

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1071

Short Title: Prepaid Entertainment Contracts.

(Public)

Sponsors: Representative Holt.

Referred to: Business and Labor.

April 19, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE STATUTES REGARDING PREPAID  
3 ENTERTAINMENT CONTRACTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 66-118 reads as rewritten:

6 "§ 66-118. Definitions.

7 As used in this Article, unless the context clearly requires otherwise:

- 8 (1) 'Contract cost' means the total consideration paid by a buyer pursuant  
9 to a contract including but not limited to:  
10 a. Any initiation or nonrecurring fee charged;  
11 b. All periodic fees required by the contract;  
12 c. All dues or maintenance fees; and  
13 d. All finance charges, time-price differentials, interest, and other  
14 similar fees and charges.
- 15 (2) 'Contract duration' means the total period of use allowed by a buyer's  
16 contract, including months or time periods that are called 'free' or  
17 'bonus' or that are described in any other terms suggesting that they are  
18 provided free of charge.
- 19 (3) 'Prepaid entertainment contract' means any contract in which:  
20 a. The buyer of a service pays for or is obligated to pay for service  
21 prior to the buyer's receipt of or enjoyment of any or all of the  
22 services;

- 1           b.     The seller is other than a licensed nonprofit school, college, or  
2           university; the State or any subdivision thereof; or a nonprofit  
3           religious, ethnic, or community organization; and  
4           c.     The services to be performed are related to any one of the  
5           following:  
6           1.     Dance lessons or facilities, or any related services or  
7           events;  
8           2.     Matching, dating, or social club services or facilities,  
9           including any service represented as providing names of,  
10          introduction to, or opportunity to meet members of the  
11          opposite sex;  
12          3.     Martial arts training;  
13          4.     Health or athletic club services or facilities.

14           Prepaid entertainment contract also means any contract in which:

- 15           a.     The buyer of health or athletic club services or the buyer of the  
16           use of the health or athletic facilities pays for or is obligated to  
17           pay for this service or the use of the facility prior to the buyer's  
18           receipt of or enjoyment of any or all of the services or use of the  
19           facility; and  
20           b.     The seller is a nonprofit religious, ethnic, or community  
21           organization."

22           Sec. 2. G.S. 66-124.1 is amended by adding a new subsection to read:

23           "(d) Any person who sells prepaid entertainment contracts shall register with the  
24           Attorney General and provide any information requested by the Attorney General that  
25           the Attorney General determines is necessary to inform the public of buyers' and sellers'  
26           rights pertaining to prepaid entertainment contracts."

27           Sec. 3. G.S. 66-124 reads as rewritten:

28           "**§ 66-124. Bond or escrow account required.**

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

- 32           (1)     ~~The amount of the surety bond shall be equal to the aggregate value of~~  
33           ~~outstanding liabilities to buyers, or ten thousand dollars (\$10,000),~~  
34           ~~whichever is greater. For purposes of this section, 'liabilities' means the~~  
35           ~~moneys actually received in advance from the buyer on or after~~  
36           ~~January 1, 1993, for contract costs, less the prorated value of services~~  
37           ~~rendered by the seller based on the number of years the seller has been~~  
38           in business in this State as follows: one hundred thousand dollars  
39           (\$100,000) for a seller in business less than three years, fifty thousand  
40           dollars (\$50,000) for a seller in business three years or more but less  
41           than five years, twenty-five thousand dollars (\$25,000) for a seller in  
42           business five years or more but less than 10 years, and ten thousand  
43           dollars (\$10,000) for a seller in business 10 years or more. The bond  
44           shall be in favor of the State of North Carolina and in a form approved

1 by the Attorney General. The surety company shall have a duty to  
2 disclose the amount and status of the bond to the public upon request.  
3 Any person who is damaged by reason of the closing of a facility or  
4 bankruptcy of the seller, may bring an action against the bond to  
5 recover damages suffered; provided, however, that the aggregate  
6 liability of the surety shall be only for actual damages and in no event  
7 shall exceed the amount of the bond.

8 (2) The amount of the bond shall be based upon a written sworn statement  
9 by the seller under penalty of perjury stating the seller's ~~outstanding~~  
10 ~~liabilities to buyers.~~ number of years in business in this State. A  
11 corporate seller's statement shall be signed by the president of the  
12 corporation; the statement of a partnership shall be signed by a general  
13 partner; and the statement of a sole proprietorship shall be signed by  
14 the sole proprietor. The statement and a copy of the bond shall be filed  
15 with the Attorney General within 90 days after the first contract is sold  
16 and at 180-day intervals thereafter.

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

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

24 (5) Notwithstanding any other provision of this section, no seller is  
25 required to purchase a bond in excess of ~~two hundred fifty thousand~~  
26 ~~dollars (\$250,000)~~ one hundred thousand dollars (\$100,000) per ~~facility.~~  
27 facility or three hundred thousand dollars (\$300,000) for multiple  
28 facilities.

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

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

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

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

- 1 on the bond and recover against the surety. In the case of a  
2 letter of credit that has been filed with the Attorney General, the  
3 buyer may file a claim with the Attorney General;
- 4 b. Any claim under paragraph a. of this subdivision shall be filed  
5 no later than one year from the date on which the facility closed  
6 or bankruptcy was filed;
- 7 c. The Attorney General may file a claim with the surety on behalf  
8 of any buyer in paragraph a. of this subdivision. The surety  
9 shall pay the amount of the claims to the Attorney General for  
10 distribution to claimants entitled to restitution and shall be  
11 relieved of liability to that extent;
- 12 d. The liability of the surety under any bond may not exceed the  
13 aggregate amount of the bond, regardless of the number or  
14 amount of claims filed;
- 15 e. If the claims filed should exceed the amount of the bond, the  
16 surety shall pay the amount of the bond to the Attorney General  
17 for distribution to claimants entitled to restitution and shall be  
18 relieved of all liability under the bond.
- 19 (9) The seller shall be exempt from the bonding requirement if all of its  
20 unexpired contracts and present membership plans meet the following  
21 criteria: (i) no initiation fee or similar nonrecurring fee is charged, and  
22 (ii) at no time is any member charged to pay for the use of facilities or  
23 services more than 31 days in advance.
- 24 (b) If, for any reason, services under a prepaid entertainment contract are not  
25 available to the buyer on the date of sale, then:
- 26 (1) The seller shall establish a surety bond issued by a surety company  
27 authorized to do business in the State or shall establish an escrow  
28 account with a licensed and insured bank or savings institution located  
29 in this State. The surety bond or escrow account shall be ~~in the amount~~  
30 ~~of ten thousand dollars (\$10,000) per location or in an amount equal to all~~  
31 ~~contract costs received from the buyer, whichever is greater.~~ the same  
32 amount as is required for a seller under (a)(1) of this section. The  
33 bond or escrow account shall be in favor of the State of North Carolina  
34 and a copy of the bond or escrow agreement shall be filed with the  
35 Attorney General prior to the sale of any prepaid entertainment  
36 contracts. The bond or escrow account shall remain in force until 60  
37 days after all services of the seller are available to the buyer, at which  
38 time the seller shall comply with the bonding requirement of  
39 subsection (a) of this section. The escrow account shall be established  
40 and maintained only in a financial institution which agrees in writing  
41 with the Attorney General to hold all funds deposited and not to  
42 release such funds until receipt of written authorization from the  
43 Attorney General. The funds deposited will be eligible for withdrawal  
44 by the depositor after the facility has been open and providing services

1 for 60 days and the Attorney General gives written authorization for  
2 withdrawal. Any person who is damaged by any violation of this  
3 Article, or by the seller's breach of the contract for sale or any  
4 obligation arising therefrom may bring an action against the bond or  
5 escrow account to recover damages suffered; provided, however, that  
6 the aggregate liability of the surety or escrow agent shall be for actual  
7 damages only and in no event shall exceed the amount of the bond or  
8 escrow account.

9 (2) The buyer's right to cancel the contract pursuant to G.S. 66-121 shall  
10 be extended until midnight of the third business day after the date upon  
11 which the services become available and the buyer is notified that the  
12 services are available."

13 Sec. 4. This act is effective upon ratification.