

ASSEMBLY BILL

No. 2699

Introduced by Assembly Member Cox

February 25, 2000

An act to amend Section 1812.201 of the Civil Code, relating to seller assisted marketing plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2699, as introduced, Cox. Seller assisted marketing plans: exemptions.

Existing law imposes requirements on seller assisted marketing plans, as defined. Existing law also specifies certain transactions that are not deemed to be seller assisted marketing plans for the purposes of those requirements.

This bill would provide that a product distributorship that meets certain requirements is not a seller assisted marketing plan for the purpose of those requirements.

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

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

1 SECTION 1. Section 1812.201 of the Civil Code is
2 amended to read:

3 1812.201. For the purposes of this title, the following
4 definitions shall apply:

5 (a) "Seller assisted marketing plan" means any sale or
6 lease or offer to sell or lease any product, equipment,

1 supplies, or services—~~which that~~ requires a total initial
2 payment exceeding five hundred dollars (\$500), but
3 requires an initial cash payment of less than fifty thousand
4 dollars (\$50,000),—~~which that~~ will aid a purchaser or will
5 be used by or on behalf of the purchaser in connection
6 with or incidental to beginning, maintaining, or
7 operating a business when the seller assisted marketing
8 plan seller has advertised or in any other manner solicited
9 the purchase or lease of the seller assisted marketing plan
10 and done any of the following acts:

11 (1) Represented that the purchaser will earn, is likely
12 to earn, or can earn an amount in excess of the initial
13 payment paid by the purchaser for participation in the
14 seller assisted marketing plan.

15 (2) Represented that there is a market for the product,
16 equipment, supplies, or services, or any product
17 marketed by the user of the product, equipment,
18 supplies, or services sold or leased or offered for sale or
19 lease to the purchaser by the seller, or anything, be it
20 tangible or intangible, made, produced, fabricated,
21 grown, bred, modified, or developed by the purchaser
22 using, in whole or in part, the product, supplies,
23 equipment, or services—~~which that~~ were sold or leased or
24 offered for sale or lease to the purchaser by the seller
25 assisted marketing plan seller.

26 (3) Represented that the seller will buy back or is
27 likely to buy back any product made, produced,
28 fabricated, grown, or bred by the purchaser using, in
29 whole or in part, the product, supplies, equipment, or
30 services—~~which that~~ were initially sold or leased or offered
31 for sale or lease to the purchaser by the seller assisted
32 marketing plan seller.

33 (b) A “seller assisted marketing plan” shall not
34 include:

35 (1) A security, as defined in the Corporate Securities
36 Law of 1968 (Division 1 (commencing with Section
37 25000) of Title 4 of the Corporations Code)—~~which, that~~
38 has been qualified for sale by the Department of
39 Corporations, or is exempt under Chapter 1
40 (commencing with Section 25100) of Part 2 of Division 1



1 of Title 4 of the Corporations Code from the necessity to
2 qualify.

3 (2) A franchise defined by the Franchise Investment
4 Law (Division 5 (commencing with Section 31000) of
5 Title 4 of the Corporations Code)—~~which~~ *that* is registered
6 with the Department of Corporations or is exempt under
7 Chapter 1 (commencing with Section 31100) of Part 2 of
8 Division 5 of Title 4 of the Corporations Code from the
9 necessity of registering.

10 (3) Any transaction in which either the seller or
11 purchaser or the lessor or lessee is licensed pursuant to
12 and the transaction is governed by the Real Estate Law,
13 Division 4 (commencing with Section 10000) of the
14 Business and Professions Code.

15 (4) A license granted by a general merchandise
16 retailer—~~which~~ *that* allows the licensee to sell goods,
17 equipment, supplies, products, or services to the general
18 public under the retailer's trademark, trade name, or
19 service mark if all of the following criteria are satisfied:

20 (A) The general merchandise retailer has been doing
21 business in this state continually for five years prior to the
22 granting of the license.

23 (B) The general merchandise retailer sells diverse
24 kinds of goods, equipment, supplies, products, or services.

25 (C) The general merchandise retailer also sells the
26 same goods, equipment, supplies, products, or services
27 directly to the general public.

28 (D) During the previous 12 months the general
29 merchandise retailer's direct sales of the same goods,
30 equipment, supplies, products, or services to the public
31 account for at least 50 percent of its yearly sales of these
32 goods, equipment, supplies, products, or services made
33 under the retailer's trademark, trade name, or service
34 mark.

35 (5) A newspaper distribution system distributing
36 newspapers as defined in Section 6362 of the Revenue and
37 Taxation Code.

38 (6) A sale or lease to an existing or beginning business
39 enterprise—~~which~~ *that* also sells or leases equipment,
40 products, supplies, or performs services that are not



1 supplied by the seller and that the purchaser does not
2 utilize with the equipment, products, supplies, or services
3 of the seller, if the equipment, products, supplies, or
4 services not supplied by the seller account for more than
5 25 percent of the purchaser's gross sales.

6 (7) The sale in the entirety of an "ongoing business."
7 For purposes of this paragraph, an "ongoing business"
8 means a business—~~which~~ *that* for at least six months
9 previous to the sale has been operated from a particular
10 specific location, has been open for business to the
11 general public, and has had all equipment and supplies
12 necessary for operating the business located at that
13 location. The sale shall be of the entire "ongoing business"
14 and not merely a portion of the ongoing business.

15 (8) A sale or lease or offer to sell or lease to a purchaser
16 (A) who has for a period of at least six months previously
17 bought products, supplies, services, or equipment—~~which~~
18 *that* were sold under the same trademark or trade name
19 or—~~which~~ *that* were produced by the seller and, (B) who
20 has received on resale of the product, supplies, services,
21 or equipment an amount—~~which~~ *that* is at least equal to the
22 amount of the initial payment.

23 (9) The renewal or extension of an existing seller
24 assisted marketing plan contract.

25 (10) *A product distributorship that meets each of the*
26 *following requirements:*

27 (A) *The seller sells products to the purchaser for resale*
28 *by the purchaser, and it is reasonably contemplated that*
29 *substantially all of the purchaser's sales of the product will*
30 *be at wholesale.*

31 (B) *The agreement between the parties does not*
32 *require that the purchaser pay the seller, or any person*
33 *associated with the seller, a fee for the right to enter into*
34 *the agreement, and does not require the purchaser to buy*
35 *a minimum or specified quantity of the products, or to*
36 *buy products for a minimum or specified period of time.*
37 *For purposes of this paragraph, a "person associated with*
38 *the seller" means a person, including an individual or a*
39 *business entity, controlling, controlled by, or under the*
40 *same control as the seller.*



1 (C) *The seller is a corporation, partnership, limited*
2 *liability company, joint venture, or any other business*
3 *entity.*

4 (D) *The seller has a net worth of at least ten million*
5 *dollars (\$10,000,000) according to audited financial*
6 *statements of the seller done during the 18 months*
7 *preceding the date of the initial sale of products to the*
8 *purchaser. Net worth may be determined on a*
9 *consolidated basis if the seller is a subsidiary of another*
10 *business entity that is permitted by generally accepted*
11 *accounting standards to prepare financial statements on*
12 *a consolidated basis and that business entity absolutely*
13 *and irrevocably agrees in writing to guarantee the seller's*
14 *obligations to the purchaser. The seller's net worth shall*
15 *be verified by a certification to the Attorney General*
16 *from an independent certified public accountant that the*
17 *audited financial statement reflects a net worth of at least*
18 *ten million dollars (\$10,000,000). This certification shall*
19 *be provided within 30 days following receipt of a written*
20 *request from the Attorney General.*

21 (E) *The seller grants the purchaser a license to use a*
22 *trademark that is registered under federal law.*

23 (F) *It is not a multilevel distribution program.*
24 *“Multilevel distribution program” means an agreement*
25 *or arrangement encouraging a distributor to recruit*
26 *others to participate in the program and compensating*
27 *the distributor for recruiting others into the program or*
28 *for sales made by others recruited into the program.*

29 (c) *“Person” includes an individual, corporation,*
30 *partnership, limited liability company, joint venture, or*
31 *any business entity.*

32 (d) *“Seller” means a person who sells or leases or offers*
33 *to sell or lease a seller assisted marketing plan and who*
34 *meets either of the following conditions:*

35 (1) *Has sold or leased or represents or implies that the*
36 *seller has sold or leased, whether in California or*
37 *elsewhere, at least five seller assisted marketing plans*
38 *within 24 months prior to a solicitation.*

39 (2) *Intends or represents or implies that the seller*
40 *intends to sell or lease, whether in California or*



1 elsewhere, at least five seller assisted marketing plans
2 within 12 months following a solicitation.

3 For purposes of this title, the seller is the person to
4 whom the purchaser becomes contractually obligated. A
5 “seller” does not include a licensed real estate broker or
6 salesman who engages in the sale or lease of a “business
7 opportunity” as that term is used in Sections 10000 to
8 10030, inclusive, of the Business and Professions Code, or
9 elsewhere in Chapter 1 (commencing with Section
10 10000), Chapter 2 (commencing with Section 10050), or
11 Chapter 6 (commencing with Section 10450) of Part 1 of
12 Division 4 of the Business and Professions Code.

13 (e) “Purchaser” means a person who is solicited to
14 become obligated or does become obligated on a seller
15 assisted marketing plan contract.

16 (f) “Equipment” includes machines, all electrical
17 devices, video or audio devices, molds, display racks,
18 vending machines, coin operated game machines,
19 machines—~~which~~ *that* dispense products, and display units
20 of all kinds.

21 (g) “Supplies” includes any and all materials used to
22 produce, grow, breed, fabricate, modify, develop, or
23 make any product or item.

24 (h) “Product” includes any tangible chattel, including
25 food or living animals,—~~which~~ *that* the purchaser intends
26 to:

27 (1) Sell or lease.

28 (2) Use to perform a service.

29 (3) Resell or attempt to resell to the seller assisted
30 marketing plan seller.

31 (4) Provide or attempt to provide to the seller assisted
32 marketing plan seller or to any other person whom the
33 seller suggests the purchaser contact so that the seller
34 assisted marketing plan seller or that other person may
35 assist, either directly or indirectly, the purchaser in
36 distributing, selling, leasing, or otherwise disposing of the
37 product.

38 (i) “Services” includes any assistance, guidance,
39 direction, work, labor, or services provided by the seller



1 to initiate or maintain or assist in the initiation or
2 maintenance of a business.

3 (j) “Seller assisted marketing plan contract” or
4 “contract” means any contract or agreement—~~which~~ *that*
5 obligates a purchaser to a seller.

6 (k) “Initial payment” means the total amount a
7 purchaser is obligated to pay *to the seller* under the terms
8 of the seller assisted marketing plan contract prior to or
9 at the time of delivery of the equipment, supplies,
10 products, or services or within six months of the
11 purchaser commencing operation of the seller assisted
12 marketing plan. If the contract sets forth a specific total
13 sale price for purchase of the seller assisted marketing
14 plan which total price is to be paid partially as a
15 downpayment and then in specific monthly payments,
16 the “initial payment” means the entire total sale price.

17 (l) “Initial cash payment” or “downpayment” means
18 that portion of the initial payment—~~which~~ *that* the
19 purchaser is obligated to pay to the seller prior to or at the
20 time of delivery of equipment, supplies, products, or
21 services. It does not include any amount financed by or
22 for which financing is to be obtained by the seller, or
23 financing—~~which~~ *that* the seller assists in obtaining.

24 (m) “Buy-back” or “secured investment” means any
25 representation—~~which~~ *that* implies in any manner that the
26 purchaser’s initial payment is protected from loss. These
27 terms include a representation or implication of any of
28 the following:

29 (1) That the seller may repurchase either all or part of
30 what it sold to the purchaser.

31 (2) That the seller may at some future time pay the
32 purchaser the difference between what has been earned
33 and the initial payment.

34 (3) That the seller may in the ordinary course buy
35 from the purchaser items made, produced, fabricated,
36 grown, bred, modified, or developed by the purchaser
37 using, in whole or in part, the product, supplies,
38 equipment, or services—~~which~~ *that* were initially sold or
39 leased to the purchaser by the seller.



1 (4) That the seller or a person to whom the seller will
2 refer the purchaser may in the ordinary course sell, lease,
3 or distribute the items the purchaser has for sale or lease.

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