

1 State of Arkansas *As Engrossed: S2/6/19 H2/20/19*

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

SENATE BILL 176

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5 By: Senator T. Garner

6 *By: Representative McCollum*

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## For An Act To Be Entitled

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

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## Subtitle

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

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

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

23 4-88-109. ~~Pyramiding devices~~ Prohibition of pyramid promotional  
24 schemes.

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

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

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



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

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

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

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

15 (B) "Consideration" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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*/s/T. Garner*

**APPROVED: 3/7/19**