into a community are required to post a bond.

That may have an adverse impact upon interstate commerce and therefore be unlawful within the meaning of the United States Constitution.

Secondly, no one has done any market studies regarding this in the State of West Virginia ~~the~~ issue of lower fees or lower charges.

We don't know exactly why charges are lower. We can make assumptions, but for every assumption that can be made, there may be additional assumptions possible too.

For example, one of the advantages that West Virginia has is that we have few national chains. So, therefore, we don't have, in essence, brother company competing against brother company, or brother store competing against brother store.

We have unaffiliated companies competing with each other essentially across the street. Therefore, there is a lesser possibility for price stabilization.

I think it is also an equally viable assumption that fees are lower in West Virginia in many areas because of, in essence, deep competition, high competition, high levels of competition.

Finally, my observation of the health spa rule is that it is a middle of the road rule. It is not the most extreme statutory or regulatory scheme in existence in the United States, nor is it the weakest. It does fit somewhere in the middle.

In fact, based upon my recollections, it is precisely in the middle.

Regarding that issue, I believe one point that needs to be made is that, on the bonding point, on the bonding requirement rather, what we have is the shifting of risk.

In essence, the question we have to ask is, through the bonding requirement, are we shifting the risk to the party who can better be able to assume the risk? I must answer that question in the affirmative.

Certainly consumers should not be responsible for poor management decisions made by health spa operators who may attempt to expand too quickly or may attempt to offer more services than they may be able to provide in their market area.

Certainly we would all like to have massive health spa facilities in each and every community.

West Virginia is no different than any other state in the Union. We all -- every state, all 50 states have major metropolitan areas, and all 50 states have rural areas with small communities.

For example, in California, we have major cities, such as Los Angeles, San Francisco, San Jose, San Diego. We also have small counties such as, Indio County, Susanville, and areas like that.

We have large cities in Texas. We have small cities in Texas.

So, West Virginia is not that geographically distinct from any other area of any other state, except for overall state population.

We all have small areas. We all have large areas. Therefore, it is my belief and my recommendation that the rule be approved by the Office of the Attorney General in its present form.

Thank you.

MR. LAMONT: Are there any other comments?

MR. WHITE: Yes, I have one.

MR. LAMONT: Mr. White?

MR. WHITE: One, there is not a large area in West Virginia. So, I disagree with that to begin with. I mean, Charleston is 225,000 people. It is not even a

big town.

Second, I think you had better look at the impact of what the ruling will do. I think you had better look at the clubs that are open and the impact that it will have on them. I think you will do more damage than you are going to do good, if you look at the impact.

From my standpoint, bonding is just going to protect me. It is just going to keep other people from coming in and I am going to be better off from it. However, I do not feel that I should have to put up \$50,000 in a bank, per location, to be in business when there is not a business on Capitol Street that has to put up \$50,000 to go into business.

I just don't think it is right to bond health clubs and say, "Well, look, for you to open your business, you have to have \$50,000," just to sit up here at the Attorney General's in some State account, but for you to open a business, you can get in the bar business for \$5,000.

If you get out and get these companies to lend you all the money and you go into bankruptcy, it is just bankruptcy to them, but for the health club business, it is not just bankruptcy, all of a sudden we have a bond we have to put up and it is not fair. It is just not a good law.

That is all.

MR. LAMONT: Mr. Knowles?

MR. KNOWLES: On this, I forget the man's name, he said the reason the cost was low was competition. There is no competition. Farron has no competition. I have no competition. We charge 179. He is 35 miles from me. He is the closest around.

West Virginia is different. He said it is not different. It has the lowest percentage of breast feeding of anyplace in the world, 35 percent, and that generally goes along with education. That is one of the healthiest things you can do as a mother. I am not a mother.

It has the highest percentage of

smokers and overweight people.

So West Virginia is definitely different. That is a big thing. The people are not into health like they are in other places.

So, I just want to disagree with what he had to say.

Shifting of risk, some people risk putting up \$200 to this health club. It is the consumer that puts up piddlings. It is the person that puts the thing in, if he goes bankrupt, then he has lost all sorts of -- you know, he has lost everything and \$50,000 maybe.

So, I think that Consumer Affairs -- I wonder, I would like to have a list of how many places went out of business and how many complaints there were. These people may just be doing something to occupy their time in all of this paperwork here.

MR. LAMONT: Thank you.

Mr. Poster?

MR. POSTER: You know, when we look at the

general health of West Virginia, I think we lead the United States, vis-a-vis, heart disease and cancer.

I wonder if people that are getting benefits from health spas far outweigh the people that lost a few bucks?

If that is the case, you know, we are just jungling up the situation and I think that is what we are all concerned about is that no matter what business it is, or what we are trying to do, there are just going to be some situations that do not make it, and not always is it they were trying to rip off the people, they were probably trying to make a good business out of it.

So, I think there are a lot more people getting benefits from health clubs than the actual dollars that they are losing. So I don't know why we are getting that involved.

Actually, you know, if you really thought about it, maybe anybody that is trying to do something about the health of a community and raise

that level in West Virginia, then they ought to have the assistance, maybe they -- they are the ones that need protecting.

MR. LAMONT: Thank you. Any other comments?

Mr. Wiley?

MR. WILEY: I think if you consider a couple of things, if you feel like 100 percent sure there has to be a bond issue, I think, number one, you need to consider a lesser bond.

Number two, I think you need to consider grandfathering it, because the clubs in existence now, especially in the summertime, usually have a more difficult time.

If you are going to offer bond, I am like Mr. White over there, I think that you will do more harm than you would do good.

MR. LAMONT: Thank you.

Did you have a comment, sir?

MR. DEARTH: Yes, my name is Joe Dearth. I am with Nautilus, in Clarksburg.

MR. LAMONT: Did you sign in, sir?

MR. DEARTH: No, I did not. I will in a second.

MR. LAMONT: Joe?

MR. DEARTH: Dearth, D-E-A-R-T-H.

I think the big question is not whether or not new facilities are going to be coming into the State of West Virginia and opening, because I think the competition is pretty much taken up and in the larger areas of West Virginia, it is not a concern.

The concern lies upon the businesses that are now incorporated in the State of West Virginia as a health club to stay in business. This would certainly hurt it, as Bob White has explained.

As a health club owner for four years, we do offer everything that you are currently now trying to implement in the rules, short-term memberships, financing, cash payments, everything.

So, one thing that I have learned in college and business is that the consumer should always

be aware. Why place all of the responsibility on the health club?

When a person sits down in an office and is going to join a health club, they are looking at long-term benefits, short-term benefits, whether or not they are going to join for a year, whether or not they are going to join for three months.

The consumer has the responsibility of spending their dollars as they see fit.

I would love to have a godfather looking over my shoulder everytime I sit down to write a check for something that I wanted to incorporate as far as a purchase, a car, a piece of furniture, anything, an airline ticket, a vacation.

So, I think it is the responsibility of the health club to provide the route best suited for their prospective members.

The bond, you know, you are just looking to increase expenses on either starving or successfully owned and operated health clubs in the

State of West Virginia, not whether or not new ones are going to be coming into the State, but the ones that are here just looking to survive and provide a good quality business to these people.

MR. LAMONT: Do you think it is appropriate for a club that is "starving," as you put it, to be required to disclose that to a consumer that they are about to sell a two year contract on?

MR. DEARTH: Well, not that whether or not it is starving, but you have heard comments, up and down seasons, as far as summer, or winter.

It is not whether or not they are starving. They are here. They are existing. You can tell by the way it is ran, the way it is kept up, as long as it has been in business whether or not it is going to be here in the future, the reputation of the person who is in there.

You know, I am a competitor and in the same situation as Dominic here in Clarksburg, West Virginia. We are both known publicly. People know us.

People respect us.

I think if there are any question about whether either one was going out of business, it would certainly be known and I can tell you that we both uphold good standing in the community.

I don't think as far as starving communities, no. The bond is definitely a bad idea. You are just looking to decrease the amount of profitability that some clubs have and then looking at the ones that are going month-to-month seasonal, but just taking them completely under where they could survive.

But I think it is being aware as a consumer is where we really ought to, as health club owners, provide everything the consumer needs to make their decision. Once their decision is made, that is theirs.

MR. LAMONT: Thank you. Any other comments?

Yes?

MS. HOOVER: My name is Kathy Hoover and I am

the Director of Consumer Services in the Consumer Protection Division of the Office of Attorney General.

I have submitted some written comments, but I would like to point out a few things and perhaps answer a few questions that have been brought up.

In the past 17 months, we have received 1,031 consumer complaints against health spas and fitness centers. 779 of those complaints were results of health spas going under and leaving the state.

I do think that there is a definite problem in the State of West Virginia with health spas coming into our State; opening up; selling memberships, whether they be pre-sales, or whether they be open; and selling memberships; taking peoples' money and up and leaving.

Those 779 known consumers resulted in approximately \$138,000. That is a lot of money in West Virginia.

So, I think that we do have a problem here and I think that is a big point of the bond, the

\$50,000 bond.

If we have one, and people post a bond, then the health spas that went out of business and left the state or filed bankruptcy, there would be some recovery to the consumers.

There was one particular health spa that came into the State. They sold pre-sales before the center opened and they gave away one to three month free memberships. However, those free memberships did not expire until the center was completed.

During these one to three months, they sold one to two year memberships at approximately \$150 each. Those memberships did not start until the fitness center was complete.

During the one to three months, they converted those one to two year memberships to lifetime memberships at an additional, approximately an additional \$490.

The center never opened. So people

were out anywhere from 6 to \$700 up front for no services rendered whatsoever.

So I do think that we definitely do have a problem in our state with health spas coming in, selling memberships, taking peoples' money and leaving the State.

MR. WHITE: That is a problem when they do not open. I agree with that.

MR. COX: So 779 of those complaints were pre-sales; is that right?

MS. HOOVER: No, I am saying 779 known consumers were affected by health spa memberships or health spas leaving the state, going out of business, going under.

I am not sure of the statistics of how many were pre-sold and how many fitness centers did not actually open. We just know that there were that many people affected.

MR. DOSS: How many of these businesses were out of state that came in here that weren't local, from

outside the State of West Virginia?

MS. HOOVER: I am sorry, I do not know.

MR. DOSS: And you can't cite the example you just stated, as far as the area of West Virginia, the club itself, because as a health club owner, we know pretty much what is going on, at least I do all over the State and I have never heard, or I don't know of clubs that are closing. I haven't heard of any in the last year, at least in my area, and that is in north central West Virginia.

MR. WHITE: There has been several.

MR. DEARTH: Has there been?

MS. HOOVER: One of them has been in the northern part of the State and then there is the southern part of the State.

We also have several investigations that we are working on currently. So I am not really at liberty to discuss names and such.

MR. MANOS: I feel that, you know, we have seen the problem already. It is just the people

coming in right now trying to make a quick buck and getting out of here. There is no regulation on that whatsoever in the State of West Virginia and the people that are here are established. They have no problem. The only problem is the \$50,000 bond.

That is what you have got to set up, a regulatory committee that comes in, if you want to open a fitness spa, and check these people out first. That is what you have got to do. You have answered your question.

MR. BURNETT: And keep somebody from doing it twice.

MR. MANOS: I know a lot of guys, you know, that went through and do that. I mean, that is what they are there for. They are con artists, a scheme. They come in, make a quick buck and they are out.

Not one person here has a problem, okay, with their club. They have been established for four, five, six, or ten years. They are established. They will survive.

MR. LAMONT: Mr. Schulenberg?

MR. SCHULENBERG: I agree with the gentleman who just spoke.

In theory, however, his suggestion could constitute a kind of licensing mechanism, which is both beyond the scope of the Attorney General's ability in promulgation of rules. It would probably require an act of the Legislature, which cannot be done through this process.

If there should be health spa licensing, then I think that the people who desire that should contact their appropriate State Senators and Representatives, but right now, for the purpose of the rule, clearly the licensing and the pre-opening investigation is beyond both the resources of the Attorney General and his legislative fiat.

MR. MANOS: Why couldn't you offer a service where if someone had joined a health club as a consumer you have the names of our clubs and those are the names that you pick and if anybody else came in, you don't

recommend them. You give us a recommendation. We have been established.

MR. SCHULENBERG: Because that is beyond the Attorney General's power. Indeed, there are specific restrictions prohibiting the Attorney General or representatives of the Government of the State of West Virginia from making specific recommendations.

MR. MANOS: So now you are going to ask us to go get a \$50,000 bond and ask how many people in here could keep their club open if you did that.

Did you ever think how many members are going to be out and how much money they are going to lose by getting that \$50,000 bond?

MR. WHITE: The \$50,000 bond also, just as you said, the two states that repealed it, doesn't mean he had to touch it. He told you he had a \$30,000 a month break even. He has got to turn 360 a year to break even. So he is probably maybe turning 500,000 a year. Other clubs are turning \$700,000 a year. What about the other 750,000 that is lost?

The \$50,000 bond really doesn't touch it. The \$50,000 bond is something that may make you look good, but it isn't really going to touch it if you are really wanting him to bond and you are finding out that they can't even afford the 50,000.

So what actually is necessary is way beyond their ability and it just can't happen. It shouldn't happen with the clubs that are here now.

These clubs would shut down and other ones would open probably and they wouldn't open in the smaller communities and you wouldn't have the improved -- getting people to think more about their health, which is what Mr. Poster was talking about earlier.

MR. LAMONT: Mr. Knowles?

MR. KNOWLES: A couple of things. It sounds like \$138,000 was lost last year. That seems like piddlings. 779 people were hurt with people leaving the state. So there, once again, is people out of state and it sounds like you are hurting everyone, especially the little person, for a few shysters.

So it seems like there ought to be some other type of a better equitable control or something.

MR. LAMONT: Mr. Poster?

MR. POSTER: I think we are all after the same thing. We want to keep the bums out of the business and not have the consumer get ripped off. I think we are all after the same thing.

I don't want somebody leaving scars in my community or a community that I would like to establish in. It just makes it harder for us.

MR. LAMONT: What would you suggest?

MR. POSTER: I think we need to do something that is less drastic --

MR. LAMONT: What, specifically, would you --

MR. POSTER: I -- really, if we could have --  
\* operators to merge with the Consumer Protection, and police together our own industry, we can find out people that have done this before that are not established.

I will bet you that 779 people, the

largest percentage of that money was from a few operators and a few clubs and that probably was their intent.

I think that we could investigate those concerns. I think there would be less money to our industry. It would be less money for the taxpayer, because now, you know, we have to enforce this. We would have to police it. Why not do it with what is already established, rather than hiring in somebody that may not even know the business anyway?

MR. LAMONT: Thank you.

Mr. Knowles?

MR. KNOWLES: I have one more idea. When the club opens, that is when you have the most people and you do the advertising. That is when you have the most people joining and so that is when you make the most amount of money to think you are going to survive.

But at any rate, so if maybe the bond was required for a certain amount of time, because I know on the Pam's Fitness in Williamson and Logan, they

just came and got the money up front and closed within a couple of months.

So, maybe you should have it for a year and then if somebody stays in it for a year, maybe the bond repealed or something, but that -- so, it is at first when the people join, because everybody in the community is interested then.

So, you protect most of the people. If you would just have it for that first initial time to see if the place is going to make a go of it.

MR. WILEY: I don't think the clubs you are speaking of here initially projected having a bond of \$50,000, or the clubs that are in existence in West Virginia have prepared for that financially, but I think if you made this -- if you went ahead with a bond and made it for all new facilities coming to the area, at least they have time to financially plan for the bond and they understand the bond needs to be posted up front, whereas the folks now that you are speaking to never had an idea that this would ever be proposed and

they didn't project this, so they didn't plan for it financially.

MR. LAMONT: Thank you.

Any other comments? (Pause.)

Okay, there being no further comments, I declare that the public comment period on the Legislative Rule, Series 13, is closed, with the exception of written comments, which would be received in this office through 5:00 p.m., today.

Thank you.

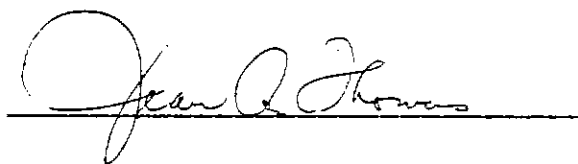
(WHEREUPON, at 10:18 a.m.,  
the hearing was  
concluded.)

## REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA) SS:

COUNTY OF JACKSON)

I, Jean A. Thomas, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of the public hearing held in the aforementioned matter as set forth in the caption hereof.

A handwritten signature in cursive script, reading "Jean A. Thomas", is written over a horizontal line.

Reporter

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DISCUSSION OF AMENDMENTS

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August 14, 1989

TITLE 142  
WEST VIRGINIA LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 13  
HEALTH SPAS

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DISCUSSION OF AMENDMENTS

Section 2.5 was amended to clarify the definition of "health spa" and thus, the scope of the Rule applies to facilities regardless of whether they did not provide "wet areas" such as pools, whirlpools, or steam rooms. This was done in response to a written comment received on the day of the hearing.

Section 3 was amended in light of the considerable objection to the surety bond requirement. The experience of the Consumer Protection Division staff and the consumers among other states surveyed clearly favored some financial security requirement to protect consumers who prepay, out of pocket or through financing, long term contracts. Representatives from various health spas indicated that other arrangements would be more acceptable. In order to attempt to accommodate other alternatives, Section 3 was amended to allow a health spa to exempt itself from posting a bond under one of two options. If the spa agrees to charge no more than twenty-five dollars as an application fee. The options that would avoid the bond requirement are: either limit length of contracts to no more than three

months or charge initially no more than one-third the purchase price and spread out the rest of the balance of the purchase price in monthly installments over the rest of the contract. Either of these options protect consumers by limiting the amount of potential losses they could suffer if a spa becomes insolvent while still allowing the spa to avoid obtaining a bond. Section 3 was further amended to require a spa to notify the Consumer Protection Division of the Attorney General's office in advance of opening which option available under Section 3 was being chosen.

A new Section 6 was inserted governing pre-opening sale of contracts. This Section requires health spas who sell memberships prior to opening their doors to escrow such money in separate accounts. It bars the facility from using consumers' membership fees to cover the initial start up costs of building the facility or purchasing equipment. This protects consumers from loss of membership fees paid for services never provided if the health spa falters and never opens for business despite having actually solicited and sold memberships. This Section was added at the suggestion of several states in light of their experiences and at the suggestion of at least one industry representative who testified at the hearing. The Consumer Protection Division believes this course of action is prudent and preferable to an outright ban on the selling of presale contracts. If such sales are allowed but escrowed at least a fledgling business can point to the number of sales and initial revenue to justify market demand and attract other financing for its start up costs.

The Section on unfair or deceptive acts or practices has been amended and renumbered to reflect the changes to the surety bond section and the insertion of a new Section 6 regarding pre-opening sales. It is now an unfair or deceptive act or practice to fail to comply with at least one of the three options offered under Section 3. The amended section also sanctions both the failure to notify the Consumer Protection Division of the Attorney General's office of the option chosen under Section 3 and violations of the escrow requirements imposed on pre-opening sales pursuant to Section 6 of the Rule.



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

CHARLES G. BROWN  
ATTORNEY GENERAL

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CONSUMER HOT LINE  
(800) 368-8808

August 14, 1989

The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Re: Filing of Agency-Approved Proposed Legislative Rule

Dear Secretary Hechler: *Len*

Pursuant to Rule 5B of the Secretary of State's Step Procedure for Legislative Rule-Making, enclosed for filing please find a copy of the agency approved proposed legislative rule, together with all required attachments, pertaining to the prevention of unfair or deceptive acts or practices in the connection with the sale and provision of consumer services by health spas.

If you have any questions, or if you are in need of any additional information, please feel free to contact Robert J. Lamont, Director of the Attorney General's Consumer Protection Division, at 348-8986 anytime.

Very truly yours,

CHARLES G. BROWN  
ATTORNEY GENERAL

CB/lp

Enclosures