

FIRST REGULAR SESSION

HOUSE BILL NO. 562

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WOOD.

Read 1st time February 16, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1230L.02I

AN ACT

To repeal sections 407.670, 407.671, and 407.676, RSMo, and to enact in lieu thereof nine new sections relating to the buyers club law with an effective date.

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

Section A. Sections 407.670, 407.671, and 407.676, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 407.670, 407.671, 407.676, 407.682, 407.685, 407.688, 407.691, 407.694, and 407.699, to read as follows:

407.670. Sections 407.670 to [407.679] **407.699** shall be known and may be cited as the "Buyers **and Travel** Club Law".

407.671. As used in sections 407.670 to [407.679] **407.699**, the following terms shall mean:

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

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

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

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

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

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

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.

 407.676. 1. Sections 407.670 to 407.679 shall not apply to:

2 (1) Any buyers club in which the total consideration paid by each buyer in any manner
3 whatsoever for discount buying services does not exceed fifty dollars over the expected life of
4 the contract;

5 (2) Any buyers club in which persons receive discount buyer services incidentally as part
6 of a package of services provided to or available to such individual on account of his
7 membership in such organization, which is not organized for the profit of any person or
8 corporation or which does not have as one of its primary purposes or businesses the provisions
9 of discount buying services; [and]

10 (3) Any buyers club which files with the office of the attorney general a declaration,
11 executed under penalty of perjury by the owner or manager of such club, stating that the club
12 does not require, or in the ordinary course of business, receive prepayment; **and**

13 (4) **Any buyers club or travel club that itself has a class of securities that is**
14 **registered or exempt under 15 U.S.C. 781 or is a parent, direct or indirect subsidiary,**
15 **affiliate, division, or other unit of entity, which has a class of securities which is either**
16 **registered or exempt under 15 U.S.C. 781. However, any entity qualifying as exempt under**
17 **this subdivision, which but for this exemption would be considered to be selling travel club**
18 **memberships, shall be required to comply with the provisions of section 407.699.**

19 2. **Nothing in this section shall exempt the entities described in subsection 1 of this**
20 **section from any law prohibiting fraud.**

 407.682. **As used in sections 407.682 to 407.699, the term "travel club" means any**
2 **person, corporation, unincorporated association, or other organization that offers to**
3 **provide and sells in return for either an advance fee for membership or an annual charge**
4 **for membership of more than three hundred dollars the privilege for its members to**
5 **arrange or obtain for personal noncommercial use only discounts on future travel services**
6 **through or from the travel club. "Travel services" means transportation by carrier, rental**
7 **of motor vehicles, accommodations or lodging, entertainment, sightseeing, or any service**
8 **reasonably related to travel. For purposes of sections 407.682 to 407.699, "travel services"**
9 **shall not include:**

10 (1) **The sale of travel services or benefits in conjunction with activity regulated by**
11 **sections 407.600 to 407.630; or**

12 (2) The sale of travel services or benefits that do not entitle the purchaser to any
13 reoccurring right to occupy or otherwise use travel services and that are not sold to a
14 person in the form of a membership in any type of organization or club.

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 under the
5 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 under the provisions of chapter
8 417, RSMo, shall keep the information on file with the secretary of state under such
9 registration current.

10 **3.** Any travel club in existence as of the effective date of this section shall have
11 ninety days from such effective date to comply with the provisions of this section.

407.688. 1. Before entering into any contract or agreement to sell any membership
2 for a travel club, a seller shall file and maintain with the office of the attorney general a
3 bond with corporate surety from a company authorized to transact business in this state
4 or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in
5 the amount of one hundred thousand dollars. One bond, letter of credit, or other
6 acceptable financial assurance shall be required for each travel club seller. Such bond,
7 letter of credit, or other acceptable financial assurance shall be renewed annually. The
8 attorney general may require a travel club seller to increase the amount of the bond, letter
9 of credit, or other acceptable financial assurance if there are any claims filed against the
10 bond, letter of credit, or other acceptable financial assurance. Such increases shall not
11 exceed ten thousand dollars per instance of claim.

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

16 (1) Name of the seller of the travel club, including business address and phone
17 number;

18 (2) Name or names of the principals of the seller; and

19 (3) 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. The attorney general shall waive the bond, letter of credit, or other acceptable**
26 **financial assurance requirement on an annual basis if the travel club has contracted with**
27 **the Airlines Reporting Corporation for the most recent consecutive two years or more.**
28 **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is**
29 **created under the authority delegated in this section shall become effective only if it**
30 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
31 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
32 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
33 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
34 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
35 **adopted after August 28, 2005, shall be invalid and void.**

407.691. 1. The bond, letter of credit, or other acceptable financial assurance
2 **required by section 407.688 shall be in favor of the state of Missouri for the benefit of any**
3 **claimant who suffers a loss as a result of a violation of this chapter by a travel club.**
4 **Fourteen days prior to making a claim against the bond, letter of credit, or other assurance**
5 **for a violation of this chapter, the attorney general shall provide written notice to the travel**
6 **club in order to provide the travel club with an opportunity to cure the violation of this**
7 **chapter. The attorney general shall take no action against such travel club to enforce a**
8 **violation of this chapter until the fourteen-day period has expired.**

9 **2. No bond or letter of credit shall be cancelled or terminated except with the**
10 **consent of the attorney general. However, bonds or letters of credit may be withdrawn by**
11 **giving sixty days advance notice to the attorney general, thereby releasing the surety from**
12 **accruing future liability beyond the date of withdrawal. Any cancellation or termination**
13 **shall not relieve the surety company from any liability incurred prior to the termination**
14 **date unless the attorney general accepts or consents to a replacement bond. On or before**
15 **the effective date of the cancellation or termination of the bond, the travel club shall either**
16 **obtain a new bond which meets the requirements of section 407.688 and file a copy of the**
17 **new bond with the attorney general or provide other acceptable financial assurance as**
18 **provided in section 407.688.**

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

407.694. 1. Violation of any provision of sections 407.682 to 407.694 shall be
2 **deemed an unlawful merchandising practice under section 407.020 and shall be subject to**
3 **all penalties, remedies, and procedures provided in sections 407.010 to 407.145. The**

4 attorney general shall have all powers, rights, and duties regarding violations of sections
5 407.682 to 407.694 as are provided in sections 407.010 to 407.145 and shall have the
6 rulemaking authority as provided in section 407.145.

7 2. Any moneys collected from fines levied by the attorney general under this section
8 which are not used by the attorney general shall be deposited into the schools of the future
9 fund created under section 163.005, RSMo.

407.699. 1. A seller of a travel club membership shall deliver a fully completed
2 contract to the purchaser at the time the contract is signed. Every contract shall constitute
3 the entire agreement between seller and member, shall be in writing, shall be signed by the
4 member, shall designate the date on which the member signed the contract and shall state,
5 clearly and conspicuously, in boldface type of at least ten points, in immediate proximity
6 to the space reserved for the signature of the purchaser, the following or substantially
7 similar language:

8 **MEMBER'S RIGHT TO CANCEL:**

9 **ANY PURCHASER OF A TRAVEL CLUB MEMBERSHIP MAY CANCEL**
10 **SUCH PURCHASE BY GIVING WRITTEN NOTICE WHICH IS DELIVERED**
11 **PERSONALLY OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO**
12 **THE ADDRESS IN THIS CONTRACT, AND PERSONALLY DELIVERED OR**
13 **POSTMARKED BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY FOLLOWING**
14 **THE DATE ON WHICH THE PURCHASE WAS MADE. HOWEVER, THE SELLER**
15 **SHALL PROVIDE A CONFIRMATION NUMBER TO THE PURCHASER OF A**
16 **TRAVEL CLUB MEMBERSHIP WITHIN THREE BUSINESS DAYS OF SUCH SALE.**
17 **IF SUCH CONFIRMATION NUMBER IS NOT POSTMARKED PRIOR TO THE**
18 **THIRD DAY OF SUCH SALE, THEN THE RIGHT OF CANCELLATION FOR SUCH**
19 **CUSTOMER'S PURCHASE SHALL EXTEND TO THE FOURTEENTH BUSINESS**
20 **DAY FOLLOWING SUCH PURCHASE. SUCH CANCELLATION SHALL BE**
21 **WITHOUT LIABILITY ON THE PART OF THE PURCHASER AND SHALL ENTITLE**
22 **THE PURCHASER TO A REFUND OF THE ENTIRE CONSIDERATION PAID FOR**
23 **THE CONTRACT MINUS ANY NONREFUNDABLE DEPOSIT THAT CANNOT BE**
24 **RECOVERED FROM A THIRD-PARTY TRAVEL SERVICES PROVIDER OR OTHER**
25 **PAYMENT FOR NONREFUNDABLE SERVICES OF A THIRD-PARTY TRAVEL**
26 **SERVICES PROVIDER OR FOR ANY TRAVEL SERVICES UTILIZED BY THE**
27 **PURCHASER. PURCHASER MUST RETURN ALL MATERIALS DELIVERED TO**
28 **THE PURCHASER ALONG WITH THE NOTICE OF CANCELLATION.**

29 2. Notice of cancellation shall be in writing and delivered personally or by mail to
30 the address stated in the contract. Any purchaser of membership in a travel club may

31 **cancel such purchase by giving written notice which is postmarked before midnight of the**
32 **third business day following the date on which the purchase was made. If given by mail,**
33 **the notice is effective upon the date it is postmarked, certified mail, return receipt**
34 **requested, properly addressed and postage paid. Notice of cancellation need not take a**
35 **particular form and is sufficient if it indicates, by any form of legible written expression,**
36 **the intention of the purchaser not to be bound by the contract. If delivered personally, the**
37 **notice is to be accepted by any agent or employee of the seller at the address stated in the**
38 **contract, and a receipt for the notice shall be given by that agent or employee to the person**
39 **rescinding.**

40 **3. The entitled refund shall be delivered to the purchaser within thirty days after**
41 **notice of cancellation is received by the seller. However, the travel club may retain**
42 **payments made for specific third-party travel services utilized by the purchaser.**

43 **4. Rights of cancellation shall not be waived or otherwise surrendered.**

44 **5. Cancellation of a travel club membership shall not relieve the purchaser from**
45 **paying for any travel services received or travel services booked with a third-party**
46 **provider, disclosed as nonrefundable prior to the date of cancellation, and which funds**
47 **cannot be recovered by the seller.**

Section B. Section A of this act shall become effective January 1, 2006.