**South Carolina General Assembly**

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**H. 3965**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Norrell

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Introduced in the House on February 13, 2019

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Prepaid Entertainment Contracts

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/13/2019 House Introduced and read first time ([House Journal‑page 49](file:///h:\hj\20190213.docx))

2/13/2019 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 49](file:///h:\hj\20190213.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=3965&session=123&summary=B) at the website

**VERSIONS OF THIS BILL**

[2/13/2019](file:///p:\pprever\2019-20\3965_20190213.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 31 TO TITLE 37 ENTITLED “PREPAID ENTERTAINMENT CONTRACTS” SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE REQUIREMENTS FOR A PREPAID ENTERTAINMENT CONTRACT, TO ESTABLISH THE BUYER’S RIGHTS UNDER A CONTRACT, TO PROHIBIT CERTAIN PRACTICES, TO REQUIRE A SELLER TO PURCHASE A SURETY BOND OR ESTABLISH AN ESCROW ACCOUNT, TO ESTABLISH CERTAIN RECORD KEEPING REQUIREMENTS, AND TO PROVIDE REMEDIES FOR THE BREACH OF A PREPAID ENTERTAINMENT CONTRACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 37 of the 1976 Code is amended by adding:

“CHAPTER 31

Prepaid Entertainment Contracts

Section 37‑31‑10. As used in this chapter:

(1) ‘Administrator’ means the administrator of the South Carolina Department of Consumer Affairs.

(2) ‘Contract cost’ means the total consideration paid by a buyer pursuant to a contract including, but not limited to:

(a) an initiation or nonrecurring fee charged by the seller;

(b) periodic fees required by the contract;

(c) dues or maintenance fees; and

(d) finance charges, time‑price differentials, interest, and similar fees and charges.

(3) ‘Contract duration’ means the total period of use allowed by a buyer’s contract, including months or time periods that are described as ‘free’, ‘bonus’, or similar language suggesting they are provided free of charge.

(4) ‘Prepaid entertainment contract’ means a contract in which:

(a) the buyer of a service pays for or creates an obligation to pay for a service prior to the receipt or enjoyment of the services;

(b) the seller is a person or entity other than a licensed nonprofit school, college, university, nonprofit religious, ethnic, or community organization, or the State or a subdivision thereof; and

(c) the services to be performed are related to:

(i) dance lessons or facilities;

(ii) matching, dating, or social club services or facilities including any service represented as providing names of, introduction to, or opportunity to meet other people;

(iii) martial arts training; and

(iv) health or athletic club services or facilities that are outside of the scope of the Physical Fitness Services Act, Chapter 79, Title 44.

Section 37‑31‑20. A prepaid entertainment contract must:

(1) be in writing, dated, and signed by all contracting parties. A copy of the contract must be given to the buyer at the time he signs the contract;

(2) have a specific duration of service that is a precisely measured period;

(3) contain a full statement of the buyer’s rights provided in this chapter;

(4) contain, in immediate proximity to the space reserved for the signature of the buyer, in bold face type of a minimum size of ten points, a right to cancel provision in the following language:

‘CUSTOMER’S RIGHT TO CANCEL

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.’

Section 37‑31‑30. Every seller of a prepaid entertainment contract must:

(1) deliver to the buyer all information of a personal or private nature including, but not limited to, answers to tests and questionnaires, photographs, evaluations, and background information, within thirty days after they are requested;

(2) refund to the buyer or the buyer’s representative at least ninety percent of the pro rata cost of any unused services, within thirty days after request if:

(a) the buyer is unable to receive benefits from the seller’s services by reason of death or disability;

(b) the buyer relocates more than eight miles from his present location, and more than thirty miles from the seller’s facility and any substantially similar facility that will accept the seller’s obligation under the contract and this chapter; or

(c) the seller relocates his facility more than eight miles from its present location, or the services provided by the seller are materially impaired; and

(3) refund to the buyer the pro rata cost of any unused services under all contracts between the parties within thirty days after request if the aggregate price of all contracts in force between the parties exceeds one thousand five hundred dollars. However, if the contract so provides, the seller may retain a cancellation fee of not more than twenty‑five percent of the pro rata cost of unused services on all contracts that may not exceed five hundred dollars.

Section 37‑31‑40. (A) In addition to any right to otherwise 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 this chapter.

(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 deemed 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 chapter, business days are all days other than Saturdays, Sundays, holidays, and other days on which the seller’s facility is not open to the buyer.

Section 37‑31‑50. Within thirty days of the cancellation of a prepaid entertainment contract in accordance with Section 37‑31‑40, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

Section 37‑31‑60. No person may sell any prepaid entertainment contract:

(1) which, when taken together with all other contracts in force between the parties, has an aggregate duration of service in excess of twenty‑four months; and

(2) performance of that contract is to begin more than one hundred eighty days after the parties sign the contract.

Section 37‑31‑70. (A)(1) Prior to the sale of a prepaid entertainment contract, the seller must maintain with the administrator a surety bond in a sum to be determined by the administrator but not to exceed two hundred fifty thousand dollars.

(2) In lieu of purchasing the bond, an irrevocable letter of credit from a bank insured by the Federal Deposit Insurance Corporation, in a form acceptable to the administrator, may be filed with the administrator.

(3) The amount of the bond may be increased or decreased, as necessary, to take into account changes in the seller’s financial status.

(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 must be filed with the administrator.

(5) A change in ownership shall not release, cancel, or terminate liability under any bond previously established unless the administrator 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.

(6) The seller must be exempt from the bonding requirement if all of its unexpired contracts and present membership plans meet the following criteria:

(a) no initiation fee or similar nonrecurring fee is charged; and

(b) at no time is any member charged to pay for the use of facilities or services more than thirty‑one days in advance.

(B)(1) 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 administrator, the buyer may file a claim with the administrator.

(2) A claim must be filed no later than one year from the date on which the facility closed or bankruptcy was filed.

(3) The administrator may file a claim with the surety on behalf of any buyer. The surety shall pay the amount of the claims to the administrator for distribution to claimants entitled to restitution and must be relieved of liability to that extent.

(4) 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.

(5) If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the administrator for distribution to claimants entitled to restitution and must be relieved of all liability under the bond.

(C) 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 must establish a surety bond that shall remain in force in relation to the buyer until sixty days after all services of the seller are available to the buyer. If the seller maintains a line of credit in lieu of purchasing a bond, the seller must establish an escrow account with a licensed and insured bank or savings institution located in this State. The amount in the escrow account or surety bonds must be ten thousand dollars for each location the buyer may benefit from under the contract or in an amount equal to all contract costs received from the buyer, whichever is greater. Once services are provided to the buyer, the seller shall comply with the bonding requirements of subsection (A). A buyer who is damaged by any violation of this chapter or by the seller’s breach of the contract for sale or any obligation arising therein may bring an action against the bond or account to recover damages suffered. The aggregate liability is limited to actual damages only and in no event may exceed the amount of the bond or escrow account; and

(2) the buyer’s right to cancel the contract must 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.

Section 37‑31‑80. (A) Any person or business bonded under this chapter shall maintain accurate records of the bond and of premium payments on it. These records must be open to inspection by the administrator at any time during normal business hours.

(B) Any person who sells prepaid entertainment contracts shall maintain accurate records, updated as necessary, of the name, address, contract terms, and payments of each buyer of services. These records must be open to inspection by the administrator, upon reasonable notice not to exceed seventy‑two hours, at any time during normal business hours.

(C) On the permanent closing of a facility, the seller of the services shall provide the following information to the administrator within fifteen business days:

(1) a list of the names and addresses of all buyers holding unexpired contracts;

(2) the original or a copy of all buyers’ contracts; and

(3) a record of all payments received under buyers’ agreements.

Section 37‑31‑90. (A) Any buyer injured by any violation of this chapter may bring an action for recovery of damages, including reasonable attorney’s fees.

(B) The remedies herein must 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 a provision of this chapter constitutes an unfair practice.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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