

Amendment No. 1 to HB2356

**Faison
Signature of Sponsor**

AMEND Senate Bill No. 2130*

House Bill No. 2356

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-5601.

For purposes of this part:

(1) "Appropriate inventory repurchase program" means a program by which a plan or operation repurchases, upon request and upon commercially reasonable terms, when the salesperson's business relationship with the company ends, current and marketable inventory in the possession of the salesperson and purchased by the salesperson for resale, and such plan or operation clearly describes the program in its recruiting literature, sales manual, or contract with independent salespersons, including but not limited to, disclosure of any inventory that is not eligible for repurchase under the program. For purposes of this subdivision (1):

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

(B) "Current and marketable" excludes inventory that:

(i) Is no longer within its commercially reasonable use or shelf-life period;

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(ii) Was clearly described to salespersons prior to purchase as seasonal, discontinued, or special promotion products not subject to the plan or operation's inventory repurchase program; or

(iii) Has been used or opened; and

(C) "Inventory" includes both goods and services, including, but not limited to, company-produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase;

(2) "Compensation" means:

(A) Except as otherwise provided in subdivision (6)(B), a payment of any money, thing of value, or financial benefit conferred in return for inducing another person to become a participant in a pyramid promotional scheme; and

(B) Does not include payments that are based on sales of goods or services by a person to others, including anyone who is purchasing the goods or services for actual use or consumption, so long as the plan or operation does not promote inventory loading and implements an appropriate inventory repurchase program;

(3) "Consideration":

(A) Means, except as otherwise provided in subdivision (7)(B), the payment of cash or the purchase of goods, services, or intangible property; and

(B) Does not include:

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

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

(4) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory or services in an amount that unreasonably exceeds what the salesperson can expect to resell for ultimate consumption or consume in a reasonable time period;

(5) "Participant" means a person who gives consideration for the opportunity to receive compensation in return for inducing others to join a pyramid promotional scheme;

(6) "Person" means an individual, a corporation, a partnership, or any association or unincorporated organization;

(7) "Promotes" means to contrive, prepare, establish, plan, operate, advertise, or to otherwise induce or attempt to induce another person to be a participant in a pyramid promotional scheme; and

(8) "Pyramid promotional scheme":

(A) Means any plan or operation by which a participant gives consideration for the opportunity to receive compensation that is derived 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; and

(B) Includes a plan or operation under which:

(i) The number of persons who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation; or

(ii) A participant, on giving any consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

(C) Nothing in this part may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that 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 so long as the plan or operation does not promote or induce inventory loading and the plan or operation implements an appropriate inventory repurchase program.

47-18-5602.

(1) It is an offense for any person to knowingly establish, promote, or operate any pyramid promotional scheme in this state.

(2) A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme nor is it a defense under this section.

47-18-5603.

Nothing in this part shall limit the authority of any state official from proceeding against pyramid promotional schemes for other violations of state law.

47-18-5604.

(a) The attorney general may, upon finding that any person is engaged in or about to engage in any act or practice that constitutes a pyramid promotional scheme in violation of this part, bring an action in the appropriate court of jurisdiction to enjoin such act or practice and to obtain other appropriate relief. Such court may grant a temporary restraining order, or a preliminary or permanent injunction, or other appropriate relief.

(b) Upon a determination by a court that a violation of § 47-18-5602 has occurred, a court may impose by order and collect a civil penalty of not more than ten thousand dollars (\$10,000) per violation per person.

(c) The attorney general may bring actions in circuit court to recover penalties pursuant to this section. In determining the amount of the civil penalty, a court shall consider the magnitude of the offense, prior offenses and compliance history, the good faith of the person charged in attempting to achieve compliance, and other matters as justice may require.

(d) All penalties collected pursuant to this part shall be deposited in the general fund.

47-18-5605.

A violation of this part is a Class A misdemeanor.

47-18-5606.

A person who only participates in a pyramid promotional scheme may not be prosecuted under this part for any violation of this part. However, a person who knowingly establishes, promotes, or operates a pyramid promotional scheme shall be subject to prosecution pursuant to this part.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it.