

AMENDED IN SENATE MAY 15, 2001

SENATE BILL

No. 916

Introduced by Senator Ackerman

February 23, 2001

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 ~~limiting refunds to members who were charged with goods or services without authorization or who did not receive promised services, that maintain a bond of \$50,000, 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, and that~~ comply with other specified requirements, ~~from the above-described provisions of law.~~

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 ~~such an organization shall a discount~~
11 ~~buying organization does not include: (1) any~~ *include any of the*
12 *following:*

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

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

20 (B) Does not exceed a one-time or annual fee of fifty dollars
21 (\$50) and the organization provides a majority of the goods and
22 services through purchases by members who walk in to a fixed
23 location operated by the ~~organization; (2) any~~ *organization.*

24 (2) Any discount buying organization in which the total
25 consideration paid by each client or member in any manner
26 whatsoever for the purchase of discount buying services from the
27 organization does not exceed a one-time or annual fee of one
28 hundred dollars (\$100) and the organization ~~(A) offers~~ *does all of*
29 *the following:*

30 (A) Offers buying services to clients or members through
31 toll-free telephone access, computer access, or video shopping
32 ~~terminals; (B) (i) during~~ *terminals.*

33 (B) (i) During the first year of membership of each member,
34 upon the request of the member, provides a full refund of
35 membership fees, exclusive of any fees, however designated, not
36 exceeding ten dollars (\$10) in the aggregate, without conditions
37 other than the surrender of materials which allow the member to
38 access or use the service, ~~or (ii) if a publicly traded corporation;~~



1 ~~limits refunds to those members who were charged for goods or~~
2 ~~services without authorization or did not receive the services~~
3 ~~promised with membership, and maintains a procedure for the~~
4 ~~submission of a disputed refund to an independent third party~~
5 ~~arbitrator and assumes all parties' arbitration costs; (C) provides~~
6 ~~service.~~

7 (ii) (I) *In the case of a corporation described in paragraph*
8 *(16) of subdivision (e) of Section 17511.1 of the Business and*
9 *Professions Code, the organization shall establish an escrow*
10 *account of fifty thousand dollars (\$50,000) for the purpose of*
11 *providing refunds to members, pursuant to clause (i). If at any time*
12 *during the first year of the existence of the escrow account the fifty*
13 *thousand dollars (\$50,000) is depleted, the corporation shall*
14 *within 30 days replenish the account in the amount of fifty*
15 *thousand dollars (\$50,000). For each calendar year thereafter, the*
16 *corporation shall deposit in the account an amount equal to*
17 *refunds made from the account in the prior calendar year, but not*
18 *less than fifty thousand dollars (\$50,000). The corporation shall*
19 *provide proof of the establishment of the escrow account to the*
20 *Secretary of State and shall maintain records of all member*
21 *requests for refunds and refunds made pursuant to this*
22 *subparagraph. The records shall be made available for review*
23 *upon request by the Attorney General, any district attorney, or the*
24 *Department of Justice.*

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

29 (III) *Refunds shall be made from the escrow account to any*
30 *member who provides proof of membership while a California*
31 *resident and requests, in writing, a membership refund, and has not*
32 *previously been refunded their membership fee. Requests for*
33 *refunds may be made directly to the corporation, but refunds may*
34 *not be made from the escrow account unless the refund request is*
35 *made to the escrow trustee.*

36 (IV) *Proof of creation of the escrow account, and membership*
37 *refund information, shall be provided to the Secretary of State in*
38 *the following form:*

39 “The _____ (organization) has established an escrow account
40 for the refund of membership fees at _____ (financial institution).”



1 *Refunds from the escrow account may, in addition to other*
2 *remedies and sources available to you, be obtained by mailing a*
3 *written request along with proof of membership to _____ (escrow*
4 *trustee).” This refund request shall not affect or limit any other*
5 *remedy at law available to you.”*

6 (C) *Provides at least 15 toll-free service lines to California*
7 *customers devoted exclusively to customer service questions and*
8 *complaints; and (D) maintains complaints.*

9 (D) *Maintains a bond which meets the requirements of*
10 *Sections 1812.103 and 1812.104, except that the principal sum of the*
11 *bond need only be twenty thousand dollars (\$20,000) or, in the*
12 *case of a corporation described in clause (ii) of subparagraph (B),*
13 *fifty thousand dollars (\$50,000); or (3) any (\$20,000).*

14 (E) (i) *Provides the Attorney General, to the Attorney*
15 *General’s satisfaction, documents that clearly explain*
16 *membership fee cancellation and refund terms which include:*

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

19 (II) *If applicable, that a customer need not be provided billing*
20 *information in order to be charged a membership fee.*

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

24 (IV) *Specifically how the customer may cancel membership.*

25 (ii) *If an organization provides documentation that clearly*
26 *explains membership fee cancellation and refund terms, which*
27 *include information required by clauses (i) to (iv), inclusive, of*
28 *subparagraph (E), to obtain this exemption, the organization need*
29 *not comply with Section 1584.5, 1812.106, or 1812.107.*

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

37 ~~*A discount buying organization does not include any person,*~~

38 (4) *Any person, corporation, unincorporated association, or*
39 *other organization, which, for a consideration collected from*
40 *another entity, provides or purports to provide the clients of the*



1 other entity with the ability to purchase goods or services at
2 discount prices, if the clients of the other entity do not order from,
3 or pay any money to, that person, corporation, unincorporated
4 association, or other organization; however, the entity from which
5 the customer purchases the right to obtain goods or services at
6 discount prices, shall comply with the requirements of this title.

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

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

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

