§ 66-124. Bond or escrow account required.

(a) Prior to the sale of any prepaid entertainment contract for services which are available on the day of sale, the seller shall purchase a surety bond issued by a surety company authorized to do business in this State, as follows:

(1) The amount of the surety bond shall be equal to the aggregate value of outstanding liabilities to buyers, or ten thousand dollars ($10,000), whichever is greater. For purposes of this section, "liabilities" means the moneys actually received in advance from the buyer on or after January 1, 1993, for contract costs, less the prorated value of services rendered by the seller. The bond shall be in favor of the State of North Carolina and in a form approved by the Attorney General. The surety company shall have a duty to disclose the amount and status of the bond to the public upon request. Any person who is damaged by reason of the closing of a facility or bankruptcy of the seller, may bring an action against the bond to recover damages suffered; provided, however, that the aggregate liability of the surety shall be only for actual damages and in no event shall exceed the amount of the bond.

(2) The amount of the bond shall be based upon a written sworn statement by the seller under penalty of perjury stating the seller's outstanding liabilities to buyers. A corporate seller's statement shall be signed by the president of the corporation; the statement of a partnership shall be signed by a general partner; and the statement of a sole proprietorship shall be signed by the sole proprietor. The statement and a copy of the bond shall be filed with the Attorney General within 90 days after the first contract is sold and at 180-day intervals thereafter.

(3) The amount of the bond shall be increased or may be decreased, as necessary, to take into account changes in the seller's outstanding liabilities to buyers on a semiannual basis.

(4) The bonding requirement of this section applies to each location of the seller in any case where a seller operates or plans to operate more than one facility in the State. A separate bond for each separately located facility shall be filed with the Attorney General.

(5) Notwithstanding any other provision of this section, no seller is required to purchase a bond in excess of two hundred fifty thousand dollars ($250,000) per facility.

(6) A change in ownership shall not release, cancel, or terminate liability under any bond previously established unless the Attorney General agrees in writing to the release, cancellation, or termination because the new owner has established a new bond for the benefit of the previous owner's members, or because the former owner has paid the required funds to its members.

(7) In lieu of purchasing the bond required by subdivision (1), an irrevocable letter of credit from a bank insured by the Federal Deposit Insurance Corporation, in a form acceptable to the Attorney General, may be filed with the Attorney General.

(8) Claims and actions by a buyer of prepaid entertainment contract services:

a. A buyer of prepaid entertainment contract services who suffers or sustains any loss or damage by reason of the closing of a facility or bankruptcy of the seller shall file a claim with the surety, and, if the claim is not paid, may bring an action based on the bond and recover

against the surety. In the case of a letter of credit that has been filed with the Attorney General, the buyer may file a claim with the Attorney General;

b. Any claim under paragraph a. of this subdivision shall be filed no later than one year from the date on which the facility closed or bankruptcy was filed;

c. The Attorney General may file a claim with the surety on behalf of any buyer in paragraph a. of this subdivision. The surety shall pay the amount of the claims to the Attorney General for distribution to claimants entitled to restitution and shall be relieved of liability to that extent;

d. The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed;

e. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Attorney General for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(9) The seller shall be exempt from the bonding requirement if all of its unexpired contracts and present membership plans meet the following criteria: (i) no initiation fee or similar nonrecurring fee is charged, and (ii) at no time is any member charged to pay for the use of facilities or services more than 31 days in advance.

(b) If, for any reason, services under a prepaid entertainment contract are not available to the buyer on the date of sale, then:

(1) The seller shall establish a surety bond issued by a surety company authorized to do business in the State or shall establish an escrow account with a licensed and insured bank or savings institution located in this State. The surety bond or escrow account shall be in the amount of ten thousand dollars ($10,000) per location or in an amount equal to all contract costs received from the buyer, whichever is greater. The bond or escrow account shall be in favor of the State of North Carolina and a copy of the bond or escrow agreement shall be filed with the Attorney General prior to the sale of any prepaid entertainment contracts. The bond or escrow account shall remain in force until 60 days after all services of the seller are available to the buyer, at which time the seller shall comply with the bonding requirement of subsection (a) of this section. The escrow account shall be established and maintained only in a financial institution which agrees in writing with the Attorney General to hold all funds deposited and not to release such funds until receipt of written authorization from the Attorney General. The funds deposited will be eligible for withdrawal by the depositor after the facility has been open and providing services for 60 days and the Attorney General gives written authorization for withdrawal. Any person who is damaged by any violation of this Article, or by the seller's breach of the contract for sale or any obligation arising therefrom may bring an action against the bond or escrow account to recover damages suffered; provided, however, that the aggregate liability of the surety or escrow agent shall be for actual damages only and in no event shall exceed the amount of the bond or escrow account.

(2) The buyer's right to cancel the contract pursuant to G.S. 66-121 shall be extended until midnight of the third business day after the date upon which the services become available and the buyer is notified that the services are available. (1979, c. 833, s. 1; 1991 (Reg. Sess., 1992), c. 1009, s. 2.)