

SENATE BILL NO. 44—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 10, 2005

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.

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; revising provisions that authorize a buyer who is a member of an organization to rescind his contract if the organization moves its place of business beyond a certain distance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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

This bill allows a buying club that is an affiliate of a parent business entity to authorize its parent to serve as the trustee of the buying club's trust accounts. To qualify as the trustee, the parent must have owned, operated, controlled or granted



franchises to at least 25 buying clubs for a consecutive period of 10 years or more. The parent must also post security with the Consumer Affairs Division in the aggregate amount of \$250,000. The security is held for the benefit of any member who is harmed by the failure of the affiliate buying club to comply with the membership contract. This security is in addition to the \$50,000 security that the affiliate buying club must post with the Consumer Affairs Division under existing law. (NRS 598.851)

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

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

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

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

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

1. *“Affiliate organization” means an organization for buying goods or services at a discount that:*

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

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

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

~~2-1~~ 3. “Buyer” means a person who purchases by contract a membership in an organization for buying goods or services at a discount.



1 ~~[3.]~~ 4. "Commissioner" means the Commissioner of the
2 Consumer Affairs Division . ~~[of the Department of Business and~~
3 ~~Industry.~~

4 ~~—4.]~~ 5. *"Consumer Affairs Division" means the Consumer*
5 *Affairs Division of the Department of Business and Industry.*

6 6. *"Franchise" has the meaning ascribed to it in 16 C.F.R. §*
7 *436.2.*

8 7. "Organization for buying goods or services at a discount" or
9 "organization" means a person who, for a consideration, provides
10 or claims to provide a buyer with the ability to purchase goods or
11 services at a price which is represented to be lower than the price
12 generally charged in the area. *The term includes, without*
13 *limitation, an affiliate organization.*

14 8. *"Parent business entity" or "parent" means any business*
15 *entity that, directly or indirectly, has owned, operated, controlled*
16 *or granted franchises to, in any combination thereof, at least 25*
17 *organizations or affiliate organizations for a consecutive period of*
18 *10 years or more.*

19 9. *"Subsidiary" means an organization for buying goods or*
20 *services at a discount that is owned, operated or controlled, either*
21 *directly or indirectly or in whole or in part, by a parent business*
22 *entity.*

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

24 598.851 Before advertising its services or conducting business
25 in this State, an organization for buying goods or services at a
26 discount must register pursuant to NRS 598.721 and post security in
27 the amount of \$50,000 with the Consumer Affairs Division ~~[of the~~
28 ~~Department of Business and Industry]~~ pursuant to NRS 598.726.
29 The security must be conditioned on compliance by the organization
30 with the provisions of NRS 598.840 to 598.930, inclusive, ~~[and this~~
31 ~~section.]~~ and the terms of the contract with the buyer.

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

33 598.855 1. Before the organization receives any money from
34 any buyer pursuant to a contract for membership in the organization,
35 it shall establish a trust account for payments on contracts at a
36 financial institution that is federally insured or insured by a private
37 insurer approved pursuant to NRS 678.755. Each payment from a
38 buyer for his contract for membership , except for \$50 of the first
39 payment, must be deposited in the *trust* account. ~~[During]~~

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



1 ~~[2-]~~ 3. *If an affiliate organization obtains the express consent*
2 *of its parent and the parent posts the security required by*
3 *subsection 4, the affiliate organization may:*

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

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

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

14 (2) *During the second quarter of the term of the buyer's*
15 *contract or the second 6 months, whichever period is shorter, the*
16 *trustee shall withdraw the remaining balance of the buyer's*
17 *payments under the contract from the trust account and pay the*
18 *amount to the affiliate organization.*

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

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

25 (b) *Must be held in trust for the benefit of any buyer harmed*
26 *by the failure of such an affiliate organization to comply with the*
27 *terms of the buyer's contract for membership in the affiliate*
28 *organization; and*

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

32 5. *If the organization sells, transfers or assigns the contract*
33 *with the buyer to a third party, and the third party gives reasonable*
34 *consideration for the contract, the organization shall deposit the*
35 *consideration in the trust account. If the third party does not give*
36 *reasonable consideration for the contract, the organization shall*
37 *deposit all payments on the contract from the buyer in the*
38 *organization's trust account for payments on the contract.*

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

40 598.865 1. ~~[The]~~ *Except as otherwise provided in subsection*
41 *3 of NRS 598.855, the trust accounts required by NRS 598.855 and*
42 *598.860 must be administered by an independent trustee approved*
43 *by the Commissioner. All fees charged by the trustee to administer*
44 ~~[an]~~ *a trust account must be paid by the organization.*



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

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

598.875 Each contract for membership in an organization must:

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

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

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

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

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

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

7. Clearly specify the buyer's right to cancel the contract pursuant to NRS 598.885.

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

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

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

~~—(a) The}~~ *of the organization if any of the following circumstances occur:*

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

(1) The organization offers the buyer a substantially equivalent at-home ordering service through at least one other



1 *generally available channel of communication, including, without*
2 *limitation, the Internet;*

3 (2) *The at-home ordering service offers the same categories*
4 *of goods and services provided by the organization at the time the*
5 *buyer signed the contract for membership; and*

6 (3) *Any goods ordered by the buyer through the at-home*
7 *ordering service are shipped to the buyer's residence, as indicated*
8 *in the contract, or to a freight receiver within 20 miles of that*
9 *residence.*

10 (b) Within 6 months after the contract for membership was
11 signed, the organization stops providing any category of goods or
12 services represented to the buyer to be available when he signed the
13 contract.



