

AMENDED IN SENATE MAY 31, 2001

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 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, *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*, 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:
28 (A) Offers buying services to clients or members through
29 toll-free telephone access, computer access, or video shopping
30 terminals.
31 (B) (i) During the first year of membership of each member,
32 upon the request of the member, provides a full refund of
33 membership fees, exclusive of any fees, however designated, not
34 exceeding ten dollars (\$10) in the aggregate, without conditions
35 other than the surrender *or destruction* of materials which allow
36 the member to access or use the service.
37 (ii) (I) In the case of a corporation described in paragraph (16)
38 of subdivision (e) of Section 17511.1 of the Business and



1 Professions Code, the organization shall establish an escrow
2 account of fifty thousand dollars (\$50,000) for the purpose of
3 providing refunds to members, pursuant to clause (i). ~~If at any time~~
4 ~~during the first year of the existence of the escrow account the fifty~~
5 ~~thousand dollars (\$50,000) is depleted, the corporation shall~~
6 ~~within 30 days replenish the account in the amount of fifty~~ *If the*
7 *fifty thousand dollars (\$50,000) deposited in escrow is depleted*
8 *during the first year of the existence of the escrow account, the*
9 *corporation shall within three business days of depletion replenish*
10 *the account in the amount of fifty thousand dollars (\$50,000).* For
11 each calendar year thereafter, the corporation shall deposit in the
12 account an amount equal to refunds made from the account in the
13 prior calendar year, but not less than fifty thousand dollars
14 (\$50,000). *At any time the balance in the escrow account decreases*
15 *to 50 percent of the amount funded that year, the corporation shall*
16 *within three business days replenish the account back to the*
17 *balance required at the beginning of that calendar year.* The
18 corporation shall provide proof of the establishment of the escrow
19 account to the Secretary of State and shall maintain records of all
20 member requests for refunds and refunds made pursuant to this
21 ~~subparagraph~~ *clause*. The records shall be made available for
22 review upon request by the Attorney General, any district attorney,
23 or the Department of Justice.

24 (II) The escrow account shall be established and maintained at
25 a federally insured bank or *federally insured* financial institution
26 independent of the corporation with escrow instructions making
27 the *bank or* financial institution or an officer or employee thereof
28 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~~ *The*
33 *escrow trustee shall issue the refund within 10 days of the date the*
34 *written request is received by the escrow trustee. In addition,*
35 *requests for refunds may be made directly to the corporation, but*
36 ~~refunds may not be made from the escrow account unless the~~
37 ~~refund request is made to the escrow trustee. and paid directly by~~
38 *the corporation.*



1 (IV) Proof of creation of the escrow account, and membership
2 refund information, shall be provided to the Secretary of State in
3 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).” *trustee*). This refund request shall not affect or limit any
10 other remedy at law available to you.”

11 (C) Provides at least 15 toll-free service lines to California
12 ~~customers~~ *members* 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 the Attorney General, to the Attorney
18 General’s satisfaction, documents that clearly explain
19 membership fee cancellation and refund terms which include:

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

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

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

32 (IV) Specifically how the ~~customer~~ *member* may cancel
33 membership.

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

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



1 (ii) If an organization provides documentation that clearly
2 explains membership fee cancellation and refund terms, which
3 include information required by ~~clauses (i) to (iv)~~ *subclauses (I)*
4 *to (VI)*, inclusive, of ~~subparagraph (E)~~ *clause (i)*, to obtain this
5 exemption, the organization need not comply with Section 1584.5,
6 1812.106, or 1812.107.

7 *(F) The disclosures listed in subclauses (I) to (VI), inclusive, of*
8 *clause (i) of subparagraph (E) shall be provided to every*
9 *prospective member.*

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

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

22 (4) Any person, corporation, unincorporated association, or
23 other organization, which, for a consideration collected from
24 another entity, provides or purports to provide the clients of the
25 other entity with the ability to purchase goods or services at
26 discount prices, if the clients of the other entity do not order from,
27 or pay any money to, that person, corporation, unincorporated
28 association, or other organization; ~~however, the entity from which~~
29 ~~the customer purchases the right to obtain goods or services at~~
30 ~~discount prices;. However, if any person, corporation,~~
31 ~~unincorporated association, or other organization from which the~~
32 ~~other entity purchases the right to obtain goods or services at~~
33 ~~discount prices for its clients, receives orders or payment directly~~
34 ~~from the entity's clients, then that person, corporation,~~
35 ~~unincorporated association, or other organization shall comply~~
36 ~~with the requirements of this title.~~

37 (b) "Contract for discount buying services" means a contract
38 between one party (hereinafter referred to as the "buyer") who is
39 purchasing the service for personal or family use, and a discount
40 buying organization, whereby the buyer for a consideration



1 receives the right to obtain goods or services from the discount
2 buying organization, or to utilize the discount buying organization
3 services in obtaining goods and services, at discount prices.

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

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

