

## Senate Bill No. 916

### CHAPTER 178

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

[Approved by Governor August 12, 2001. Filed with Secretary of State August 13, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 916, 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 acknowledgment from the Attorney General of compliance with the requirements of the exclusion provisions, and comply with other specified requirements.

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

SECTION 1. Section 1812.101 of the Civil Code is amended to read:

1812.101. For the purpose of this title, the following definitions shall be used:

(a) "Discount buying organization" means any person or persons, corporation, unincorporated association, or other organization which, for a consideration, provides or purports to provide its clients or the clients or members of any other discount buying organization with the ability to purchase goods or services at discount prices, except that a discount buying organization does not include any of the following:



(1) Any discount buying organization in which the total consideration paid by each client or member in any manner whatsoever for the purchase of discount buying services from the organization that either:

(A) Does not exceed a one-time fee of fifty dollars (\$50) or an annual fee of twenty-five dollars (\$25) to be paid on a yearly basis.

(B) Does not exceed a one-time or annual fee of fifty dollars (\$50) and the organization provides a majority of the goods and services through purchases by members who walk in to a fixed location operated by the organization.

(2) Any discount buying organization in which the total consideration paid by each client or member in any manner whatsoever for the purchase of discount buying services from the organization does not exceed a one-time or annual fee of one hundred dollars (\$100) and the organization does all of the following in subparagraphs (A) to (F), inclusive, and subject to subparagraph (G):

(A) Offers buying services to clients or members through toll-free telephone access, computer access, or video shopping terminals.

(B) (i) During the first year of membership of each member, upon the request of the member, provides a full refund of membership fees, exclusive of any fees, however designated, not exceeding ten dollars (\$10) in the aggregate, without conditions other than the surrender or destruction of materials which allow the member to access or use the service.

(ii) (I) The organization shall establish an escrow account of fifty thousand dollars (\$50,000) for the purpose of providing refunds to members, pursuant to clause (i). If the fifty thousand dollars (\$50,000) deposited in escrow is depleted during the first year of the existence of the escrow account, the organization shall within three business days of depletion replenish the account in the amount of fifty thousand dollars (\$50,000). For each calendar year thereafter, the organization shall deposit in the account an amount equal to refunds made from the account in the prior calendar year, but not less than fifty thousand dollars (\$50,000). At any time the balance in the escrow account decreases to 50 percent of the amount funded that year, the organization shall within three business days replenish the account back to the balance required at the beginning of that calendar year. The organization shall provide proof of the establishment of the escrow account to the Secretary of State and shall maintain records of all member requests for refunds and refunds made pursuant to this clause. The records shall be made available for review upon request by the Attorney General, any district attorney, or the Department of Justice.



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

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

(IV) Proof of creation of the escrow account, and membership refund information, shall be provided to the members in the following form:

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

(C) Provides at least 15 toll-free service lines to California consumers devoted exclusively to customer service questions and complaints.

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

(E) (i) Possesses an unrevoked acknowledgment from the Attorney General that the organization has provided to the Attorney General, to the Attorney General’s reasonable satisfaction, marketing procedures and documents that clearly explain membership fee cancellation and refund terms which include:

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

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

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

(IV) Specifically how the member may cancel membership.

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



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

(ii) When an organization provides documentation that clearly explains membership fee cancellation and refund terms to the Attorney General's reasonable satisfaction, which includes the information required by subclauses (I) to (VI), inclusive, of clause (i) of subparagraph (E), the Attorney General shall issue a revocable acknowledgment to the organization for it to obtain this exception. The acknowledgment issued by the Attorney General is not evidence of the adequacy or accuracy of the organization's actual disclosures and representations provided to consumers. No organization in any marketing to consumers may make any reference to an acknowledgment issued by the Attorney General under this clause.

(F) Provides the disclosures listed in subclauses (I) to (VI), inclusive, of clause (i) of subparagraph (E) to every prospective member.

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

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

(4) Any person, corporation, unincorporated association, or other organization, which, for a consideration collected from another entity, provides or purports to provide the clients of the other entity with the ability to purchase goods or services at discount prices, if the clients of the other entity do not order from, or pay any money to, that person, corporation, unincorporated association, or other organization; however, the entity, from which the customer purchases the right to obtain goods or services at discount prices, shall comply with the requirements of this title.

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



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

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

