Stricken language would be deleted from and underlined language would be added to present law.

Act 340 of the Regular Session

State of Arkansas  
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:

(a) Every 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