

AMENDED IN ASSEMBLY JULY 5, 2001
AMENDED IN ASSEMBLY JUNE 29, 2001
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, 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 acknowledgement

from the Attorney General of compliance with the requirements of the exclusion provisions, 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 in subparagraphs (A) to (F), inclusive, and subject to
28 subparagraph (G):

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

32 (B) (i) During the first year of membership of each member,
33 upon the request of the member, provides a full refund of



1 membership fees, exclusive of any fees, however designated, not
2 exceeding ten dollars (\$10) in the aggregate, without conditions
3 other than the surrender or destruction of materials which allow the
4 member to access or use the service.

5 (ii) (I) The organization shall establish an escrow account of
6 fifty thousand dollars (\$50,000) for the purpose of providing
7 refunds to members, pursuant to clause (i). If the fifty thousand
8 dollars (\$50,000) deposited in escrow is depleted during the first
9 year of the existence of the escrow account, the organization shall
10 within three business days of depletion replenish the account in the
11 amount of fifty thousand dollars (\$50,000). For each calendar year
12 thereafter, the organization shall deposit in the account an amount
13 equal to refunds made from the account in the prior calendar year,
14 but not less than fifty thousand dollars (\$50,000). At any time the
15 balance in the escrow account decreases to 50 percent of the
16 amount funded that year, the organization shall within three
17 business days replenish the account back to the balance required
18 at the beginning of that calendar year. The organization 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 clause. The
22 records shall be made available for review upon request by the
23 Attorney General, any district attorney, or the Department of
24 Justice.

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

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

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



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

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

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

14 (E) (i) Possesses an unrevoked acknowledgement from the
15 Attorney General that the organization has provided to the
16 Attorney General, to the Attorney General’s *reasonable*
17 satisfaction, marketing procedures and documents that clearly
18 explain membership fee cancellation and refund terms which
19 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 member must be advised, before any
23 charges are applied, that they need not provide billing information
24 in order to be charged a membership fee, in circumstances in which
25 the telemarketing firm has prior access to the member’s billing
26 information.

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

30 (IV) Specifically how the member may cancel membership.

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

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

37 (ii) When an organization provides documentation that clearly
38 explains membership fee cancellation and refund terms to the
39 Attorney General’s *reasonable* satisfaction, which includes the
40 information required by subclauses (I) to (VI), inclusive, of clause



1 (i) of subparagraph (E), the Attorney General shall issue a
2 revocable acknowledgement to the organization for it to obtain this
3 exception. The acknowledgement issued by the Attorney General
4 is not evidence of the adequacy or accuracy of the organization's
5 actual disclosures and representations provided to consumers. No
6 organization in any marketing to consumers may make any
7 reference to an acknowledgement issued by the Attorney General
8 under this clause.

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

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

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

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

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



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

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

