

**ASSEMBLY BILL**

**No. 547**

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**Introduced by Assembly Member Gatto**

February 16, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 547, as introduced, Gatto. Discount buying organizations.

Existing law regulates membership contracts for discount buying organizations. Discount buying organization is defined for these purposes to include any person or persons, corporation, unincorporated association, or other organization that, 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. Certain discount buying organizations are exempted from these provisions.

This bill would make a technical change by referring in that definition to an entity, among other technical, nonsubstantive changes.

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 definitions
- 4 shall ~~be used~~ apply:

(a) “Discount buying organization” means any person or persons, corporation, unincorporated association, or other organization ~~which~~ *or entity that*, 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~~ *is described by* all of the following in subparagraphs (A) to (F), inclusive, ~~and but~~ 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~~ *that* 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

1 year thereafter, the organization shall deposit in the account an  
2 amount equal to refunds made from the account in the prior  
3 calendar year, but not less than fifty thousand dollars (\$50,000).  
4 At any time the balance in the escrow account decreases to 50  
5 percent of the amount funded that year, the organization shall,  
6 within three business days, replenish the account back to the  
7 balance required at the beginning of that calendar year. The  
8 organization shall provide proof of the establishment of the escrow  
9 account to the Secretary of State and shall maintain records of all  
10 member requests for refunds and refunds made pursuant to this  
11 clause. The records shall be made available for review upon request  
12 ~~by~~ of the Attorney General, any district attorney, or the Department  
13 of Justice.

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

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

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

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

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

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

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

9 (I) The amount of the initial membership fee and ~~how and when~~  
10 ~~it will be collected~~ *the process and timing for its collection*.

11 (II) If applicable, that a member ~~must~~ *shall* be advised, before  
12 any charges are applied, that they need not provide billing  
13 information in order to be charged a membership fee, in  
14 circumstances in which the telemarketing firm has prior access to  
15 the member's billing information.

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

20 (IV) ~~Specifically how~~ *The specific process by which* the member  
21 may cancel membership.

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

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

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

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

4 (G) The exemption *provided in paragraph (2)* is null and void  
5 if the organization fails to comply with the conditions set forth in  
6 this section, or if the Attorney General's office revokes the  
7 exemption due to ~~a~~ *an* organization not being in full compliance  
8 with all of the provisions of this section.

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

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

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

34 (c) "Discount prices" means prices ~~which~~ *that* are represented  
35 to be lower on most or all offered goods or services than those  
36 generally charged for the items in the locality in which the  
37 representation is made.

38 This definition is not intended to affect the degree of savings  
39 ~~which~~ *that* must be offered on an item or selection of items in order  
40 to truthfully, and without misleading consumers, represent an item,

- 1 selection of items, or entire store as being “discount” or
- 2 “discounted.”

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