

Stricken language would be deleted from and underlined language would be added to present law.
Act 340 of the Regular Session

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S2/6/19 H2/20/19
A Bill

SENATE BILL 176

By: Senator T. Garner

By: Representative McCollum

For An Act To Be Entitled

AN ACT TO AMEND THE REGULATION OF PYRAMIDING DEVICES
AND TO REGULATE THE PYRAMID PROMOTIONAL SCHEMES; AND
FOR OTHER PURPOSES.

Subtitle

TO AMEND THE REGULATION OF PYRAMIDING
DEVICES AND TO REGULATE THE PYRAMID
PROMOTIONAL SCHEMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-88-109 is amended to read as follows:

4-88-109. ~~Pyramiding devices~~ Prohibition of pyramid promotional schemes.

(a) ~~Every~~ A person who ~~contrives, prepares, sets up, proposes, or operates~~ promotes any ~~pyramiding device~~ pyramid promotional scheme shall be ~~guilty of~~ engages in an unlawful practice.

(b)~~(1)~~ As used in this section, ~~a pyramiding device shall mean any scheme whereby a participant pays valuable consideration for the chance to receive compensation primarily from introducing one (1) or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.~~

(1) "Bona fide inventory repurchase program" means a program through which an entity repurchases from an independent salesperson current and marketable inventory in possession of the independent salesperson, upon



request and upon commercially reasonable terms, when the independent salesperson's business relationship with the entity is terminated;

(2) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months after the date of purchase at not less than ninety percent (90%) of the original net cost, less appropriate set-offs and legal claims, if any;

~~(3) "Compensation", as used in this section, does not mean or include payment based upon sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme~~
means a payment of any money, a thing of value, or financial benefit conferred in return for inducing another person to participate in a pyramid promotional scheme;

(4)(A) "Consideration" means the payment of cash or the purchase of goods, services, or intangible property.

(B) "Consideration" does not include:

(i) The purchase of goods or services furnished at cost to be used in making sales and not for resale;

(ii) Time and effort spent in pursuit of sales or recruiting activities; or

(iii) Payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(5) "Inventory" means goods and services, including company-produced promotional materials, sales aids, and sales kits that an entity requires independent salespersons to purchase;

(6) "Inventory loading" means the requirement or encouragement by a plan or operation that its independent salesperson purchase inventory in an amount that exceeds the amount that the independent salesperson can expect to resell for ultimate consumption, or to use or consume in a reasonable time period, or both;

(7) "Person" means an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity;

(8) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme; and

(9)(A) "Pyramid promotional scheme" means any plan or operation

through which a person gives consideration for the opportunity to receive compensation primarily from the introduction of other persons into the plan or operation rather than from the sale and consumption of goods, services, or intangible property by a participant or other persons introduced into the plan or operation.

(B) "Pyramid promotional scheme" includes any plan or operation that limits the number of participants either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, and includes any plan or operation under which a person, on giving any consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

(c)(1) This section does not prohibit a plan or operation, or define a plan or operation as a pyramid promotional scheme, if all of the following occur:

(A) The participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale;

(B) The plan or operation does not require inventory loading; and

(C) The plan or operation implements a bona fide inventory repurchase program.

(2)(A) An entity shall clearly describe a bona fide inventory repurchase program in an entity's recruiting literature, sales manual, or contracts with independent salespersons.

(B) The recruiting literature, sales manual, or contracts shall disclose any inventory that is not eligible for repurchase under the bona fide inventory repurchase program.

(3) A bona fide inventory repurchase program is not required to apply to inventory that is no longer within the inventory's commercially reasonable use or shelf life period or has been used or opened.

(d) Before an independent salesperson of an entity purchases inventory, the entity shall clearly document the inventory that is excluded from the bona fide inventory repurchase program as "seasonal", "discontinued", or "special promotion products" and indicate that the

inventory is not subject to the bona fide inventory repurchase program.

/s/T. Garner

APPROVED: 3/7/19