

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 31

Short Title: Campground Memberships.

(Public)

Sponsors: Senators Speed, Odom, and Shaw.

Referred to: Judiciary II.

February 6, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CHAPTER 66 OF THE GENERAL STATUTES  
3 REGULATING PREPAID ENTERTAINMENT CONTRACTS TO INCLUDE  
4 SALES OF CAMPGROUND MEMBERSHIPS.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 66-118. Definition-Definitions.**

8 ~~For purposes of As used in this Article, a 'prepaid entertainment contract' is any~~  
9 ~~contract in which:~~ unless the context clearly requires otherwise:

10 (1) 'Camping membership' means an agreement offered or sold within this  
11 State evidencing a purchaser's title to, interest in, right or license to  
12 use, for more than 30 days, the campgrounds and facilities of a  
13 membership camping operator, and includes a membership which  
14 provides for this use.

15 (2) 'Contract cost' means the total consideration paid by a buyer pursuant  
16 to a contract including but not limited to:

17 a. Any initiation or nonrecurring fee charged;

18 b. All periodic fees required by the contract;

19 c. All dues or maintenance fees, and

20 d. All finance charges, time-price differentials, interest, and other  
21 similar fees and charges.

22 (3) 'Contract term' means the total period of use allowed by a buyer's  
23 contract, including months or time periods that are called 'free' or

1           'bonus' or that are described in any other terms suggesting that they are  
 2           provided free of charge.

3           (4) 'Membership camping operator' means any enterprise that solicits  
 4           membership camping contracts paid for by a fee or periodic payments  
 5           and has as one of its purposes camping or outdoor recreation including  
 6           use of camping sites primarily by purchasers.

7           (5) 'Prepaid entertainment contract' means any contract in which:

8           a. The buyer of a service pays for or is obligated to pay for service  
 9           prior to the buyer's receipt of or enjoyment of any or all of the  
 10           service;

11           b. The seller is other than a licensed nonprofit school, college, or  
 12           university; the State or any subdivision thereof; or a nonprofit  
 13           religious, ethnic, or community organization; and

14           c. The services to be performed are related to any one of the  
 15           following:

16           1. Dance lessons or facilities, or any related services or  
 17           events;

18           2. Matching, dating, or social club services or facilities,  
 19           including any service represented as providing names of,  
 20           introduction to, or opportunity to meet members of the  
 21           opposite sex;

22           3. Martial arts training;

23           4. Health or athletic club services or facilities;

24           5. Camping memberships.

25           ~~The buyer of a service pays for or is obligated to pay for service prior~~  
 26           ~~to the buyer's receipt of or enjoyment of any or all of the service; and~~

27           (2) ~~The seller is other than a licensed nonprofit school, college, or~~  
 28           ~~university; the State or any subdivision thereof; or a nonprofit~~  
 29           ~~religious, ethnic, or community organization; and~~

30           (3) ~~The services to be performed are related to any one of the following:~~

31           a. ~~Dance lessons or facilities, or any related services or events;~~

32           b. ~~Matching, dating, or social club services or facilities, including~~  
 33           ~~any service represented as providing names of, introductions to,~~  
 34           ~~or opportunity to meet members of the opposite sex;~~

35           e. ~~Martial arts training;~~

36           d. ~~Health or athletic club services or facilities."~~

37           Sec. 2. G.S. 66-119 reads as rewritten:

38           **"§ 66-119. Contract requirements.**

39           Every prepaid entertainment contract shall:

40           (1) Be in writing, fully completed, dated and signed by all contracting  
 41           parties. A copy of the contract shall be given to the buyer at the time  
 42           he signs the contract;

43           (2) Have a duration of service that is a precisely measured period of years  
 44           or any definite part of a year;

- 1 (3) Contain a full statement of the buyer's rights under G.S. 66-120;
- 2 (4) Contain, in immediate proximity to the space reserved for the signature
- 3 of the buyer, in bold face type of a minimum size of 10 points, a
- 4 statement of the buyer's rights under G.S. 66-121, in substantially the
- 5 following form:

6 'You the buyer, may cancel this contract at any time prior to

7 midnight of the third business day after the date of this contract. To

8 cancel, you must notify the seller in writing not later than midnight of

9 .....

10 (Date).'

- 11 (5) Contain one of the following statements, whichever is appropriate, in
- 12 substantially the following form:

- 13 a. 'As required by North Carolina law, this seller has secured a
- 14 bond by ..... (name and address of surety company), a
- 15 surety authorized to do business in this State. Before signing a
- 16 contract with this seller, you should check with the surety
- 17 company to determine the bond's current status.', or

- 18 b. 'As required by North Carolina law, this seller has established
- 19 an ..... escrow ..... account.....(number)
- 20 with.....(name and address of bank or
- 21 savings institution). Before signing a contract with this seller
- 22 you should check with the bank or savings institution to
- 23 determine the current status of the escrow account.'"

24 Sec. 3. G.S. 66-120 reads as rewritten:

25 **"§ 66-120. Buyer's rights.**

26 Every seller of a prepaid entertainment contract must:

- 27 (1) Deliver to the buyer all information of a personal or private nature,
- 28 including but not limited to answers to tests or questionnaires,
- 29 photographs, evaluations, and background information, within 30 days
- 30 after request therefor;
- 31 (2) Refund to the buyer at least ninety percent (90%) of the pro rata cost
- 32 of any unused services, within 30 days after request therefor, if:
- 33 a. The buyer is unable to receive benefits from the seller's services
- 34 by reason of death or disability; or
- 35 b. The buyer relocates more than eight miles from his present
- 36 location, and more than 30 miles from the seller's facility and
- 37 any substantially similar facility that will accept the seller's
- 38 obligation under the contract and this Article; provided, that the
- 39 seller of a camping membership contract shall not be liable for a
- 40 refund to the buyer due to the buyer's relocation unless the
- 41 buyer's relocation precludes reasonable use of the facility by the
- 42 buyer; or
- 43 c. The seller relocates his facility more than eight miles from its
- 44 present location, or the services provided by the seller are

1 materially ~~impaired~~ impaired; provided, if the facility is a  
2 camping facility, any relocation of the entire facility to a  
3 separate tract of real estate is presumed to impair the services  
4 materially.

- 5 (3) Refund to the buyer the pro rata cost of any unused services under all  
6 contracts between the parties, within 30 days after request therefor, if  
7 the aggregate price of all contracts in force between the parties exceeds  
8 one thousand five hundred dollars (\$1,500). Provided, if the contract  
9 so provides, the seller may retain a cancellation fee of not more than  
10 25 percent (25%) of the pro rata cost of unused services on all  
11 contracts, not to exceed five hundred dollars (\$500.00)."

12 Sec. 4. G.S. 66-124 reads as rewritten:

13 "**§ 66-124. Services not available until future date. Bond or escrow account required.**

14 (a) ~~If, for any reason, services under a prepaid entertainment contract are not available~~  
15 ~~to the buyer on the date of sale, then:~~ Prior to the sale of any prepaid entertainment contract  
16 for services which are available on the day of sale, the seller shall purchase a surety  
17 bond issued by a surety company authorized to do business in this State, as follows:

- 18 ~~(1) The seller must establish a surety bond issued by a surety company~~  
19 ~~authorized to do business in this State, or establish a trust account with~~  
20 ~~a licensed and insured bank or savings institution located in this State.~~  
21 ~~The amount of the bond or trust account shall equal all consideration~~  
22 ~~received from the buyer. The bond or trust account must remain in~~  
23 ~~force until 60 days after all services of the seller are available to the~~  
24 ~~buyer. The bond or trust account shall be in favor of the State of North~~  
25 ~~Carolina. Any person who is damaged by any violation of this Article,~~  
26 ~~or by the seller's breach of the contract for sale or any obligation~~  
27 ~~arising therefrom may bring an action against the bond or trust account~~  
28 ~~to recover damages suffered; provided, however, that the aggregate~~  
29 ~~liability of the surety or trustee shall be only for actual damages and in~~  
30 ~~no event shall exceed the amount of the bond or trust account.~~

- 31 ~~(2) The buyer's right to cancel the contract pursuant to G.S. 66-121 shall~~  
32 ~~be extended until midnight of the third business day after the date upon~~  
33 ~~which the services become available and the buyer is so notified.~~  
34 ~~However, the buyer may waive the extension of his right to cancel by~~  
35 ~~initialing a written contract provision to that effect, if in consideration~~  
36 ~~for such waiver he has been allowed to buy the seller's services at a~~  
37 ~~price at least twenty five percent (25%) below the lowest price the~~  
38 ~~seller will charge for similar services when the facility is available.~~

- 39 (1) The amount of the surety bond shall be equal to the aggregate value of  
40 outstanding liabilities to buyers, or ten thousand dollars (\$10,000),  
41 whichever is greater. For purposes of this section, 'liabilities' means  
42 the monies actually received in advance from the buyer for contract  
43 costs, less the prorated value of services rendered by the seller. The  
44 bond shall be in favor of the State of North Carolina and in a form

1 approved by the Attorney General. The surety company shall have a  
2 duty to disclose the amount and status of the bond to the public upon  
3 request. Any person who is damaged by any violation of this Article,  
4 or by the seller's breach of the contract for sale or any obligations  
5 arising therefrom, may bring an action against the bond to recover  
6 damages suffered; provided, however, that the aggregate liability of  
7 the surety shall be only for actual damages and in no event shall  
8 exceed the amount of the bond.

9 (2) The amount of the bond shall be based upon a written sworn statement  
10 by the seller under penalty of perjury stating the seller's outstanding  
11 liabilities to buyers. A corporate seller's statement shall be signed by  
12 the president of the corporation; the statement of a partnership shall be  
13 signed by a general partner; and the statement of a sole proprietorship  
14 shall be signed by the sole proprietor. The statement and a copy of the  
15 bond shall be filed with the Attorney General within 90 days after the  
16 first contract is sold 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 semi-annual 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 one million dollars per  
26 facility.

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

33 (7) Upon application by the seller, the Attorney General shall exempt a  
34 seller from the bonding requirement if all of its unexpired contracts  
35 and present membership plans meet the following criteria: (i) no  
36 initiation fee or similar nonrecurring fee is charged, and (ii) at no time  
37 is any member charged or obligated to pay for use of facilities or  
38 services more than 31 days in advance.

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

41 (1) The seller shall establish a surety bond issued by a surety company  
42 authorized to do business in this State or shall establish an escrow  
43 account with a licensed and insured bank or savings institution located  
44 in this State. The surety bond or escrow account shall be in the

1           amount of ten thousand dollars (\$10,000) per location or in an amount  
2           equal to all consideration received from the buyer, whichever is  
3           greater. The bond or escrow account shall be in favor of the State of  
4           North Carolina and a copy of the bond or escrow agreement shall be  
5           filed with the Attorney General prior to the sale of any prepaid  
6           entertainment contracts. The bond or escrow account shall remain in  
7           force until 60 days after all services of the seller are available to the  
8           buyer, at which time the seller shall comply with the bonding  
9           requirement of subsection (a) of this section. The escrow account shall  
10           be established and maintained only in a financial institution which  
11           agrees in writing with the Attorney General to hold all funds deposited  
12           and not to release such funds until receipt of written authorization from  
13           the Attorney General. The funds deposited will be eligible for  
14           withdrawal by the depositor after the facility has been open and  
15           providing services for 60 days and the Attorney General gives written  
16           authorization for withdrawal. Any person who is damaged by any  
17           violation of this Article, or by the seller's breach of the contract for  
18           sale or any obligation arising therefrom may bring an action against  
19           the bond or escrow account to recover damages suffered; provided,  
20           however, that the aggregate liability of the surety or escrow agent shall  
21           be for actual damages only and in no event shall exceed the amount of  
22           the bond or escrow account.

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

27           Sec. 5. Article 21 of Chapter 66 of the General Statutes is amended by  
28 adding the following new section to read:

29    **"§ 66-124.1. Recordkeeping; provision of records to the Attorney General.**

30           (a)   Any person or business bonded under this Article shall maintain accurate  
31           records of the bond and of premium payments on it. These records shall be open to  
32           inspection by the Attorney General at any time during normal business hours.

33           (b)   Any person who sells prepaid entertainment contracts shall maintain accurate  
34           records, updated as necessary, of the name, address, contract terms, and payments of  
35           each buyer of services. These records shall be open to inspection by the Attorney  
36           General, upon reasonable notice not to exceed 72 hours, at any time during normal  
37           business hours.

38           (c)   On the permanent closing of a facility, the seller of the services shall provide  
39           the following information to the Attorney General within 15 business days:

40           (1)   A list of the names and addresses of all buyers holding unexpired  
41           contracts;

42           (2)   The original or a copy of all buyers' contracts; and

43           (3)   A record of all payments received under buyers' agreements."

44           Sec. 6. This act becomes effective October 1, 1991.