

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

2

SENATE BILL 31
Second Edition Engrossed 2/14/91

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. §66-121 is rewritten as follows:

13 "G.S. §66-121. Buyer's Right to Cancel

14 (a) In addition to any other right to revoke an offer or cancel a sale or contract,
15 the buyer has the right to cancel a prepaid entertainment contract sale until midnight of
16 the third business day after the buyer signs the contract. Failure of a seller to comply
17 with §66-119(4) or this section extends the onset of the three day right to cancel until
18 the seller fully complies. The seller must furnish the buyer, at the time the buyer signs
19 the prepaid entertainment contract or otherwise agrees to buy services from the seller, a
20 completed form in duplicate, captioned either 'NOTICE OF RIGHT TO CANCEL' or
21 'NOTICE OF CANCELLATION' which shall contain in 10 point bold face type the
22 following information and statements in the same language, e.g., Spanish, as that used
23 in the contract.

24 **NOTICE OF CANCELLATION**

25 (Enter date of transaction) _____
26 (date)

27 You, the buyer, may cancel this transaction, without any penalty or obligation,
28 within 3 business days from the date above. Business days are all days other than
29 Saturdays, Sundays, holidays, and days on which the seller's facility is not open to you.
30 You must cancel in writing. If given by mail, notice of cancellation is given when it is
31 deposited in the United States mail properly addressed and postage prepaid.

32 If you cancel, any payments made by you under the contract or sale, and any
33 negotiable instrument executed by you will be returned within thirty days following
34 receipt by the seller of your cancellation notice, and any security interest arising out of
35 the transaction will be cancelled.

36 To cancel this transaction, mail or deliver a signed and dated copy of this
37 cancellation notice or any other written notice, or send a telegram, to
38 _____

39 (name of seller)

40 at _____
41 (seller's mailing and physical address) not later than midnight of

42 _____
43 (date)

44 I hereby cancel this transaction.

1 _____
 2 (date)
 3 _____

4 (buyer's signature)

5 (b) The seller shall, before furnishing copies of the 'Notice of Cancellation' to the
 6 buyer, complete both copies by entering the name of the seller, the address of the seller's
 7 place of business, the date of the transaction, and the date, not earlier than the third
 8 business day following the day of the transaction, by which the buyer may give notice
 9 of cancellation.

10 (c) The seller shall orally inform each buyer, at the time he signs a contract or
 11 purchases the services, of his three day right to cancel; provided, that no oral notice is
 12 required in any case in which the seller does not solicit the buyer's business in person
 13 and the buyer signs the contract outside the presence of the seller and returns the signed
 14 contract to the seller by mail.

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

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

19 (f) Notice of cancellation by the buyer is sufficient if it indicates by any form of
 20 written expression the intention of the buyer not to be bound by the contract.

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

23 (h) Failure of the seller to honor a buyer's cancellation is a violation of this Act."

24 Sec. 5. G.S. 66-124 reads as rewritten:

25 **"§ 66-124. Services not available until future date. Bond or escrow account required.**

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

30 (1) ~~The seller must establish a surety bond issued by a surety company~~
 31 ~~authorized to do business in this State, or establish a trust account with~~
 32 ~~a licensed and insured bank or savings institution located in this State.~~
 33 ~~The amount of the bond or trust account shall equal all consideration~~
 34 ~~received from the buyer. The bond or trust account must remain in~~
 35 ~~force until 60 days after all services of the seller are available to the~~
 36 ~~buyer. The bond or trust account shall be in favor of the State of North~~
 37 ~~Carolina. Any person who is damaged by any violation of this Article,~~
 38 ~~or by the seller's breach of the contract for sale or any obligation~~
 39 ~~arising therefrom may bring an action against the bond or trust account~~
 40 ~~to recover damages suffered; provided, however, that the aggregate~~
 41 ~~liability of the surety or trustee shall be only for actual damages and in~~
 42 ~~no event shall exceed the amount of the bond or trust account.~~

43 (2) ~~The buyer's right to cancel the contract pursuant to G.S. 66-121 shall~~
 44 ~~be extended until midnight of the third business day after the date upon~~

1 ~~which the services become available and the buyer is so notified.~~
2 ~~However, the buyer may waive the extension of his right to cancel by~~
3 ~~initialing a written contract provision to that effect, if in consideration~~
4 ~~for such waiver he has been allowed to buy the seller's services at a~~
5 ~~price at least twenty-five percent (25%) below the lowest price the~~
6 ~~seller will charge for similar services when the facility is available.~~

7 (1) The amount of the surety bond shall be equal to the aggregate value of
8 outstanding liabilities to buyers, or ten thousand dollars (\$10,000),
9 whichever is greater. For purposes of this section, 'liabilities' means
10 the monies actually received in advance from the buyer for contract
11 costs, less the prorated value of services rendered by the seller. The
12 bond shall be in favor of the State of North Carolina and in a form
13 approved by the Attorney General. The surety company shall have a
14 duty to disclose the amount and status of the bond to the public upon
15 request. Any person who is damaged by any violation of this Article,
16 or by the seller's breach of the contract for sale or any obligations
17 arising therefrom, may bring an action against the bond to recover
18 damages suffered; provided, however, that the aggregate liability of
19 the surety shall be only for actual damages and in no event shall
20 exceed the amount of the bond.

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

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

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

36 (5) Notwithstanding any other provision of this section, no seller is
37 required to purchase a bond in excess of one million dollars per
38 facility.

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

- 1 (7) The seller shall be exempt from the bonding requirement if all of its
2 unexpired contracts and present membership plans meet the following
3 criteria: (i) no initiation fee or similar nonrecurring fee is charged, and
4 (ii) at no time is any member charged for use of facilities or services
5 more than 31 days in advance.
- 6 (b) If, for any reason, services under a prepaid entertainment contract are not
7 available to the buyer on the date of sale, then:
- 8 (1) The seller shall establish a surety bond issued by a surety company
9 authorized to do business in this State or shall establish an escrow
10 account with a licensed and insured bank or savings institution located
11 in this State. The surety bond or escrow account shall be in the
12 amount of ten thousand dollars (\$10,000) per location or in an amount
13 equal to all consideration received from the buyer, whichever is
14 greater. The bond or escrow account shall be in favor of the State of
15 North Carolina and a copy of the bond or escrow agreement shall be
16 filed with the Attorney General prior to the sale of any prepaid
17 entertainment contracts. The bond or escrow account shall remain in
18 force until 60 days after all services of the seller are available to the
19 buyer, at which time the seller shall comply with the bonding
20 requirement of subsection (a) of this section. The escrow account shall
21 be established and maintained only in a financial institution which
22 agrees in writing with the Attorney General to hold all funds deposited
23 and not to release such funds until receipt of written authorization from
24 the Attorney General. The funds deposited will be eligible for
25 withdrawal by the depositor after the facility has been open and
26 providing services for 60 days and the Attorney General gives written
27 authorization for withdrawal. Any person who is damaged by any
28 violation of this Article, or by the seller's breach of the contract for
29 sale or any obligation arising therefrom may bring an action against
30 the bond or escrow account to recover damages suffered; provided,
31 however, that the aggregate liability of the surety or escrow agent shall
32 be for actual damages only and in no event shall exceed the amount of
33 the bond or escrow account.
- 34 (2) The buyer's right to cancel the contract pursuant to G.S. 66-121 shall
35 be extended until midnight of the third business day after the date upon
36 which the services become available and the buyer is notified that the
37 services are available."

38 Sec. 6. Article 21 of Chapter 66 of the General Statutes is amended by
39 adding the following new section to read:

40 **"§ 66-124.1. Recordkeeping; provision of records to the Attorney General.**

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

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

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

8 **(1)** A list of the names and addresses of all buyers holding unexpired
9 contracts;

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

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

12 Sec. 7. This act becomes effective October 1, 1991.