

SECOND REGULAR SESSION

SENATE BILL NO. 902

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time January 16, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4998S.01I

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.

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Section A. Sections 407.400 and 407.405, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 407.400 and 407.405, to read as follows: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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **recruiting activities. The term shall not include payment for sales**
20 **demonstrations, equipment, and materials furnished at cost for use in**
21 **making sales and not for resale;**

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

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

25 **(b) Was clearly described to salespersons prior to purchase as**
26 **seasonal, discontinued, or special promotion products not subject to the**
27 **plan or organization's inventory repurpose program; or**

28 **(c) Has been used or open.**

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

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

53 **[(3) The term "other property" includes a franchise, license**
54 **distributorship, or other similar right, privilege, or interest;**

55 (4) The term] (8) "Inventory", includes both goods and services,
56 including company-produced promotional materials, sales aids, and
57 sales kits that an entity requires independent salespersons to purchase;

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

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

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

73 (6) The term "sale or distribution" includes the acts of leasing, renting or
74 consigning]

75 (11) "Promote", to contrive, prepare, establish, plan, operate,
76 advertise, or otherwise induce or attempt to induce another person to
77 participate in a pyramid sales scheme; and

78 (12) "Pyramid sales scheme", any plan or operation by which a
79 person gives consideration for the opportunity to receive compensation
80 that is derived primarily from the introduction of other persons into
81 the plan or operation rather than from the sale and consumption of
82 goods, services, or intangible property by a participant or other
83 persons introduced into the plan or operation. The term includes any
84 plan or operation under which the number of people who may
85 participate is limited either expressly or by the application of
86 conditions affecting the eligibility of a person to receive compensation
87 under the plan or operation, and includes any plan or operation under
88 which a person, on giving any consideration, obtains any goods,
89 services, or intangible property in addition to the right to receive
90 compensation.

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

12 **2. The provisions of this section shall not be construed to**
13 **prohibit a plan or operation, or to define a plan or operation as a**
14 **pyramid sales scheme, if the participants in the plan or operation give**
15 **consideration in return for the right to receive compensation based**
16 **upon purchases or goods, services, or intangible property for personal**
17 **use, consumption, or resale if the plan or operation does not cause**
18 **inventory loading and the plan or operation implements a bona fide**
19 **inventory repurchase program.**

20 **(1) A person shall clearly describe a bona fide inventory**
21 **repurchasing program in its recruiting literature, sales manual, or**
22 **contracts with independent salespersons. The recruiting literature,**
23 **sales manual, or contract shall disclose any inventory that is not**
24 **eligible for repurchase under the program.**

25 **(2) A bona fide inventory repurchase program is not required to**
26 **apply to inventory that is no longer within the inventory's**
27 **commercially reasonable use or shelf life period or has been used or**
28 **opened.**

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

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