

SALES MARKETING REQUIREMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill amends the Pyramid Scheme Act to clarify the elements of those operations that are not unlawful schemes. This bill provides definitions of terms used in referring to the operations. This bill sets forth the operations' required functions, which include providing for the repurchase of inventory from the participant under specified terms. The bill also requires that the operations do not promote inventory loading.

Highlighted Provisions:

This bill:

▶ includes definitions of:

- an appropriate inventory repurchase program for participants;
- ~~H~~→ [commercially reasonable] ←~~H~~ terms for repurchase of inventory from participants;
- consumable or durable goods that are current and marketable for purposes of repurchase; and
- inventory loading, which requires or encourages a participant to purchase an unreasonable amount of inventory; and

▶ provides that an operation involving participants' giving consideration to an operation for the right to receive compensation based upon purchases of goods or services by participants is not a pyramid promotional scheme if the operation:

- includes an appropriate inventory repurchase program for participants; and
- does not promote inventory loading.

Monies Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **76-6a-1**, as enacted by Chapter 89, Laws of Utah 1983

34 **76-6a-2**, as enacted by Chapter 89, Laws of Utah 1983

35 **76-6a-3**, as enacted by Chapter 89, Laws of Utah 1983

36 **76-6a-4**, as last amended by Chapter 38, Laws of Utah 1993

37 **76-6a-5**, as enacted by Chapter 89, Laws of Utah 1983

38 **76-6a-6**, as enacted by Chapter 89, Laws of Utah 1983



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **76-6a-1** is amended to read:

42 **CHAPTER 6a. PYRAMID PROMOTIONAL SCHEME ACT**

43 **76-6a-1. Title.**

44 This ~~[act shall be]~~ chapter is known ~~[and may be cited]~~ as the "Pyramid Promotional
45 Scheme Act."

46 Section 2. Section **76-6a-2** is amended to read:

47 **76-6a-2. Definitions.**

48 As used in this chapter:

49 (1) "Appropriate inventory repurchase program" means a program by which an
50 operation repurchases inventory, upon a participant's request and at the termination of the
51 participant's business relationship with the operation, if:

52 (a) the repurchase program is based upon commercially reasonable terms;

53 (b) the inventory is current and marketable inventory purchased and maintained by the
54 participant for resale, use, or consumption; and

55 (c) the operation has clearly described the repurchase program in its recruiting
56 literature, sales manual, or its contracts with participants, including in the description:

57 (i) how the repurchase is exercised; and

58 (ii) any inventory that is not eligible for repurchase under the program.

59 (2) (a) "Commercially reasonable terms" means the repurchase of current and
 60 marketable inventory within 12 months from the date of the participant's original purchase of
 61 the inventory, and at not less than 90% of the original net cost to the participant, minus any
 62 appropriate set-offs and legal claims.

63 (b) If the inventory is service products, the repurchase program for these products shall
 64 be on a pro rata basis in order to qualify as commercially reasonable terms, unless the operation
 65 has clearly disclosed otherwise to the participant.

66 [(+)] (3) "Consideration" ~~H→~~ **[means] includes** ~~←H~~ a payment of any money, or the
 66a purchase of goods,
 67 services, or intangible property, but does not include:

68 (a) payment for sales demonstration equipment and materials furnished at cost for use
 69 in making sales and not for resale[;]; or

70 (b) time or effort spent in selling or recruiting activities.

71 [(2)] (4) "Compensation" means ~~[money bonuses, commissions, overrides, prizes, or~~
 72 ~~other real or personal property, tangible or intangible.] a payment of any money, thing of value,~~
 73 or financial benefit.

74 (5) "Current and marketable":

75 (a) includes consumable or durable goods inventory that is unopened, unused, and
 76 within ~~H→~~ :

76a (i) ~~←H~~ its commercially reasonable use ~~H→~~ [of] or ~~←H~~ shelf-life period ~~H→~~, if that
 76b period is clearly and conspicuously disclosed to the participant prior to the participant's purchase of
 76c the inventory ~~←H~~ ; ~~H→~~or

76d (ii) if the requirement of Subsection (5)(a) is not met, 12 months from the date of the
 76e participant's original purchase of the inventory; ~~←H~~

77 (b) means, regarding services and intangible property, including Internet sites, the
 78 unexpired portion of any contract or agreement regarding the services or intangible property;
 79 and

80 (c) does not include inventory that has been clearly described to the participant
 80a ~~H→~~ [; prior to

81 purchase,] ~~←H~~ as ~~H→~~ [a] ~~←H~~ seasonal, discontinued, or special promotion products not
 81a subject to the

82 operation's inventory repurchase program ~~H→~~ , if this description is:

82a (i) in at least 12 point type on the front page of a disclosure form; and

82b (ii) prior to the participant's purchase of inventory under this Subsection (5)(c):

82c (A) signed by the participant; or

82d (B) acknowledged in another manner by the participant, if the operation maintains evidence of
 82e the acknowledgment. ←H

83 (6) "Inventory" means both goods and services, and includes organization-produced
 84 promotional materials, sales aids, and sales kits that the operation requires independent
 85 salespersons to purchase.

86 (7) "Inventory loading" means that the operation requires or encourages its
 86a H→ [independent
 87 salespersons] participants ←H to purchase inventory in an amount that unreasonably exceeds that
 87a which the

88 H→ [salesperson] participant ←H can expect to resell for ultimate consumption, or to use or
 88a consume, in a reasonable
 89 time period.

90 (8) "Participant" means a natural person who joins an operation.

91 [~~(3)~~] (9) "Person" includes a business trust, estate, trust, joint venture, or any other
 92 legal or commercial entity.

93 (10) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or
 94 otherwise induce or attempt to induce another person to be a participant.

95 [~~(4)~~] (11) "Pyramid scheme" means any [sales device or plan under] operation in which
 96 a [person] participant gives consideration [to another person in exchange for compensation or]
 97 for the right to receive compensation [which] that is derived primarily from the [introduction]
 98 recruitment of other persons as participants into the [sales device or plan] operation rather than
 99 from the sale of goods, services, ~~to~~ [or] ~~to~~ [other] intangible property ~~to~~ [to participants or]
 99a , or other property ~~to~~ by participants
 100 to others ~~to~~ who are not participants ~~to~~ .

101 Section 3. Section **76-6a-3** is amended to read:

102 **76-6a-3. Schemes prohibited -- Violation as deceptive consumer sales practice --**
 103 **Prosecution of civil violations.**

104 (1) A person may not organize, establish, promote, or administer any pyramid
 105 promotional scheme.

106 (2) A criminal conviction under this chapter is prima facie evidence of a violation of
 107 Section 13-11-4[;] of the Utah Consumer Sales Practices Act.

108 (3) Any violation of this chapter constitutes a violation of Section 13-11-4[;] of the
 109 Utah Consumer Sales Practices Act.

110 (4) All civil violations of this chapter shall be investigated and prosecuted as
 111 prescribed by [~~the~~] Title 13, Chapter 11, Utah Consumer Sales Practices Act.

112 (5) This section and any administrative rules made pursuant to this section do not
 113 prohibit an operation or define an operation as a pyramid promotional scheme based on the fact
 114 that the participants in the operation give consideration in return for the right to receive
 115 compensation based upon purchases of goods, services, or intangible property by participants
 116 for personal use, consumption, or resale, if the operation:

117 (a) implements an appropriate inventory repurchase program; and

118 (b) does not promote inventory loading.

119 Section 4. Section **76-6a-4** is amended to read:

120 **76-6a-4. Operation as felony -- Investigation -- Prosecution.**

121 (1) Any person who knowingly organizes, establishes, promotes, or administers a
122 pyramid promotional scheme is guilty of a third degree felony.

123 (2) The appropriate county attorney or district attorney has primary responsibility for
124 investigating and prosecuting criminal violations of this chapter.

125 Section 5. Section **76-6a-5** is amended to read:

126 **76-6a-5. Operation provisions not constituting defenses.**

127 It is not a defense to an action brought under this chapter if:

128 (1) the sales [~~device or plan~~] operation limits the number of persons who may be
129 introduced into it;

130 (2) the sales [~~device or plan~~] operation includes additional conditions affecting
131 eligibility for introduction into it or when compensation is received from it; or

132 (3) a person receives property or services in addition to the compensation or right to
133 receive compensation in connection with a pyramid promotion scheme.

134 Section 6. Section **76-6a-6** is amended to read:

135 **76-6a-6. Rights of persons giving consideration in pyramid promotional scheme.**

136 (1) (a) Any person giving consideration in connection with a pyramid promotional
137 scheme may, notwithstanding any agreement to the contrary, declare his giving of
138 consideration and the related sale or contract for sale void, and may bring a court action to
139 recover the consideration.

140 (b) In the action, the court shall, in addition to any judgment awarded to the plaintiff,
141 require the defendant to pay to the plaintiff interest as provided in Section 15-1-4, reasonable
142 attorneys' fees, and the costs of the action reduced by any compensation paid by the defendant
143 to the plaintiff in connection with the pyramid scheme.

144 (2) (a) The rights, remedies, and penalties provided in this chapter are independent of
145 and supplemental to each other and to any other right, remedy, or penalty available in law or
146 equity. [~~Nothing contained in this~~]

147 (b) This chapter [~~shall~~] may not be construed to diminish or abrogate any other right,
148 remedy, or penalty.

Legislative Review Note

as of 1-31-05 6:23 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0269

Sales Marketing Requirements

04-Feb-05

10:56 AM

State Impact

No fiscal impact.

Individual and Business Impact

Provisions of this bill could affect corporate revenue of some companies. The impact will vary depending on the types and amount of goods involved and the current policies of the company.

Office of the Legislative Fiscal Analyst