

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1338

92ND GENERAL ASSEMBLY

Reported from the Committee on Tourism and Cultural Affairs, February 25, 2004, with recommendation that the House Committee Substitute for House Bill No. 1338 Do Pass.

Taken up for Perfection March 1, 2004. House Committee Substitute for House Bill No. 1338 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

3949L.02P

AN ACT

To repeal sections 407.670 and 407.671, RSMo, and to enact in lieu thereof eight new sections relating to the buyers club law.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.670 and 407.671, RSMo, are repealed and eight new sections
2 enacted in lieu thereof, to be known as sections 407.670, 407.671, 407.682, 407.685, 407.688,
3 407.691, 407.694, and 407.699, to read as follows:

407.670. Sections 407.670 to [407.679] **407.694** shall be known and may be cited as the
2 "Buyers Club Law".

407.671. As used in sections 407.670 to [407.679] **407.694**, the following terms shall
2 mean:

3 (1) "Business day", any day other than a Saturday, Sunday, or legal holiday;

4 (2) "Buying service", "buying club", or "club", any person, corporation, partnership,
5 unincorporated association or other business enterprise operating for profit within the state of
6 Missouri, the primary purpose of which is to provide benefits to members from the cooperative
7 purchase of services or merchandise;

8 (3) "Buyer" or "member", any status by which any natural person is entitled to any of the
9 benefits of a discount buying organization;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

10 (4) "Claimant", any aggrieved consumer or business organization, but does not
11 include any political subdivision of the state;

12 (5) "Contract", any written agreement by which one becomes a member of a club;

13 [(5)] (6) "Prepayment", any payment greater than fifty dollars for service, merchandise
14 or membership made before any service or merchandise is rendered. Money received by a club
15 from a financial institution upon assignment of a contract shall be considered prepayment when
16 and to the extent the member is required to make prepayments to the financial institution
17 pursuant to the contract.

407.682. As used in sections 407.682 to 407.694, the term "travel club" means a for-
2 profit business that offers to provide in return for either an advance fee for membership
3 or an annual charge for membership of more than one hundred fifty dollars the privilege
4 for its members or participants to arrange or obtain for personal noncommercial use only
5 discounts on future travel services through or from the travel club. "Travel services"
6 means transportation by carrier, rental of motor vehicles, accommodations or lodging,
7 entertainment, sightseeing, or any service reasonably related to travel. For purposes of
8 sections 407.682 to 407.694, "travel services" shall not include the sale or promotion of any
9 timeshare plan or exchange program as those terms are defined in section 407.600.

407.685. 1. Any individual, corporation, association, cooperative, partnership,
2 limited liability partnership, or limited liability company, foreign or domestic, selling travel
3 club memberships in this state shall keep its registration or certificate of authority to do
4 business in this state with the secretary of state current and in good standing pursuant to
5 the applicable provisions of chapters 347, 351, 355, 356, 357, 358, and 359, RSMo.

6 2. Any person or entity engaged in the business of selling travel club memberships
7 in this state which is required to register a fictitious name pursuant to the provisions of
8 chapter 417, RSMo, shall keep the information on file with the secretary of state pursuant
9 to such registration current.

407.688. 1. Before entering into any contract or agreement to sell any membership
2 for a travel club or vacation club, a seller shall file and maintain with the office of the
3 attorney general a bond with corporate surety from a company authorized to transact
4 business in this state or a letter of credit from a bank insured by the Federal Deposit
5 Insurance Corporation in an amount to be determined by the attorney general before the
6 seller enters into any contract or agreement. Such bond or letter of credit shall be renewed
7 annually at the time of registration. The attorney general shall, by rule, determine the
8 amount of the bond or letter of credit based upon the number of active memberships in
9 Missouri. Until such time as the attorney general adopts a rule setting the amount of the
10 bond or letter of credit, a seller shall obtain an initial bond or letter of credit of fifty

11 thousand dollars under which the seller may sell the number of memberships up to the
12 equivalent coverage of the bond or letter of credit.

13 **2. At the time of the filing of the bond or letter of credit and upon each such**
14 **renewal, every seller of travel club memberships shall, using a form prescribed by the**
15 **attorney general, furnish the attorney general with the following information:**

16 **(1) Name of the company, including business address and phone number;**

17 **(2) Name or names of the principals of the business;**

18 **(3) Number of active memberships in Missouri; and**

19 **(4) Any other information that the attorney general deems reasonably necessary.**

20 **3. In lieu of the bond or letter of credit required by subsections 1 and 2 of this**
21 **section, a seller of travel club memberships shall provide annually to the attorney general**
22 **proof that it carries a current insurance policy insuring its customers against**
23 **nonperformance covering losses up to at least the same amount as provided in the bond or**
24 **letter of credit.**

25 **4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
26 **that is created under the authority delegated in this section shall become effective only if**
27 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
28 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
29 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
30 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
31 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
32 **adopted after August 28, 2004, shall be invalid and void.**

407.691. 1. The bond or letter of credit required by section 407.688 shall be in
2 **favor of the state of Missouri for the benefit of any claimant who suffers a loss as a result**
3 **of a violation of this chapter by a travel club.**

4 **2. No bond or letter of credit shall be cancelled or terminated except with the**
5 **consent of the attorney general.**

6 **3. The remedies available in this section are cumulative and in addition to any other**
7 **remedies available by law.**

407.694. Violation of any provision of sections 407.682 to 407.694 shall be deemed
2 **an unlawful merchandising practice pursuant to section 407.020 and shall be subject to all**
3 **penalties, remedies, and procedures provided in sections 407.010 to 407.145. The attorney**
4 **general shall have all powers, rights, and duties regarding violations of sections 407.682 to**
5 **407.694 as are provided in sections 407.010 to 407.145 and shall have the rulemaking**
6 **authority as provided in section 407.145.**

2 **407.699. 1. Any purchaser of a travel club membership may rescind such purchase**
3 **by giving written notice which is postmarked before midnight of the seventh business day**
4 **following the date on which the purchase was made except the seller shall provide a**
5 **confirmation number to the purchaser of a travel club membership within five business**
6 **days of such sale. If such confirmation number is not postmarked or electronically**
7 **confirmed prior to the fifth day of such sale, then the right of rescission for such customer's**
8 **purchase shall extend to the fourteenth business day following such purchase. Such**
9 **cancellation shall be without liability on the part of the purchaser and shall entitle the**
10 **purchaser to a refund of the entire consideration paid for the contract minus any**
11 **nonrefundable deposit that cannot be recovered from a travel services provider.**

12 **2. Notice of cancellation shall be in writing and delivered personally or by mail.**
13 **Any purchaser of membership in a travel club may rescind such purchase by giving**
14 **written notice which is postmarked before midnight of the seventh business day following**
15 **the date on which the purchase was made. If given by mail, the notice is effective upon**
16 **deposit in a mailbox, certified mail, return receipt requested, properly addressed and**
17 **postage paid. Notice of cancellation need not take a particular form and is sufficient if it**
18 **indicates, by any form of legible written expression, the intention of the purchaser not to**
19 **be bound by the contract. If delivered personally or electronically confirmed, the notice**
20 **is to be accepted by any agent or employee of the seller, and a receipt for the notice must**
21 **be given by that agent or employee to the person rescinding.**

22 **3. The entitled refund shall be delivered to the purchaser within thirty days after**
23 **notice of rescission is given.**

24 **4. Rights of rescission may not be waived or otherwise surrendered.**

25 **5. Rescission shall not relieve the purchaser from paying for any merchandise or**
services received prior to the date of rescission.