

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 833
SENATE BILL 617

AN ACT TO GUARANTEE FAIR PRACTICES IN HEALTH SPAS, DANCE STUDIOS,
AND SIMILAR BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article, to be entitled "Prepaid Entertainment Contracts," to read as follows:

"§ 66-111. **Definition.** — For purposes of this Article, a 'prepaid entertainment contract' is any contract in which:

- (a) the buyer of a service pays for or is obligated to pay for service prior to the buyer's receipt of or enjoyment of any or all of the service; and
- (b) the seller is other than a licensed nonprofit school, college, or university; the State or any subdivision thereof; or a nonprofit religious, ethnic, or community organization; and
- (c) the services to be performed are related to any one of the following:
 - (1) dance lessons or facilities, or any related services or events;
 - (2) matching, dating, or social club services or facilities, including any service represented as providing names of, introductions to, or opportunity to meet members of the opposite sex;
 - (3) martial arts training;
 - (4) health or athletic club services or facilities.

"§ 66-112. **Contract requirements.** — Every prepaid entertainment contract shall:

- (a) be in writing, fully completed, dated and signed by all contracting parties. A copy of the contract shall be given to the buyer at the time he signs the contract;
- (b) have a duration of service that is a precisely measured period of years or any definite part of a year;
- (c) contain a full statement of the buyer's rights under G.S. 66-113;
- (d) contain, in immediate proximity to the space reserved for the signature of the buyer, in bold face type of a minimum size of 10 points, a statement of the buyer's rights under G.S. 66-114, in substantially the following form:

'You the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of this contract. To cancel, you must notify the seller in writing not later than midnight of (Date).'

"§ 66-113. **Buyer's rights.** — Every seller of a prepaid entertainment contract must:

- (a) deliver to the buyer all information of a personal or private nature, including but not limited to answers to tests or questionnaires, photographs, evaluations, and background information, within 30 days after request therefor;
- (b) refund to the buyer at least ninety percent (90%) of the pro rata cost of any unused services, within 30 days after request therefor, if:
 - (1) the buyer is unable to receive benefits from the seller's services by reason of death or disability; or
 - (2) the buyer relocates more than eight miles from his present location, and more than 30 miles from the seller's facility and any substantially similar

facility that will accept the seller's obligation under the contract and this Article; or

- (3) the seller relocates his facility more than eight miles from its present location, or the services provided by the seller are materially impaired.

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

"§ 66-114. Buyer's right to cancel. — (a) In addition to any right otherwise to revoke an offer or cancel a sale or contract, the buyer has the right to cancel a prepaid entertainment contract sale until midnight of the third business day after the buyer signs a contract which complies with G.S. 66-112(d).

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the contract.

(c) Notice of cancellation, if given by mail, is given when it is deposited in the United States mail properly addressed and postage prepaid.

(d) Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the contract.

(e) For purposes of this Article, business days are all days other than Saturdays, Sundays, holidays, and days on which the seller's facility is not open to the buyer.

"§ 66-115. Rights and responsibilities after cancellation. — Within 30 days after a prepaid entertainment contract has been cancelled in accordance with G.S. 66-114, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

"§ 66-116. Prohibited practices. — (a) No person shall sell any prepaid entertainment contract or contracts which, when taken together with all other contracts in force between the parties have an aggregate duration of service in excess of three years.

(b) No person shall sell any prepaid entertainment contract unless performance of that contract is to begin within 180 days.

"§ 66-117. Services not available until future date. — If, for any reason, services under a prepaid entertainment contract are not available to the buyer on the date of sale, then:

(a) The seller must establish a surety bond issued by a surety company authorized to do business in this State, or establish a trust account with a licensed and insured bank or savings institution located in this State. The amount of the bond or trust account shall equal all consideration received from the buyer. The bond or trust account must remain in force until 60 days after all services of the seller are available to the buyer. The bond or trust account shall be in favor of the State of North Carolina. 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 trust account to recover damages suffered; provided, however, that the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

(b) The buyer's right to cancel the contract pursuant to G.S. 66-114 shall be extended until midnight of the third business day after the date upon which the services become available and the buyer is so notified. However, the buyer may waive the extension of his right to cancel by initialing a written contract provision to that effect, if in consideration for such waiver he has been allowed to buy the seller's services at a price at least twenty-five percent (25%) below the lowest price the seller will charge for similar services when the facility is available.

"§ 66-118. Remedies. — (a) Any buyer injured by any violation of this Article may bring an action for recovery of damages, including reasonable attorney's fees.

(b) The remedies herein shall be in addition to any other remedies provided for by law or in equity, but the damages assessed shall not exceed the largest amount of damages available by any single remedy.

(c) The violation of any provisions of this Article shall constitute an unfair practice under G.S. 75-1.1."

Sec. 2. This act shall become effective September 1, 1979.

In the General Assembly read three times and ratified, this the 7th day of June, 1979.