

AMENDED IN ASSEMBLY JUNE 29, 2001

AMENDED IN SENATE MAY 31, 2001

AMENDED IN SENATE MAY 15, 2001

**SENATE BILL**

**No. 916**

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**Introduced by Senator Ackerman**

February 23, 2001

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An act to amend Section 1812.101 of the Civil Code, relating to discount buying organizations.

LEGISLATIVE COUNSEL'S DIGEST

SB 916, as amended, Ackerman. Discount buying organizations.

Existing law regulates membership contracts for discount buying organizations, as defined. Certain discount buying organizations are exempted from these provisions, including organizations that provide a full refund of membership fees, as specified, maintain a bond of \$20,000, and comply with certain other requirements.

This bill would additionally exclude certain discount buying organizations from these provisions if they establish, maintain, and file with the Secretary of State specified information regarding an escrow account in the amount of \$50,000 used to provide members with membership fee refunds, *provide members with proof, in a specified form, of the creation of the escrow account and membership refund information*, issue a refund within 10 days after the escrow trustee receives a member's request, provide the Attorney General and every prospective member with specified documents relating to membership cancellation and refund terms, *possess an unrevoked acknowledgement from the Attorney General of compliance with the requirements of the exclusion provisions*, and comply with other specified requirements.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1812.101 of the Civil Code is amended  
2 to read:  
3 1812.101. For the purpose of this title, the following  
4 definitions shall be used:  
5 (a) “Discount buying organization” means any person or  
6 persons, corporation, unincorporated association, or other  
7 organization which, for a consideration, provides or purports to  
8 provide its clients or the clients or members of any other discount  
9 buying organization with the ability to purchase goods or services  
10 at discount prices, except that a discount buying organization does  
11 not include any of the following:  
12 (1) Any discount buying organization in which the total  
13 consideration paid by each client or member in any manner  
14 whatsoever for the purchase of discount buying services from the  
15 organization that either:  
16 (A) Does not exceed a one-time fee of fifty dollars (\$50) or an  
17 annual fee of twenty-five dollars (\$25) to be paid on a yearly basis.  
18 (B) Does not exceed a one-time or annual fee of fifty dollars  
19 (\$50) and the organization provides a majority of the goods and  
20 services through purchases by members who walk in to a fixed  
21 location operated by the organization.  
22 (2) Any discount buying organization in which the total  
23 consideration paid by each client or member in any manner  
24 whatsoever for the purchase of discount buying services from the  
25 organization does not exceed a one-time or annual fee of one  
26 hundred dollars (\$100) and the organization does all of the  
27 following *in subparagraphs (A) to (F), inclusive, and subject to*  
28 *subparagraph (G)*:  
29 (A) Offers buying services to clients or members through  
30 toll-free telephone access, computer access, or video shopping  
31 terminals.  
32 (B) (i) During the first year of membership of each member,  
33 upon the request of the member, provides a full refund of  
34 membership fees, exclusive of any fees, however designated, not  
35 exceeding ten dollars (\$10) in the aggregate, without conditions



1 other than the surrender or destruction of materials which allow the  
2 member to access or use the service.

3 (ii) (I) ~~In the case of a corporation described in paragraph (16)~~  
4 ~~of subdivision (e) of Section 17511.1 of the Business and~~  
5 ~~Professions Code, the~~ The organization shall establish an escrow  
6 account of fifty thousand dollars (\$50,000) for the purpose of  
7 providing refunds to members, pursuant to clause (i). If the fifty  
8 thousand dollars (\$50,000) deposited in escrow is depleted during  
9 the first year of the existence of the escrow account, the  
10 ~~corporation~~ organization shall within three business days of  
11 depletion replenish the account in the amount of fifty thousand  
12 dollars (\$50,000). For each calendar year thereafter, the  
13 ~~corporation~~ organization shall deposit in the account an amount  
14 equal to refunds made from the account in the prior calendar year,  
15 but not less than fifty thousand dollars (\$50,000). At any time the  
16 balance in the escrow account decreases to 50 percent of the  
17 amount funded that year, the ~~corporation~~ organization shall within  
18 three business days replenish the account back to the balance  
19 required at the beginning of that calendar year. The ~~corporation~~  
20 organization shall provide proof of the establishment of the  
21 escrow account to the Secretary of State and shall maintain records  
22 of all member requests for refunds and refunds made pursuant to  
23 this clause. The records shall be made available for review upon  
24 request by the Attorney General, any district attorney, or the  
25 Department of Justice.

26 (II) The escrow account shall be established and maintained at  
27 a federally insured bank or federally insured financial institution  
28 independent of the ~~corporation~~ organization with escrow  
29 instructions making the bank or financial institution or an officer  
30 or employee thereof the escrow trustee.

31 (III) Refunds shall be made from the escrow account to any  
32 member who provides proof of membership while a California  
33 resident and requests, in writing, a membership refund, and has not  
34 previously been refunded ~~their~~ his or her membership fee. The  
35 escrow trustee shall issue the refund within 10 days of the date the  
36 written request is received by the escrow trustee. In addition,  
37 requests for refunds may be made directly to and paid directly by  
38 the ~~corporation~~ organization.



1 (IV) Proof of creation of the escrow account, and membership  
2 refund information, shall be provided to the ~~Secretary of State~~  
3 *members* in the following form:

4 “The \_\_\_\_ (organization) has established an escrow account for  
5 the refund of membership fees at \_\_\_\_ (financial institution).  
6 Refunds from the escrow account may, in addition to other  
7 remedies and sources available to you, be obtained by mailing a  
8 written request along with proof of membership to \_\_\_\_ (escrow  
9 trustee). This refund request shall not affect or limit any other  
10 remedy at law available to you.”

11 (C) Provides at least 15 toll-free service lines to California  
12 ~~members~~ *consumers* devoted exclusively to customer service  
13 questions and complaints.

14 (D) Maintains a bond which meets the requirements of  
15 Sections 1812.103 and 1812.104, except that the principal sum of  
16 the bond need only be twenty thousand dollars (\$20,000).

17 (E) (i) ~~Provides~~ *Possesses an unrevoked acknowledgement*  
18 *from the Attorney General that the organization has provided to*  
19 *the Attorney General, to the Attorney General’s satisfaction,*  
20 *marketing procedures and documents that clearly explain*  
21 membership fee cancellation and refund terms which include:

22 (I) The amount of the initial membership fee and how and when  
23 it will be collected.

24 (II) If applicable, that a member must be advised, before any  
25 charges are applied, that they need not provide billing information  
26 in order to be charged a membership fee, in circumstances in which  
27 the telemarketing firm has prior access to the member’s billing  
28 information.

29 (III) In the case of trial membership offers, the duration of the  
30 trial period and that if the member does not cancel within the trial  
31 period he or she will automatically be charged the membership fee.

32 (IV) Specifically how the member may cancel membership.

33 (V) The written disclosure, printed in capital letters with a  
34 minimum 14-point boldface type, indicating who to contact, both  
35 directly through the company and through the escrow account, for  
36 a refund.

37 (VI) The written disclosure made at the time of solicitation and  
38 at the time an enrollment package is sent to consumers.

39 (ii) ~~If an organization provides documentation that clearly~~  
40 ~~explains membership fee cancellation and refund terms, which~~



1 ~~include information required by subclauses (I) to (VI), inclusive,~~  
2 ~~of clause (i), to obtain this exemption, the organization need not~~  
3 ~~comply with Section 1584.5, 1812.106, or 1812.107. When an~~  
4 ~~organization provides documentation that clearly explains~~  
5 ~~membership fee cancellation and refund terms to the Attorney~~  
6 ~~General's satisfaction, which includes the information required by~~  
7 ~~subclauses (I) to (VI), inclusive, of clause (i) of subparagraph (E),~~  
8 ~~the Attorney General shall issue a revocable acknowledgement to~~  
9 ~~the organization for it to obtain this exception. The~~  
10 ~~acknowledgement issued by the Attorney General is not evidence~~  
11 ~~of the adequacy or accuracy of the organization's actual~~  
12 ~~disclosures and representations provided to consumers. No~~  
13 ~~organization in any marketing to consumers may make any~~  
14 ~~reference to an acknowledgement issued by the Attorney General~~  
15 ~~under this clause.~~

16 (F) ~~The~~ Provides the disclosures listed in subclauses (I) to (VI),  
17 inclusive, of clause (i) of subparagraph (E) ~~shall be provided to~~  
18 every prospective member.

19 (G) The exemption is null and void if the ~~corporation~~  
20 ~~organization~~ fails to comply with the conditions set forth in this  
21 section or if the Attorney General's office revokes the exemption  
22 due to a ~~corporation~~ ~~organization~~ not being in full compliance with  
23 all of the provisions of this section.

24 (3) Any discount buying organization in which persons receive  
25 discount buying services incidentally as part of a package of  
26 services provided to or available to the individual on account of his  
27 or her membership in the organization, which is not organized for  
28 the profit of any person or ~~corporation~~ ~~organization~~, and which  
29 does not have as one of its primary purposes or businesses, the  
30 provision of discount buying services.

31 (4) Any person, corporation, unincorporated association, or  
32 other organization, which, for a consideration collected from  
33 another entity, provides or purports to provide the clients of the  
34 other entity with the ability to purchase goods or services at  
35 discount prices, if the clients of the other entity do not order from,  
36 or pay any money to, that person, corporation, unincorporated  
37 association, or other organization. ~~However, if any person,~~  
38 ~~corporation, unincorporated association, or other organization~~  
39 ~~from which the other entity purchases the right to obtain goods or~~  
40 ~~services at discount prices for its clients, receives orders or~~



1 ~~payment directly from the entity's clients, then that person,~~  
2 ~~corporation, unincorporated association, or other organization;~~  
3 *however, the entity, from which the customer purchases the right*  
4 *to obtain goods or services at discount prices, shall comply with*  
5 *the requirements of this title.*

6 (b) "Contract for discount buying services" means a contract  
7 between one party (hereinafter referred to as the "buyer") who is  
8 purchasing the service for personal or family use, and a discount  
9 buying organization, whereby the buyer for a consideration  
10 receives the right to obtain goods or services from the discount  
11 buying organization, or to utilize the discount buying organization  
12 services in obtaining goods and services, at discount prices.

13 (c) "Discount prices" means prices which are represented to be  
14 lower on most or all offered goods or services than those generally  
15 charged for the items in the locality in which the representation is  
16 made.

17 This definition is not intended to affect the degree of savings  
18 which must be offered on an item or selection of items in order to  
19 truthfully and without misleading consumers represent an item,  
20 selection of items, or entire store as being "discount" or  
21 "discounted."

