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SENATE BILL NO. 44—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 10, 2005

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Referred to Committee on Commerce and Labor

**SUMMARY**—Revises provisions regulating organizations for buying goods or services at discount. (BDR 52-763)

**FISCAL NOTE:** Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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**AN ACT** relating to trade practices; revising provisions regulating organizations for buying goods or services at a discount; authorizing a parent business entity to serve as a trustee, under certain circumstances, for trust accounts maintained by its affiliate organizations; requiring such a parent to post additional security for the protection of buyers who are members of the affiliate organizations; providing an alternative method for trustees of such affiliate organizations to withdraw money from certain trust accounts; requiring that the membership contract between a buyer and an organization clearly specify certain of the buyer's rights and the conditions and limitations on those rights; revising provisions that authorize a buyer to rescind his membership contract if the organization moves its place of business beyond a certain distance; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law regulates buying clubs that require a person to enter into a  
2 membership contract to buy goods or services at a discount. (NRS 598.840-  
3 598.930) Existing law requires a buying club to have a trust account for the  
4 member's payments under the membership contract. (NRS 598.855) Existing law  
5 also requires the buying club to have a trust account for payments made by  
6 members to buy goods or services. (NRS 598.860) These trust accounts must  
7 be administered by an independent trustee approved by the Commissioner of  
8 the Consumer Affairs Division of the Department of Business and Industry.  
9 (NRS 598.865)



10 This bill allows a buying club that is an affiliate of a parent business entity to  
11 authorize its parent to serve as the trustee of the buying club's trust accounts. To  
12 qualify as the trustee, the parent must have owned, operated, controlled or granted  
13 franchises to at least 15 buying clubs for a consecutive period of 5 years or more.  
14 The parent must also post security with the Consumer Affairs Division in the  
15 amount of \$250,000. The security is held for the benefit of any member who is  
16 harmed by the failure of the affiliate buying club to comply with the laws  
17 governing buying clubs, the terms of the membership contract or the terms of any  
18 contract for the purchase of goods or services. This security is in addition to the  
19 \$50,000 security that the affiliate buying club must post with the Consumer Affairs  
20 Division under existing law. (NRS 598.851)

21 Existing law provides that a member of a buying club may not be required to  
22 make payments under the membership contract for more than 2 years after the  
23 contract is signed. (NRS 598.880) Existing law also provides that the trustee must  
24 distribute one-quarter of the member's payments to the buying club during each  
25 quarter of the term of the membership contract. (NRS 598.855)

26 This bill establishes an alternative method for distributing the member's  
27 payments to the buying club if the parent of the buying club has met the  
28 requirements to serve as the trustee. Under the alternative method, the trustee must  
29 distribute not more than one-half of the member's payments to the buying club  
30 during the first quarter of the term of the membership contract. During the second  
31 quarter, the trustee must distribute the remaining balance of the member's  
32 payments to the buying club.

33 Existing law requires the membership contract to contain certain information  
34 and disclosures. The membership contract must also clearly specify certain of the  
35 member's rights under the laws governing buying clubs. (NRS 598.875)

36 This bill requires the membership contract to clearly specify the member's right  
37 to rescind the contract under certain circumstances and his right to receive a refund  
38 on the purchase of goods under certain circumstances. The membership contract  
39 must also clearly specify whether the member is given any other rights to a refund  
40 and whether there are any conditions and limitations on those rights.

41 Existing law allows a member to rescind the membership contract if the buying  
42 club moves its place of business that was closest to the member's residence more  
43 than 20 miles farther from the member's residence. (NRS 598.910) This bill does  
44 not allow the member to rescind the membership contract under such circumstances  
45 if: (1) the buying club offers a substantially equivalent at-home ordering service via  
46 the Internet or another generally available channel of communication; (2) the at-  
47 home ordering service offers the same categories of goods and services; and (3) any  
48 goods ordered by the member are shipped, at the election of the member, to either  
49 the member's residence or a freight receiver within 20 miles of the member's  
50 residence.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 598.840 is hereby amended to read as follows:  
2 598.840 As used in NRS 598.840 to 598.930, inclusive, unless  
3 the context otherwise requires:

4 1. *"Affiliate organization" means an organization for buying*  
5 *goods or services at a discount that:*

6 (a) *Is a subsidiary of a parent business entity; or*



1       ***(b) Operates under a franchise granted by a parent business***  
2 ***entity.***

3       ***2.*** “Business day” means any calendar day except Sunday, or  
4 the following business holidays: New Year’s Day, Martin Luther  
5 King, Jr.’s Birthday, Washington’s Birthday, Memorial Day,  
6 Independence Day, Labor Day, Nevada Day, Veterans’ Day,  
7 Thanksgiving Day and Christmas Day.

8       ~~***3.***~~ “Buyer” means a person who purchases by contract a  
9 membership in an organization for buying goods or services at a  
10 discount.

11       ~~***3.***~~ ***4.*** “Commissioner” means the Commissioner of the  
12 Consumer Affairs Division . ~~***of the Department of Business and***~~  
13 ~~***Industry.***~~

14       ~~***4.***~~ ***5.*** “Consumer Affairs Division” means the Consumer  
15 Affairs Division of the Department of Business and Industry.

16       ***6.*** “Franchise” has the meaning ascribed to it in 16 C.F.R. §  
17 ***436.2, as amended or substituted in revision by the Federal Trade***  
18 ***Commission.***

19       ***7.*** “Organization for buying goods or services at a discount” or  
20 “organization” means a person who, for a consideration, provides  
21 or claims to provide a buyer with the ability to purchase goods or  
22 services at a price which is represented to be lower than the price  
23 generally charged in the area. ***The term includes, without***  
24 ***limitation, an affiliate organization.***

25       ***8.*** “Parent business entity” or “parent” means any business  
26 entity that, directly or indirectly, has owned, operated, controlled  
27 or granted franchises to, in any combination thereof, at least 15  
28 organizations or affiliate organizations for a consecutive period of  
29 5 years or more.

30       ***9.*** “Subsidiary” means an organization for buying goods or  
31 services at a discount that is owned, operated or controlled, either  
32 directly or indirectly or in whole or in part, by a parent business  
33 entity.

34       **Sec. 2.** NRS 598.851 is hereby amended to read as follows:

35       598.851 Before advertising its services or conducting business  
36 in this State, an organization for buying goods or services at a  
37 discount must register pursuant to NRS 598.721 and post security in  
38 the amount of \$50,000 with the Consumer Affairs Division ~~***of the***~~  
39 ~~***Department of Business and Industry***~~ pursuant to NRS 598.726.  
40 The security must be conditioned on compliance by the organization  
41 with the provisions of NRS 598.840 to 598.930, inclusive, ~~***and this***~~  
42 ~~***section, and***~~ the terms of the ***buyer’s contract for membership in***  
43 ***the organization and the terms of any contract*** with the buyer ~~***for***~~  
44 ***for the purchase of goods or services.***



1       **Sec. 3.** NRS 598.855 is hereby amended to read as follows:

2       598.855 1. Before the organization receives any money from  
3 any buyer pursuant to a contract for membership in the organization,  
4 it shall establish a trust account for payments on contracts at a  
5 financial institution that is federally insured or insured by a private  
6 insurer approved pursuant to NRS 678.755. Each payment from a  
7 buyer for his contract for membership , except for \$50 of the first  
8 payment, must be deposited in the *trust* account. ~~[During]~~

9       2. *Except as otherwise provided in subsection 3, during* each  
10 quarter of the term of a *buyer's* contract or each 6 months,  
11 whichever *period* is shorter, the trustee shall withdraw one - quarter  
12 of the buyer's payments *under the contract* from the *trust* account  
13 and pay the amount to the organization.

14       ~~[2-]~~ 3. *If an affiliate organization obtains the express consent*  
15 *of its parent and the parent posts the security required by*  
16 *subsection 4, the affiliate organization may:*

17       (a) *Authorize the parent to serve as the trustee pursuant to*  
18 *NRS 598.865 for the trust accounts required by this section and*  
19 *NRS 598.860; and*

20       (b) *Authorize the trustee to make the following withdrawals*  
21 *from the trust account required by this section:*

22       (1) *During the first quarter of the term of a buyer's*  
23 *contract or the first 6 months, whichever period is shorter, the*  
24 *trustee shall withdraw not more than one-half of the buyer's*  
25 *payments under the contract from the trust account and pay the*  
26 *amount to the affiliate organization; and*

27       (2) *During the second quarter of the term of the buyer's*  
28 *contract or the second 6 months, whichever period is shorter, the*  
29 *trustee shall withdraw the remaining balance of the buyer's*  
30 *payments under the contract from the trust account and pay the*  
31 *amount to the affiliate organization.*

32       4. *Before a trustee may withdraw money from a trust account*  
33 *pursuant to subsection 3, the parent must post security in the*  
34 *amount of \$250,000 with the Consumer Affairs Division pursuant*  
35 *to NRS 598.726. The security posted by the parent:*

36       (a) *Provides coverage for all of the parent's affiliate*  
37 *organizations that are authorized to act pursuant to subsection 3;*

38       (b) *Must be conditioned on compliance by such an affiliate*  
39 *organization with the provisions of NRS 598.840 to 598.930,*  
40 *inclusive, the terms of the buyer's contract for membership in the*  
41 *affiliate organization and the terms of any contract with the buyer*  
42 *for the purchase of goods or services; and*

43       (c) *May be used to pay a claim against such an affiliate*  
44 *organization only if the security posted by the affiliate*  
45 *organization pursuant to NRS 598.851 has been exhausted.*



1       **5.** If the organization sells, transfers or assigns the contract  
2 with the buyer to a third party, and the third party gives reasonable  
3 consideration for the contract, the organization shall deposit the  
4 consideration in the trust account. If the third party does not give  
5 reasonable consideration for the contract, the organization shall  
6 deposit all payments on the contract from the buyer in the  
7 organization's trust account for payments on the contract.

8       **Sec. 4.** NRS 598.865 is hereby amended to read as follows:

9       598.865 1. ~~The~~ *Except as otherwise provided in subsection*  
10 *3 of NRS 598.855, the* trust accounts required by NRS 598.855 and  
11 598.860 must be administered by an independent trustee approved  
12 by the Commissioner. All fees charged by the trustee to administer  
13 ~~an~~ *a trust* account must be paid by the organization.

14       2. The trustee shall withdraw money from the trust account for  
15 payments on goods or services only upon written proof from the  
16 source of the goods or services that the items have been shipped or  
17 delivered to the buyer. The Commissioner may audit the trustee as  
18 necessary to ensure compliance with NRS 598.840 to 598.930,  
19 inclusive.

20       **Sec. 5.** NRS 598.875 is hereby amended to read as follows:

21       598.875 Each contract for membership in an organization  
22 must:

23       1. Be in writing, legible and have all spaces filled in before the  
24 buyer signs it;

25       2. Be in the language in which the sales presentation was  
26 given;

27       3. Contain the addresses of the buyer and the organization;

28       4. Be given to the buyer when he signs it;

29       5. Disclose that the security required by NRS 598.726 ,  
30 *598.851 and, if applicable, NRS 598.855* has been obtained and  
31 deposited with the ~~Commissioner;~~ *Consumer Affairs Division;*

32       6. Specify the term of the membership of the buyer, which may  
33 not be measured by the buyer's life; ~~and~~

34       7. Clearly specify the buyer's right to cancel the contract  
35 pursuant to NRS 598.885 ~~;~~;

36       8. *Clearly specify the buyer's right to rescind the contract and*  
37 *to be given a refund pro rata pursuant to NRS 598.910 and the*  
38 *conditions and limitations on that right;*

39       9. *Clearly specify the buyer's right to a refund on the*  
40 *purchase of goods pursuant to NRS 598.895 and the conditions*  
41 *and limitations on that right; and*

42       10. *Clearly specify whether or not the buyer is given any*  
43 *other rights to a refund on the purchase of goods or services and,*  
44 *if so, any conditions and limitations on those rights.*



1 **Sec. 6.** NRS 598.910 is hereby amended to read as follows:

2 598.910 1. If an organization transfers its obligation to  
3 provide goods or services to a buyer to another organization which  
4 provides substantially fewer goods or services, the buyer may  
5 consent to the transfer in writing after a full disclosure to him of the  
6 goods and services to be provided by the new organization. If a  
7 buyer does not consent, his contract is rescinded, and he must be  
8 given a refund pro rata based on the amount of time he was a  
9 member of the organization.

10 2. The buyer may rescind the contract and the organization  
11 shall give him a refund pro rata based on the amount of time he was  
12 a member ~~[-, if:~~

13 ~~—(a) The]~~ of the organization if any of the following  
14 circumstances occur:

15 (a) *Except as otherwise provided in this paragraph, the*  
16 organization moves its place of business which is geographically  
17 closest to the buyer's residence , as indicated in the contract, more  
18 than 20 miles farther from the buyer's residence than it was when  
19 the contract for membership was signed . ~~[-or]~~ *The provisions of*  
20 *this paragraph do not apply if:*

21 (1) *The organization offers the buyer a substantially*  
22 *equivalent at-home ordering service through at least one other*  
23 *generally available channel of communication, including, without*  
24 *limitation, the Internet;*

25 (2) *The at-home ordering service offers the same categories*  
26 *of goods and services provided by the organization at the time the*  
27 *organization moves its place of business; and*

28 (3) *Any goods ordered by the buyer through the at-home*  
29 *ordering service are shipped, at the election of the buyer, to either*  
30 *the buyer's residence, as indicated in the contract, or a freight*  
31 *receiver within 20 miles of that residence.*

32 (b) Within 6 months after the contract for membership was  
33 signed, the organization stops providing any category of goods or  
34 services represented to the buyer to be available when he signed the  
35 contract.





