

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 123

SENATOR TRUMP, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 21, 2020]

1 A BILL to amend and reenact §47-15-1 and §47-15-2 of the Code of West Virginia, 1931, as
2 amended, all relating to pyramid promotional schemes; defining terms; prohibiting pyramid
3 promotional schemes; allowing certain plans or operations which do not cause inventory
4 loading and implement a bona fide inventory repurchase program; specifying
5 requirements for recruiting literature, sales manuals, and contracts; providing that a bona
6 fide inventory repurchase program is not required to apply to certain inventory; requiring
7 certain disclosures; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. PYRAMID PROMOTIONAL SCHEME.

§47-15-1. Definitions.

1 ~~(a) "Pyramid promotional scheme" shall mean the organization of any chain letter club,~~
2 ~~pyramid club, or other group organized or brought together under any plan or device whereby~~
3 ~~fees or dues or anything of material value to be paid or given by members thereof are to be paid~~
4 ~~or given to any other member thereof, which plan or device includes any provision for the increase~~
5 ~~in such membership through a chain process of any members securing other new members and~~
6 ~~thereby advancing themselves in the group to a position where such members in turn receive~~
7 ~~fees, dues or things of material value from other members.~~

8 ~~(b) "Promote" or "promotion" shall mean the initiation, preparation, operation,~~
9 ~~advertisement, or the recruitment of any person or persons in the furtherance of any pyramid~~
10 ~~promotional scheme as defined in subsection (a) of this section~~

11 (a) "Bona fide inventory repurchase program" means a program by which a person
12 repurchases from a salesperson current and marketable inventory in the possession of the
13 salesperson, upon request and upon commercially reasonable terms, when the salesperson's
14 business relationship with the person is terminated.

15 (b) "Commercially reasonable terms" means the repurchase of current and marketable
16 inventory within 12 months after the date of purchase at not less than 90 percent of the original

17 net cost, less appropriate set-offs and legal claims, if any.

18 (c) "Compensation" means a payment of any money, thing of value, or financial benefit
19 conferred in return for inducing another person to participate in a pyramid promotional scheme.

20 (d) "Consideration" means the payment of cash or the purchase of goods, services, or
21 intangible property. The term does not include the purchase of goods or services furnished at cost
22 to be used in making sales and not for resale, or time and effort spent in pursuit of sales or
23 recruiting activities.

24 (e) "Inventory" includes both goods and services, including company-produced
25 promotional materials, sales aids, and sales kits that a person requires independent salespersons
26 to purchase.

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

31 (g) "Primarily" means that the annual compensation received by a person from the
32 recruitment of others to participate in the plan or operation exceeds 15 percent of the total annual
33 compensation received by a person from the plan or operation;

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

36 (i) "Pyramid promotional scheme" means any plan or operation wherein a person pays
37 consideration for the chance or opportunity to receive compensation that is primarily derived from
38 the recruitment of others into the plan or operation rather than from the sale, consumption, or use
39 of products or services.

§47-15-2. Unlawful act.

40 ~~No person shall promote any pyramid promotional scheme, either personally or through~~
41 ~~an agent or agents~~

42 (a) A person may not knowingly establish, promote, or operate a pyramid promotional
43 scheme.

44 (b) This article may not be construed to prohibit a plan or operation, or to define a plan or
45 operation as a pyramid promotional scheme, based on the fact that participants in the plan or
46 operation give consideration in return for the right to receive compensation based upon purchases
47 of goods, services, or intangible property by participants for personal use, consumption, or resale,
48 if both of the following conditions are satisfied:

49 (1) The plan or operation does not cause inventory loading; and

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

51 (c) A person shall clearly describe a bona fide repurchase program in its recruiting
52 literature, sales manual, or contracts with independent salespersons. The recruiting literature,
53 sales manual, or contract must disclose any inventory that is not eligible for repurchase under the
54 program.

55 (d) A bona fide inventory repurchase program is not required to apply to inventory that:

56 (1) Is no longer within the inventory's commercially reasonable use or shelf life period; or

57 (2) Has been used or opened.

58 (e) A person shall clearly describe to a salesperson, prior to purchase, inventory that is
59 excluded from the entity's bona fide inventory repurchase program as seasonal, discontinued, or
60 special promotion products not subject to the entity's bona fide inventory repurchase program.