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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.)*

TITLE 2.6. CONTRACTS FOR DISCOUNT BUYING SERVICES [1812.100 - 1812.129] (*Title 2.6 added by Stats. 1976, Ch. 237.)*

1812.100. (a) The Legislature finds that there exists in connection with a substantial number of contracts for discount buying services, sales practices and business and financing practices which result in fraud, deceit, and financial hardships being perpetrated on the people of the state; that existing legal remedies are inadequate to correct these abuses; that the discount buying industry has a significant impact upon the economy and well-being of this state and its local communities; and that the provisions of this title relating to such contracts are necessary for the public welfare.

(b) The purpose of this title is to safeguard the public against fraud, deceit, and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of discount buying services by prohibiting or restricting false or misleading advertising, unfair contract terms, harmful financial practices, and other unfair, deceptive, destructive, unscrupulous, fraudulent and discriminatory practices by which the public has been endangered and by which the public may in the future be harmed in connection with contracts for discount buying services. This title shall be construed liberally in order to achieve the foregoing purposes.

(*Added by Stats. 1976, Ch. 237.*)

1812.101. For the purpose of this title, the following definitions shall be used:

(a) "Discount buying organization" means any person or persons, corporation, unincorporated association, or other organization which, 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 all of the following in subparagraphs (A) to (F), inclusive, and 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 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 year thereafter, the organization shall deposit in the account an amount equal to refunds made from the account in the prior calendar year, but not less than fifty thousand dollars (\$50,000). At any time the balance in the escrow account decreases to 50 percent of the amount funded that year, the organization shall within three business days replenish the account back to the balance required at the beginning of that calendar year. The organization shall provide proof of the establishment of the escrow account to the Secretary of State and shall maintain records of all member requests for refunds and refunds made pursuant to this clause. The records shall be made available for review upon request by the Attorney General, any district attorney, or the Department of Justice.

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

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

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

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

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

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

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

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

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

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

(IV) Specifically how the member may cancel membership.

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

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

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

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

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

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

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

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

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

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

(Amended by Stats. 2001, Ch. 178, Sec. 1. Effective January 1, 2002.)

1812.103. Every discount buying organization shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be twenty thousand dollars (\$20,000). A copy of such bond shall be filed with the Secretary of State.

(Amended by Stats. 1996, Ch. 633, Sec. 8. Effective January 1, 1997.)

1812.104. The bond required by Section 1812.103 shall be in favor of the State of California for the benefit of any person who is damaged by any violation of this title or by fraud or dishonesty or failure to provide the services of the discount buying organization in performance of the contract. The surety shall be liable only for the actual damages plus restitution and not the treble damages permitted under subdivision (a) of Section 1812.123.

(Amended by Stats. 1982, Ch. 517, Sec. 62.)

1812.105. (a) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in Section 1812.104.

(b) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval on the claim. The claim shall be designated an "approved claim."

(c) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(d) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (c) shall apply with respect to the amount remaining in the deposit.

(e) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (c) and (d) shall not be required to return funds received from the deposit for the benefit of other claimants.

(f) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the discount buying organization, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the discount buying organization by the Secretary of State.

(g) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a discount buying organization or has filed a bond pursuant to Section 1812.103, provided that there are no outstanding claims against the deposit. This written notice

shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of a discount buying organization or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(h) A judge of a superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a sufficient period beyond the two years specified in subdivision (g) to resolve outstanding claims against the deposit.

(Amended by Stats. 2002, Ch. 784, Sec. 14. Effective January 1, 2003.)

1812.106. Every discount buying organization, before obtaining the signature of a potential buyer on any application or contract for discount buying services, shall provide to the buyer, and shall allow the buyer to retain, the following written disclosures:

(a) The exact nature of the services it provides, specifying the general categories of goods that are available at the discount buying organization's place of business or warehouse, those categories of goods, if any, that must be ordered or obtained through stores to which the discount buying organization will refer the customer, and those categories of goods, if any, that must be ordered or obtained through the mail.

(b) A list, current within the previous 60 days, of at least 100 items that are sold by or through the organization or available to those who contract with the organization, identified by brand name, model, and total price including a reasonable estimate of freight charges, if any are to be imposed; a reasonable estimate of delivery charges, if any are to be imposed; a reasonable estimate of setup charges, if any are to be imposed; the discount buying organization's price markup; and a reasonable estimate of any other charges the discount buying organization imposes. These items shall be reasonably representative as to the type of goods available. In lieu of providing this list, the discount buying organization shall provide and allow the buyer to retain a list of at least 100 items that were purchased by its members through the discount buying organization during the preceding 60 days. This list shall identify the items by brand name, model, and total selling price including freight charges, if any; delivery charges, if any; setup charges, if any; the discount buying organization's price markup; and any other charges imposed by the discount buying organization, and shall be representative as to the type of goods sold and the prices charged for the listed goods sold during that period. If the maximum number of items available through a discount buying organization is fewer than 100 in number, it may comply with this section by furnishing a list of the total items available, identified as described above with a statement that those are the only goods presently available. Any list required by this subdivision shall state the date on which it was prepared.

(c) A statement of the discount buying organization's policy with respect to warranties or guarantees on goods ordered, and the policy with respect to the return of ordered goods, cancellation of orders by the buyer, and refunds for cancellation or return.

(d) A description of any charges, such as freight charges, delivery charges, setup charges, seller's markup, and any other charges that are incidental to the purchase of goods through the discount buying organization and are to be paid by the buyer. A disclosure of these costs in specific monetary amounts shall also be made on each order placed through the discount buying organization.

(e) If any stockholder, director, officer, or general or limited partner of the discount buying organization, as the case may be:

(1) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge, if the felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, misappropriation of property, or a violation of this title.

(2) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property, a violation of this title, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, an action affecting any vocational license, a statement so stating, and including the name of the court, the date of the conviction, judgment, order, or injunction and, if applicable, the name of the governmental agency that filed the action resulting in the conviction, judgment, order, or injunction.

(Amended by Stats. 2006, Ch. 538, Sec. 50. Effective January 1, 2007.)

1812.107. Every contract for discount buying services shall be in writing and shall be subject to the provisions of this title. The address of the seller's discount buying facility and the residence address of the buyer shall be clearly indicated on the face of the contract. A copy of the written contract shall be given to the buyer at the time he signs the contract. All blank spaces in the contract shall be filled in before the contract is signed by the buyer. Provisions or terms written by hand on the buyer's copy shall be legible. The contract shall disclose that a bond has been obtained by the discount buying organization and that a copy of such bond is on file

with the Secretary of State. The contract shall be specific as to the period of time for which the discount buying services will be available to the buyer. This time period shall not be measured by the life of the buyer.

(Added by Stats. 1976, Ch. 237.)

1812.108. All contracts for discount buying services, which may be in effect between a seller or related sellers and a buyer, the terms of which overlap for any period of time, shall be considered as one contract for the purpose of this title.

(Added by Stats. 1976, Ch. 237.)

1812.109. No contract for discount buying services shall require payments or financing by the buyer over a period in excess of two years from the date the contract was entered into.

(Added by Stats. 1976, Ch. 237.)

1812.110. Every contract for discount buying services shall provide that the buying services shall become available to the buyer within seven days from the date the contract was entered into.

(Added by Stats. 1976, Ch. 237.)

1812.113. No contract for discount buying services shall require or entail the execution of any note or series of notes by the buyer which, when separately negotiated, will cut off as to any third party any right of action or defense which the buyer may have against the seller.

(Added by Stats. 1976, Ch. 237.)

1812.114. No right of action or defense arising out of a contract for discount buying services which the buyer has against the discount buying organization shall be cut off by assignment or transfer of the contract to any third party.

(Added by Stats. 1976, Ch. 237.)

1812.116. (a) Every contract for discount buying services shall provide that if any goods ordered by the buyer from the seller are not delivered to the buyer or available for pickup by the buyer at a location within his county of residence within six weeks from the date the buyer placed an order for such goods, then any moneys paid by the buyer for such goods in advance of delivery shall, upon the buyer's request, be fully refunded unless a predetermined delivery date has been furnished to the buyer in writing at the time he ordered such goods and the goods are delivered to the buyer or are available for pickup by that date.

(b) Prior to receiving from a buyer any payments pursuant to the terms of a contract for discount buying services, the discount buying organization shall establish a trust account at a federally insured bank or savings and loan association for the deposit, except for the first fifty dollars (\$50) of a downpayment, of the contract payments as they are received.

If the discount buying organization sells or assigns the contract for discount buying services to a third party and such third party pays the discount buying organization as consideration an amount which is commercially reasonable for the sale or assignment of the contract, the discount buying organization shall deposit all funds received from the third party into the trust account.

If the discount buying organization in any manner transfers the contract for discount buying services to a third party which is to act as the recipient of contract payments from the buyer and such third party does not pay the discount buying organization as consideration for such transfer an amount which is commercially reasonable, then all sums received by the third party from the buyer shall be deposited in the discount buying organization's trust account for contract payments.

As to each buyer, during the first one-fourth or first six months of the buyer's membership period, whichever is shorter, funds representing no more than one-fourth of the contract price may be withdrawn from the trust account. During each subsequent one-fourth or six-month period, whichever is shorter, funds representing an additional one-fourth of the contract price may be withdrawn from the trust account.

(c) (1) Prior to receiving funds for an order of goods or services from any buyer, the discount buying organization shall establish a trust account at a federally insured bank or savings and loan association for the deposit of the funds. The discount buying organization shall deposit into the account all funds received from buyers for orders of goods or services regardless of how the funds are styled, including but not limited to, down payment, partial payment, payment in full, freight charge, or any other terms. If the total cost of goods or services ordered by a buyer on any one day does not exceed fifty dollars (\$50), including taxes, freight charges, delivery charges, markup and all other charges collected by the discount buying organization, then the funds received from the buyer need not be deposited in the trust account.

(2) The trust account required by this section shall be created and maintained for the benefit of buyers who order goods or services from or through the discount buying organization. The discount buying organization shall not in any manner encumber the corpus of the account and shall not withdraw money deposited therein on behalf of a buyer except: (i) in partial or full payment to the discount buying organization's source for the goods or services ordered by the buyer, or (ii) to make a refund to the buyer.

After the withdrawal of money from a buyer's deposit pursuant to (i) or (ii) above, only that portion of the remainder of the deposit which represents compensation to the discount buying organization may be withdrawn.

(Amended by Stats. 1980, Ch. 1001, Sec. 2. Effective September 21, 1980.)

1812.117. (a) An affiliate discount buying organization may, at its option, and with the express written consent of its parent, comply with the trust account withdrawal provisions set forth in subdivision (b), in lieu of those contained in subdivision (b) of Section 1812.116.

(b) The affiliate shall comply with the trust account provisions of subdivision (b) of Section 1812.116, except that:

(1) As to each buyer, during the first one-fourth or first six months of the buyer's membership period, whichever is shorter, funds representing no more than one-half of the contract price may be withdrawn from the trust account.

(2) During the subsequent one-fourth or six-month period of the buyer's membership period, whichever is shorter, the remaining balance of the contract price may be withdrawn from the trust account.

(c) To qualify for the provisions set forth in subdivision (b), (1) the affiliate shall maintain a surety bond of two hundred fifty thousand dollars (\$250,000), and (2) the parent shall maintain an aggregate surety bond of two million five hundred thousand dollars (\$2,500,000) and a letter of credit, as set forth in subdivision (d), for all of its affiliates that qualify for the withdrawal provisions of subdivision (b). The bonds shall be issued by a surety company admitted to do business in this state. A copy of each bond shall be filed with the Secretary of State, with a copy provided to the Attorney General. The affiliate's bond shall be in lieu of the bond required by subdivision (a) of Section 1812.103. The surety bonds shall comply with the requirements of this section and shall be in favor of the State of California for the benefit of consumers harmed by any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, and the failure of the affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services, provided the bonds shall cover only pecuniary loss and not exemplary damages or treble damages permitted under subdivision (a) of Section 1812.123, and provided further the parent's bond shall not be drawn on until the affiliate's bond is exhausted.

(d) The parent shall continuously maintain and provide to the Attorney General as beneficiary an irrevocable letter of credit issued by a California state chartered bank or a national bank with its principal place of business in the State of California, in the amount of one million dollars (\$1,000,000), in a form satisfactory to the Attorney General. After the bonds described in subdivision (c) have been exhausted, only the Attorney General, by and through the Attorney General's deputy or assistant, may draw on the letter of credit for the satisfaction of any final judgments based on any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, or the failure of an affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services, provided the liability is established by final judgment of a court of competent jurisdiction and the time for appeal has expired or, if an appeal is taken, the appeal is finally determined and the judgment is affirmed, and provided further the letter of credit shall cover only pecuniary loss and not exemplary damages or treble damages permitted under subdivision (a) of Section 1812.123. The letter of credit shall provide that payment shall be made to the Attorney General upon presentation to the issuer of a sight draft stating only the amount drawn and signed by the Attorney General or by an Assistant or Deputy Attorney General. Any amount received by the Attorney General under the letter of credit shall be used exclusively to satisfy final judgments as described in this subdivision. The Attorney General may apply to the court for orders as desired or needed to carry out the provisions of this subdivision.

(e) In addition to other lawful means for the enforcement of the surety's liability on the bonds required by this section, the surety's liability may be enforced by motion after a final judgment has been obtained against an affiliate based on any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, or the failure of the affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services. The bond of the parent shall not be drawn on until the bond of the affiliate has been exhausted, as provided in subdivisions (c) and (d). The motion may be filed by the Attorney General, a public prosecutor, or any person who obtained the judgment without first attempting to enforce the judgment against any party liable under the judgment. The notice of motion, motion, and a copy of the judgment shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The notice shall set forth the amount of the claim, a brief statement indicating that the claim is covered by the bond, and, if the motion is to enforce liability under the bond provided by the parent, a statement that the bond provided by the affiliate has been exhausted or will be exhausted if the motion is granted. Service shall also be made on the Attorney General directed to the Consumer Protection Section. The court shall grant the motion unless the surety establishes that the claim is not covered by the bond or unless the court sustains an objection made by the Attorney General that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest. The court may, in the interest of justice, order a pro rata or other equitable distribution of the bond proceeds.

(f) (1) The bond required by subdivision (c) for an affiliate shall be continuously maintained by the affiliate until the date the affiliate ceases to make the election under subdivision (a) or ceases to engage in the business of a discount buying organization. The bond

required by subdivision (c) for the parent shall be continuously maintained by the parent until the date all affiliates cease to make the election under subdivision (a) or all affiliates cease to engage in the business of a discount buying organization.

(2) Notwithstanding the expiration or termination of any bond required under this section, the bond remains in full force and effect for all liabilities incurred before, and for acts, omissions, and causes existing or which arose before, the expiration or termination of the bond. Legal proceedings may be had therefor in all respects as though the bond were in effect.

(3) The letter of credit required under subdivisions (c) and (d) shall be continuously maintained for a period of four years after all affiliates cease to make the election under subdivision (a) or cease to engage in the business of a discount buying organization, provided the period shall be extended until there is a final judgment, as described in subdivision (d), entered in each action seeking relief that may be covered by the letter of credit if the action was filed before the expiration of the four-year period.

(g) Subdivision (a) of Section 1812.121 does not apply to a discount buying organization that offers substantially equivalent alternative at-home ordering service through other generally available channels of communications, such as the internet, for the same categories of goods and services, provided the ordered goods are shipped either to the home or to a freight receiver within 20 miles of the buyer's residence at the time the buyer entered into the contract for discount buying services.

(h) For purposes of this section, the following terms apply:

(1) "Affiliate" or "affiliate discount buying organization" means a discount buying organization that is a subsidiary of a parent, as defined in paragraph (4), or operates under a franchise, as defined in paragraph (3), granted by a parent.

(2) "Consumer" or "buyer" means and includes a client or member of an affiliate discount buying organization.

(3) "Franchise" has the same meaning as in Section 31005 of the Corporations Code.

(4) "Parent" means a business entity that directly or indirectly has franchised or operated 25 or more discount buying organizations for 10 years or more.

(Amended by Stats. 2024, Ch. 853, Sec. 15. (AB 3281) Effective January 1, 2025.)

1812.118. Every contract for discount buying services shall further provide that such contract may be canceled at any time within three days after the date of receipt by the buyer of a copy of the contract by written notice to the seller at the address specified in the contract. If such cancellation is made, all moneys paid pursuant to the contract shall be refunded. Every contract for discount buying services shall be subject to the cancellation privileges and comply with the requirements of Sections 1689.6 and 1689.7 of this code.

(Added by Stats. 1976, Ch. 237.)

1812.119. (a) Any contract for discount buying services which does not comply with the applicable provisions of this title shall be voidable by the buyer.

(b) No discount buying organization shall make or authorize the making of any reference to its compliance with this title.

(Amended by Stats. 1980, Ch. 1001, Sec. 3. Effective September 21, 1980.)

1812.120. Any untrue or misleading information, representation, notice or advertisement of the seller which has been received by or made to the buyer prior to his signing a contract for discount buying services shall render the contract for discount buying services void and unenforceable by the seller. No seller shall make or disseminate such information, representations, notices or advertisements. The phrase "untrue or misleading information, representation, notice, or advertisement" shall include any acts which constitute violations of Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. However, neither this section nor any other section of this title shall operate to exempt discount buying services from any other provisions of law, including the penalty provisions of Section 17536 of the Business and Professions Code and Section 3370.1 of this code.

(Added by Stats. 1976, Ch. 237.)

1812.121. (a) If a discount buying organization removes its place of business or, if it conducts business at more than one location, that place of business which is geographically closest to the buyer's residence indicated on the face of the contract, more than 20 miles farther from the buyer's residence than it was at the time the contract for discount buying services was entered into, the organization shall offer rescission and a pro rata refund to each buyer affected, based upon the amount of time for which the buyer has been a member of the organization.

(b) If a discount buying organization discontinues providing any category of goods or services disclosed in compliance with Section 1812.106 or otherwise represented to the buyer to be available at or before the buyer's signing of the contract for discount buying services, the organization shall offer rescission and a pro rata refund based upon the amount of time for which the buyer has been a member of the organization, to each buyer who was informed of the availability of the category of goods or services to be

discontinued and signed a contract for discount buying services within the six months immediately preceding the discontinuance of said category of goods or services.

(Added by Stats. 1976, Ch. 237.)

1812.122. Any transfer by a discount buying organization of its duty or obligation to provide services to buyers under its contracts for discount buying services to another individual, corporation, or other business entity, as a result of which a buyer shall have available substantially fewer goods and services, shall constitute a complete defense to an action for further enforcement of or collection on such a contract for discount buying services which may be asserted by any buyer who did not consent in writing, after a full and fair disclosure of the categories of goods and services to be provided by the new discount buying organization, to such transfer of the duty or obligation of performance, and shall entitle such a nonconsenting individual to rescind the contract and obtain a pro rata refund from the transferor.

(Added by Stats. 1976, Ch. 237.)

1812.123. (a) Any buyer injured by a violation of this title may bring an action for the recovery of damages and return of all moneys paid by the buyer to the seller. Judgment shall be entered for three times the amount at which the actual damages, plus such restitution, are assessed plus reasonable attorney's fees and costs. In the event that the court finds a violation of Section 1812.120 relating to untrue or misleading statements, judgment shall be entered for one thousand dollars (\$1,000) plus reasonable attorney's fees or three times the amount of actual damages plus restitution plus reasonable attorney's fees, whichever is greater.

(b) Notwithstanding any other provision of this title, any failure to comply with any provision of this title except Section 1812.120 may be corrected within 30 days after the execution of the contract by the buyer, and if so corrected, neither the seller nor his transferee shall be subject to any liability under this title except that of a suit for actual damages plus reasonable attorney's fees and costs, provided that any correction must be concurred in, in writing, by the buyer, or the contract shall be void and unenforceable by the seller, who shall forthwith tender to the buyer a full refund. "Transferee" includes holders and assignees.

(Added by Stats. 1976, Ch. 237.)

1812.125. (a) Any person who violates subdivision (b) or (c) of Section 1812.116 shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) for each violation, or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or imprisoned in a county jail for not more than one year, or be punished by both that fine and imprisonment.

(b) Any person who violates any other provision of this title shall be guilty of a misdemeanor.

(Amended by Stats. 2011, Ch. 15, Sec. 33. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

1812.126. The prohibitions of this title are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with any other applicable provision of law.

(Added by Stats. 1976, Ch. 237.)

1812.127. Any waiver by the buyer of the provisions of this title shall be deemed contrary to public policy and shall be void and unenforceable.

(Added by Stats. 1976, Ch. 237.)

1812.128. If any provision of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

(Added by Stats. 1976, Ch. 237.)

1812.129. (a) The Secretary of State shall enforce the provisions of this title that govern the filing and maintenance of bonds and deposits in lieu of bonds.

(b) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or the deposit in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

(Amended by Stats. 1998, Ch. 829, Sec. 10. Effective January 1, 1999.)