

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 104

BY SENATORS TRUMP AND BOSO

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

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 plan 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; and
 7 requiring certain disclosures.

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

33 (h) "Pyramid promotional scheme" means any plan or operation by which a person gives
34 consideration for the opportunity to receive compensation that is derived primarily from the
35 introduction of other persons into the plan or operation rather than from the sale and consumption
36 of goods, services, or intangible property by a participant or other persons introduced into the
37 plan or operation. The term includes any plan or operation under which the number of people who
38 may participate is limited either expressly or by the application of conditions affecting the eligibility
39 of a person to receive compensation under the plan or operation, or any plan or operation under
40 which a person, on giving any consideration, obtains any goods, services, or intangible property
41 in addition to the right to receive compensation.

§47-15-2. Unlawful act.

1 ~~No person shall promote any pyramid promotional scheme, either personally or through~~
2 ~~an agent or agents.~~

3 (a) A person may not establish, promote, or operate any pyramid promotional scheme.

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

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

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

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

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

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

17 (2) Has been used or opened.

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

NOTE: The purpose of this bill is to rewrite sections of the pyramid promotional schemes article. The bill provides new definitions and more specifically describes what does and does not constitute an unlawful act under article 15.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.