

FIRST REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NOS. 1120 & 1138

103RD GENERAL ASSEMBLY

2577H.02C

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal sections 407.400 and 407.405, RSMo, and to enact in lieu thereof two new sections relating to pyramid sales schemes.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 407.400 and 407.405, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 407.400 and 407.405, to read as follows:

407.400. As used in sections 407.400 to 407.420, the following terms mean:

(1) **"Bona fide inventory repurchase program"**, a program by which an entity repurchases from a salesperson current and marketable inventory in possession of the salesperson, on request and on commercially reasonable terms, when the salesperson's business relationship is terminated;

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

(3) **"Compensation"**, a payment of any money, a thing of value, or financial benefit conferred in return for inducing another person to participate in a pyramid sales scheme;

(4) **"Consideration"**, the payment of cash or the purchase of goods, services, or intangible property. The term shall not include the purchase of goods and services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities. The term shall not include payment for sales demonstrations, equipment, and materials furnished at cost for use in making sales and not for resale;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

19           **(5) "Current and marketable", excludes inventory that:**

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

21           **(b) Was clearly described to salespersons prior to purchase as seasonable,**  
22 **discontinued, or special promotion products not subject to the plan or organization's**  
23 **inventory repurpose program; or**

24           **(c) Has been used or opened;**

25           **(6) "Franchise" [means],** a written or oral arrangement for a definite or indefinite  
26 period, in which a person grants to another person a license to use a trade name, trademark,  
27 service mark, or related characteristic, and in which there is a community of interest in the  
28 marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise,  
29 including but not limited to a commercial relationship of definite duration or continuing  
30 indefinite duration, between a "wholesaler", such wholesaler being a person as defined in this  
31 section, licensed pursuant to the provisions of chapter 311 to sell at wholesale, intoxicating  
32 liquor, as defined in section 311.020, to retailers, duly licensed in this state, and a "supplier",  
33 being a person engaged in the business as a manufacturer, distiller, rectifier or out-of-state  
34 solicitor whose brands of intoxicating liquor are distributed through duly licensed wholesalers  
35 in this state, and wherein a wholesaler is granted the right to offer, sell, and distribute within  
36 this state or any designated area thereof such of the supplier's brands of intoxicating liquor, or  
37 all of them, as may be specified; except that, the term "franchise" shall not apply to persons  
38 engaged in sales from warehouses or like places of storage, other than wholesalers as above  
39 described, leased departments of retail stores, places of original manufacture, nor shall the  
40 term "franchise" apply to a commercial relationship that does not contemplate the  
41 establishment or maintenance of a place of business within the state of Missouri. As used  
42 herein "place of business" means a fixed, geographical location at which goods, products or  
43 services are displayed or demonstrated for sale;

44           ~~[(2) The term]~~ **(7) "Goods",** includes any personal property, real property, or any  
45 combination thereof;

46           ~~[(3) The term "other property" includes a franchise, license distributorship, or other~~  
47 ~~similar right, privilege, or interest;~~

48           ~~[(4) The term]~~

49           **(8) "Inventory", includes both goods and services, including company-produced**  
50 **promotional materials, sales aids, and sales kits that an entity requires independent**  
51 **salespersons to purchase;**

52           **(9) "Inventory loading", the requirement or encouragement by a plan or**  
53 **operation to have the independent salesperson of the plan or operation purchase**  
54 **inventory in an amount that exceeds the amount that the salesperson can expect to resell**  
55 **for ultimate consumption or to use or consume in a reasonable time period, or both;**

56 (10) "Person" includes an individual, corporation, trust, estate, partnership,  
57 unincorporated association, or any other legal or commercial entity;

58 (11) "Promote", to contrive, prepare, establish, plan, operate, advertise, or  
59 otherwise induce or attempt to induce another person to participate in a pyramid sales  
60 scheme;

61 ~~[(5) The term]~~ (12) "Pyramid sales scheme" ~~[includes], any plan or operation [for the~~  
62 ~~sale or distribution of goods, services or other property wherein a person for a consideration~~  
63 ~~acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on~~  
64 ~~the volume or quantity of goods, services, or other property sold or distributed or to be sold or~~  
65 ~~distributed to persons for purposes of resale to consumers, and is based upon the inducement~~  
66 ~~of additional persons, by himself or herself or others, regardless of number, to participate in~~  
67 ~~the same plan or operation; and~~

68 ~~(6) The term "sale or distribution" includes the acts of leasing, renting or consigning]~~  
69 **by which a person gives consideration for the opportunity to receive compensation that**  
70 **is derived primarily from the introduction of other persons into the plan or operation**  
71 **rather than from the sale and consumption of goods, services, or intangible property by**  
72 **a participant or other persons introduced into the plan or operation. The term includes**  
73 **any plan or operation under which the number of people who may participate is limited**  
74 **either expressly or by the application of conditions affecting the eligibility of a person to**  
75 **receive compensation under the plan or operation and includes any plan or operation**  
76 **under which a person, on giving any consideration, obtains any goods, services, or**  
77 **intangible property in addition to the right to receive compensation.**

407.405. 1. No person shall, directly or through the use of agents or intermediaries,  
2 in connection with the sale or distribution of goods, service, or other property, sell, offer or  
3 attempt to sell a participation or the right to participate in a pyramid sales scheme. No person  
4 who has granted a franchise to another person shall cancel or otherwise terminate any such  
5 franchise agreement without notifying such person of the cancellation, termination or failure  
6 to renew in writing at least ninety days in advance of the cancellation, termination or failure  
7 to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or  
8 insolvency of the franchisee, or the giving of a no account or insufficient funds check is the  
9 basis or grounds for cancellation or termination, the ninety days' notice shall not be required.

10 2. (1) **The provisions of this section shall not be construed to prohibit a plan or**  
11 **operation, or to define a plan or operation as a pyramid sales scheme, if the participants**  
12 **in the plan or operation give consideration in return for the right to receive**  
13 **compensation based upon purchases of goods, services, or intangible property for**  
14 **personal use, consumption, or resale if the plan or operation does not cause inventory**

15 **loading and the plan or operation implements a bona fide inventory repurchase**  
16 **program.**

17 **(2) A person shall clearly describe a bona fide inventory repurchasing program**  
18 **in any recruiting literature, sales manual, and contracts with independent salespersons.**  
19 **The recruiting literature, sales manual, or contract shall disclose any inventory that is**  
20 **not eligible for repurchase under the program.**

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

24 **3. Before a salesperson of the entity purchases any new inventory, the entity shall**  
25 **clearly describe the inventory that is excluded from the bona fide inventory repurchase**  
26 **program as seasonal, discontinued, or special promotion products and the inventory**  
27 **that is not subject to the entity's bona fide inventory repurchase program.**

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