
SENATE BILL 5211

State of Washington

59th Legislature

2005 Regular Session

By Senators Keiser, Hewitt, Prentice, Mulliken, Sheldon, Finkbeiner, Shin, Franklin, Rockefeller and Kohl-Welles

Read first time 01/18/2005. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to prohibiting pyramid promotional schemes; adding
2 a new chapter to Title 19 RCW; and repealing RCW 19.102.010 and
3 19.102.020.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Appropriate inventory repurchase program" means a program by
8 which a plan or operation repurchases, upon request at the termination
9 of a participant's business relationship with the plan or operation and
10 based upon commercially reasonable terms, current and marketable
11 inventory purchased and maintained by the participant for resale, use,
12 or consumption, and such plan or operation clearly describes the
13 program in its recruiting literature, sales manual, or contracts with
14 participants, including the manner in which the repurchase is
15 exercised, and disclosure of any inventory that is not eligible for
16 repurchase under the program.

17 (2) "Commercially reasonable terms" means the repurchase of current
18 and marketable inventory within twelve months from the date of purchase
19 at not less than ninety percent of the original net cost to the

1 participant, less appropriate set-offs and legal claims, if any. In
2 the case of service products, the repurchase of the service products
3 must be on a pro rata basis (unless clearly disclosed otherwise to the
4 participant) to be within the meaning of "commercially reasonable
5 terms".

6 (3) "Compensation" means a payment of any money, thing of value, or
7 financial benefit.

8 (4) "Consideration" means the payment of cash or the purchase of
9 goods, services, or intangible property, and does not include:

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

12 (b) Time and effort spent in pursuit of sales or recruiting
13 activities.

14 (5) "Current and marketable" includes inventory that, in the case
15 of consumable or durable goods, is unopened, unused, and within its
16 commercially reasonable use or shelf-life period; and in the case of
17 services and intangible property, including internet sites, represents
18 the unexpired portion of any contract or agreement. "Current and
19 marketable" does not include inventory that has been clearly described
20 to the participant prior to purchase as seasonal, discontinued, or
21 special promotion products not subject to the plan or operation's
22 inventory repurchase program.

23 (6) "Inventory" includes both goods and services, including
24 company-produced promotional materials, sales aids, and sales kits that
25 the plan or operation requires independent salespersons to purchase.

26 (7) "Inventory loading" means that the plan or operation requires
27 or encourages its independent salespersons to purchase inventory in an
28 amount that unreasonably exceeds that which the salesperson can expect
29 to resell for ultimate consumption, or to use or consume, in a
30 reasonable time period.

31 (8) "Participant" means a person who joins a plan or operation.

32 (9) "Person" includes an individual, a corporation, a partnership,
33 or any association or unincorporated organization.

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

37 (11) "Pyramid promotional scheme" means any plan or operation in
38 which a participant gives consideration for the right to receive

1 compensation that is derived primarily from the recruitment of other
2 persons as participants in the plan or operation, rather than from the
3 sales of goods, services, or intangible property to participants or by
4 participants to others.

5 NEW SECTION. **Sec. 2.** No person may establish, promote, operate,
6 or knowingly participate in any pyramid promotional scheme.

7 NEW SECTION. **Sec. 3.** Nothing in this chapter may be construed to
8 prohibit a plan or operation, or to define such a plan or operation as
9 a pyramid promotional scheme, based upon the fact that participants in
10 the plan or operation give consideration in return for the right to
11 receive compensation based upon purchases of goods, services, or
12 intangible property by participants for personal use, consumption, or
13 resale, and the plan or operation does not promote inventory loading
14 and implements an appropriate inventory repurchase program.

15 NEW SECTION. **Sec. 4.** The legislature finds that the practices
16 covered by this chapter are matters vitally affecting the public
17 interest for the purpose of applying the consumer protection act,
18 chapter 19.86 RCW. A violation of this chapter is not reasonable in
19 relation to the development and preservation of business and is an
20 unfair or deceptive act in trade or commerce and an unfair method of
21 competition for the purpose of applying the consumer protection act,
22 chapter 19.86 RCW.

23 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute
24 a new chapter in Title 19 RCW.

25 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each
26 repealed:

- 27 (1) RCW 19.102.010 (Definitions) and 1973 1st ex.s. c 33 s 1; and
28 (2) RCW 19.102.020 (Chain distributor schemes prohibited--Unfair
29 practice) and 1973 1st ex.s. c 33 s 2.

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