

Buying Clubs

- [37-26-1](#) Definition of terms.
- [37-26-2](#) Fraudulent offer or sale of membership as felony.
- [37-26-3](#) Bond required of buying club--Amount.
- [37-26-4](#) Loss covered by bond--Filing and approval of bond--Action on bond.
- [37-26-5](#) Liability of surety limited to amount of bond.
- [37-26-6](#) Exemption from bond requirements of clubs not receiving prepayment--Declaration filed.
- [37-26-7](#) Violation of chapter as felony.
- [37-26-8](#) Punishment under other criminal laws not prevented by chapter.
- [37-26-9](#) Consumer protection avoidance period provisions applied.
- [37-26-10](#) Civil action for damages from violation of chapter--Equitable relief.
- [37-26-11](#) Attorney general's action for injunctive relief--Recovery of penalty for state--Maximum amount--Receivership--Disposition of civil penalties.

37-26-1. Definition of terms.

Terms used throughout this chapter unless the context plainly requires otherwise shall mean:

- (1) "Buying club," any corporation, partnership, unincorporated association, or other business enterprise organized with the primary purpose of providing benefits to members from the cooperative purchase of services or merchandise;
- (2) "Club," any buying club;
- (3) "Contract," any written agreement by which one becomes a member of a club;
- (4) "Member," any status by which any natural person is entitled to any of the benefits of a club;
- (5) "Prepayment," any payment greater than twenty-five dollars for service, merchandise or membership made before the service is rendered. Money received by a club from a financial institution upon assignment of a contract shall be considered prepayment when and to the extent the member is required to make prepayments to the financial institution pursuant to the contract.

Source: SL 1975, ch 246, § 1.

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37-26-2. Fraudulent offer or sale of membership as felony.

Any person who employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any membership or engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any membership is guilty of a Class 5 felony.

Source: SL 1975, ch 246, § 14; SL 1977, ch 190, § 297.

37-26-3. Bond required of buying club--Amount.

Every buying club shall maintain a cash bond or a bond issued by a surety company licensed to do business in this state in the penal sum of one hundred thousand dollars.

Source: SL 1975, ch 246, § 6.

37-26-4. Loss covered by bond--Filing and approval of bond--Action on bond.

The bond required by § [37-26-3](#) shall be in favor of the state for the benefit of any member who suffers loss of any prepayment made pursuant to a contract entered into after March 27, 1975, due to insolvency of the club or the cessation of business by the club. The bond shall be filed with, and approved by, the attorney general. Any person claiming against the bond may maintain an action at law against the club and the surety.

Source: SL 1975, ch 246, § 8; SL 1987, ch 29, § 52.

37-26-5. Liability of surety limited to amount of bond.

The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond.

Source: SL 1975, ch 246, § 9.

37-26-6. Exemption from bond requirements of clubs not receiving prepayment--Declaration filed.

Sections [37-26-3](#) to [37-26-5](#), inclusive, do not apply to any club which files a declaration, executed under penalty of perjury by the owner or manager of such club, with the attorney general stating that the club does not require, or in the ordinary course of business, receive prepayment.

Source: SL 1975, ch 246, § 10; SL 1987, ch 29, § 53.

37-26-7. Violation of chapter as felony.

Any person who intentionally violates any provisions of this chapter which is not otherwise classified is guilty of a Class 5 felony.

Source: SL 1975, ch 246, § 13; SL 1977, ch 190, § 298.

37-26-8. Punishment under other criminal laws not prevented by chapter.

Nothing in this chapter shall limit the power of this state to punish any person for any conduct which constitutes a crime under any other statute.

Source: SL 1975, ch 246, § 15.

37-26-9. Consumer protection avoidance period provisions applied.

Notwithstanding any other provision of law, the avoidance period provisions as provided for in chapter [37-24](#) are applicable to contracts for membership under this chapter.

Source: SL 1975, ch 246, § 2.

37-26-10. Civil action for damages from violation of chapter--Equitable relief.

In addition to the remedies otherwise provided by law, any person damaged by a violation of any of the provisions of this chapter may bring a civil action and recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

Source: SL 1975, ch 246, § 12.

37-26-11. Attorney general's action for injunctive relief--Recovery of penalty for state--Maximum amount--Receivership--Disposition of civil penalties.

The attorney general shall investigate violations of this chapter. If, from information in his possession there are reasonable grounds to believe that any person has violated or is about to violate any provisions of this chapter, or that any club is insolvent, the attorney general shall on behalf of the state, sue for and seek injunctive relief against any such violations or threatened violations. The attorney general shall also sue for and recover for the state, from any person who is found to have violated any provision of this chapter, a civil penalty, in an amount to be determined by the court, not in excess of twenty-five thousand dollars. If a club has failed to maintain the bond required by this chapter, or is insolvent or in imminent danger of insolvency, the attorney general shall sue for and have an order appointing a receiver for the property, assets, business and affairs of the club. All civil penalties recovered under this section shall be deposited in the general fund of the state treasury.

Source: SL 1975, ch 246, § 11; SL 1987, ch 29, § 54.