



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

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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 [(H)] (3) "Consideration" means a payment of any money, or the 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 its commercially reasonable use of shelf-life period;

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, prior to  
81 purchase, as a seasonal, discontinued, or special promotion products not subject to the  
82 operation's inventory repurchase program.

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 independent  
87 salespersons to purchase inventory in an amount that unreasonably exceeds that which the  
88 salesperson can expect to resell for ultimate consumption, or to use or 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, or [other] intangible property to participants or by participants  
100 to others.

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.

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**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**

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**Fiscal Note**  
**Bill Number HB0269**

**Sales Marketing Requirements**

*04-Feb-05*

*10:56 AM*

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**State Impact**

No fiscal impact.

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**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.

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**Office of the Legislative Fiscal Analyst**