

1 HB335  
2 205349-1  
3 By Representatives Marques, Simpson, Dismukes, Isbell,  
4 Sorrells, Lee and Allen  
5 RFD: Judiciary  
6 First Read: 27-FEB-20

8 SYNOPSIS: Under existing law, it is a deceptive trade  
9 practice for a person to sell or offer to sell a  
10 right to participate in a pyramid sales structure,  
11 which are plans for the sale or distribution of  
12 goods, services, or other property in which a  
13 person, for consideration, acquires the opportunity  
14 to receive a pecuniary benefit, which is based  
15 primarily upon the inducement of additional persons  
16 by that person and others, regardless of number, to  
17 participate in the same plan or operation, and is  
18 not primarily contingent on the volume or quantity  
19 of goods, services, or other property sold or  
20 distributed.

21 This bill would further provide for the  
22 prohibition against pyramid sales structures by  
23 excluding plans that include a bona fide inventory  
24 repurchase program and would provide requirements  
25 for bona fide inventory repurchase programs.

27 A BILL

1 TO BE ENTITLED

2 AN ACT

3  
4 Relating to deceptive trade practices; to amend  
5 Sections 8-19-3 and 8-19-5, Code of Alabama 1975, to provide  
6 further for the prohibition against pyramid sales structures.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 8-19-3 and 8-19-5, Code of  
9 Alabama 1975, are amended to read as follows:

10 "§8-19-3.

11 "As used in this chapter, the following words and  
12 phrases shall have the meanings hereinafter ascribed to them:

13 "(1) ATTORNEY GENERAL. The Attorney General of the  
14 State of Alabama or his duly designated representatives.

15 "(2) BONA FIDE INVENTORY REPURCHASE PROGRAM. A  
16 program by which an entity repurchases from a salesperson  
17 current and marketable inventory in possession of the  
18 salesperson, on request and on commercially reasonable terms,  
19 when the salesperson's business relationship is terminated.

20 "(3) COMMERCIALY REASONABLE TERMS. The repurchase  
21 of current and marketable inventory within 12 months after the  
22 date of purchase at not less than 90 percent of the original  
23 net cost, less appropriate set-offs and legal claims, if any.

24 "~~(2)~~ (4) CONSUMER. Any natural person who buys goods  
25 or services for personal, family, or household use.

26 "(5) CURRENT AND MARKETABLE. The term does not  
27 include inventory to which any of the following apply:

1           "a. Is no longer within its commercially reasonable  
2 use or shelf-life period.

3           "b. Was clearly described to salespersons prior to  
4 purchase as seasonal, discontinued, or special promotion  
5 products not subject to the plan or organization's inventory  
6 repurpose program.

7           "c. Has been used or opened.

8           "~~(3)~~ (6) GOODS. Includes but is not limited to any  
9 property, tangible or intangible, real, personal, or any  
10 combination thereof, and any franchise, license,  
11 distributorship, or other similar right, privilege, or  
12 interest.

13           "(7) INVENTORY. Includes both goods and services,  
14 including company-produced promotional materials, sales aids,  
15 and sales kits that an entity requires independent  
16 salespersons to purchase.

17           "(8) INVENTORY LOADING. The requirement or  
18 encouragement by a plan or operation to have the independent  
19 salesperson of the plan or operation purchase inventory in an  
20 amount that exceeds the amount that the salesperson can expect  
21 to resell for ultimate consumption or to use or consume in a  
22 reasonable time period, or both.

23           "~~(4)~~ (9) KNOW, KNOWING, KNOWINGLY, KNOWLEDGE, and  
24 KNEW. Either actual awareness or such awareness as a  
25 reasonable person should have considering all the surrounding  
26 circumstances.

1           "~~(5)~~ (10) PERSON. Includes,    but is not limited to,     
2 natural persons, corporations, trusts, partnerships,  
3 incorporated or unincorporated associations,    and any other  
4 legal entity.

5           "(11) PYRAMID PROMOTIONAL SCHEME. A plan or  
6 operation by which a person gives consideration for the  
7 opportunity to receive compensation that is derived primarily  
8 from the introduction of other persons into the plan or  
9 operation rather than from the sale or consumption of goods,  
10 servcies, or intangible property by a participant or other  
11 persons introduced into the plan or operation. The term  
12 includes any plan or operation under which the number of  
13 people who may participate is limited either expressly or by  
14 the application of conditions affecting the eligibility of a  
15 person to receive compensation under the plan or operation.  
16 The term also includes any plan or operation under which a  
17 person, on giving consideration, obtains goods, services, or  
18 intangible property in addition to the right to receive  
19 compensation.

20           "~~(6)~~ (12) SALE, BUYING, and DISTRIBUTION. In  
21 addition to their ordinary meanings, include,    but are not  
22 limited to,    the act of leasing, renting, or consigning.

23           "~~(7)~~ (13) SERVICES. Work, labor, and other services,  
24 including,    but not limited to,    services furnished in  
25 connection with the sale or repair of goods.

26           "~~(8)~~ (14) TRADE or COMMERCE. Includes,    but is not  
27 limited to,    the advertising, buying, offering for sale, sale

1 or distribution or performance of any service or goods, and  
2 any other article, commodity or thing of value wherever  
3 situated and shall include any trade or commerce affecting the  
4 people of this state.

5 "§8-19-5.

6 "The following deceptive acts or practices in the  
7 conduct of any trade or commerce are hereby declared to be  
8 unlawful:

9 "(1) Passing off goods or services as those of  
10 another, provided that this section shall not prohibit the  
11 private labeling of goods or services.

12 "(2) Causing confusion or misunderstanding as to the  
13 source, sponsorship, approval, or certification of goods or  
14 services.

15 "(3) Causing confusion or misunderstanding as to the  
16 affiliation, connection, or association with, or certification  
17 by another, provided that this section shall not prohibit the  
18 private labeling of goods or services.

19 "(4) Using deceptive representations or designations  
20 of geographic origin in connection with goods or services.

21 "(5) Representing that goods or services have  
22 sponsorship, approval, characteristics, ingredients, uses,  
23 benefits, or qualities that they do not have or that a person  
24 has sponsorship, approval, status, affiliation, or connection  
25 that he or she does not have.

26 "(6) Representing that goods are original or new if  
27 they are deteriorated, reconditioned, reclaimed, used,

1 secondhand, or altered to the point of decreasing their value  
2 or rendering the goods unfit for the ordinary purpose for  
3 which they were purchased, provided that this subdivision  
4 shall not apply to new goods which have been reconditioned,  
5 reclaimed, or repaired and such fact is disclosed to the  
6 purchaser.

7 "(7) Representing that goods or services are of a  
8 particular standard, quality, or grade, or that goods are of a  
9 particular style or model, if they are of another.

10 "(8) Disparaging the goods, services, or business of  
11 another by false or misleading representation of fact.

12 "(9) Advertising goods or services with intent not  
13 to sell them as advertised.

14 "(10) Advertising goods or services with intent not  
15 to supply reasonably expectable public demand unless the  
16 advertisement discloses a limitation of quantity.

17 "(11) Making a false or misleading statement of fact  
18 concerning the reasons for, existence of, or amounts of, price  
19 reductions.

20 "(12) Knowingly failing to identify flood, water,  
21 fire, or accidentally damaged goods as damaged goods if they  
22 are damaged to the point of decreasing their value or  
23 rendering the goods unfit for the ordinary purpose for which  
24 they were purchased, provided, that this subdivision shall not  
25 apply to accidentally damaged new goods where the goods are  
26 reconditioned, reclaimed, or repaired to substantially their

1 original condition and such fact is disclosed to the  
2 purchaser.

3 "(13) Knowingly making false or misleading  
4 statements of fact concerning the need for parts, replacement,  
5 or repair service.

6 "(14) Misrepresenting the authority of a  
7 salesperson, representative, or agent to negotiate the final  
8 terms of a transaction.

9 "(15) Disconnecting, turning back, replacing, or  
10 resetting the odometer of any motor vehicle so as to reduce  
11 the number of miles indicated on the odometer gauge with the  
12 intent of deception.

13 "(16) Advertising of any sale by falsely  
14 representing that a person is going out of business.

15 "(17) After receipt of payment for goods or  
16 services, failing to ship the goods or furnish such services  
17 within the time advertised or otherwise represented or, if no  
18 specific time is advertised or represented, failing to ship  
19 the goods or furnish such services within 30 days, unless  
20 within the applicable time period the seller provides the  
21 buyer with the option to either cancel the sales agreement and  
22 receive a refund of all previous payments to the seller or to  
23 extend the date to a specific date proposed by the seller. Any  
24 refund shall be mailed or delivered to the buyer within 10  
25 business days after the seller receives written notification  
26 from the buyer of the buyer's option to cancel the sales  
27 agreement and receive the refund.



1           "(18) Using or employing a chain referral sales plan  
2 in connection with the sale or offering for sale of goods,  
3 merchandise, or anything of value, involving a sales  
4 technique, plan, arrangement, or agreement in which the buyer  
5 or prospective buyer is offered the opportunity to purchase  
6 merchandise or goods and in connection with the purchase  
7 receives the seller's promise or representation that the buyer  
8 shall have the right to receive compensation or consideration  
9 in any form for furnishing to the seller the names of other  
10 prospective buyers, if the receipt of the compensation or  
11 consideration is contingent upon the occurrence of an event  
12 subsequent to the time the buyer purchased the goods,  
13 merchandise, or anything of value.

14           ~~"(19) Selling or offering to sell, either directly  
15 or associated with the sale of goods or services, a right to  
16 participation in a pyramid sales structure. As used herein,  
17 "pyramid sales structure" includes any plan or operation for  
18 the sale or distribution of goods, services, or other property  
19 wherein a person for consideration acquires the opportunity to  
20 receive a pecuniary benefit, which is based primarily upon the  
21 inducement of additional persons by that person, and others,  
22 regardless of number, to participate in the same plan or  
23 operation, and is not primarily contingent on the volume or  
24 quantity of goods, services, or other property sold or  
25 distributed. For purposes of this subdivision, "consideration"  
26 shall not include payments made for sales demonstration  
27 equipment and materials furnished on a nonprofit basis for use~~

1 ~~in making sales and not for resale wherein such payments~~  
2 ~~amount to less than one hundred dollars (\$100) annually.~~  
3 Establishing, promoting, or operating a pyramid promotional  
4 scheme.

5 "a. Nothing in this subdivision may be construed to  
6 prohibit a plan or operation, or to define a plan or  
7 operation, where the participants in the plan or operation  
8 give consideration in return for the right to receive  
9 compensation based upon purchases of goods, services, or  
10 intangible property for personal use, consumption, or resale  
11 if the plan or operation does not cause inventory loading and  
12 the plan or operation implements a bona fide inventory  
13 repurchase program.

14 "b. A bona fide inventory repurchase program under  
15 this subdivision is subject to the following requirements:

16 "1. The program shall be clearly described in its  
17 recruiting literature, sales manual, or contracts.

18 "2. The recruiting literature, sales manual, or  
19 contracts shall disclose any inventory that is not eligible  
20 for repurchase under the program, including inventory that is  
21 beyond the commercially reasonable use or shelf life period or  
22 has been used or opened.

23 "c. Before a repurchase of inventory is made, the  
24 entity operating the repurchase program shall clearly describe  
25 the inventory that is excluded from the entity's bona fide  
26 repurchase program as seasonal, discontinued, or special

1 promotion products and the inventory that is not subject to  
2 the entity's bona fide inventory repurchase program.

3 "(20) In connection with any seller-assisted  
4 marketing plan, either misrepresenting the amount or extent of  
5 earnings to result therefrom, or misrepresenting the extent or  
6 nature of the market for the goods or services, or both, sold  
7 or delivered in connection with the plan, or misrepresenting  
8 that the seller of the plan will repurchase all or part of the  
9 goods or services, or both, sold or delivered in connection  
10 with the plan, or failing to deliver goods or services, or  
11 both, within the time represented. As used herein,  
12 "seller-assisted marketing plan" includes any plan, scheme, or  
13 system in which for a consideration a buyer acquires goods or  
14 services, or both, together with a plan, scheme, or system for  
15 the resale of said goods or services, or both.

16 "(21) Intentionally misrepresenting that a warranty  
17 or guarantee confers or involves certain rights or remedies.

18 "(22) In selling a new motor vehicle, failing to  
19 disclose material damage to the motor vehicle as prescribed  
20 hereafter:

21 "a. Each manufacturer, importer, or distributor of  
22 new motor vehicles sold or transferred to a motor vehicle  
23 dealer in this state, shall notify the motor vehicle dealer in  
24 writing prior to delivery of the vehicle of any material  
25 damage to the vehicle which is known to the manufacturer,  
26 importer, or distributor, and which was sustained or incurred  
27 by the motor vehicle at any time after the manufacturing

1 process is complete but prior to delivery of the vehicle to  
2 the dealer.

3 "b. In selling a new motor vehicle, each motor  
4 vehicle dealer in this state shall notify the purchaser in  
5 writing at the time of sale of any material damage to the  
6 vehicle which is known to the motor vehicle dealer and which  
7 was sustained or incurred by the motor vehicle at any time  
8 after the manufacturing process is complete, but prior to  
9 delivery of the vehicle to the purchaser.

10 "c. For purposes of this section, "material damage"  
11 means damage sustained or incurred by a motor vehicle, whether  
12 corrected or uncorrected, which cost to repair exceeds three  
13 percent of the manufacturer's suggested retail price of the  
14 vehicle based upon the dealer's retail repair cost or the sum  
15 of five hundred dollars (\$500), whichever is greater. Damage  
16 to tires, glass, bumpers, and in-dash audio equipment shall  
17 not be considered in determining the cost of repair if those  
18 components are replaced by identical manufacturer's original  
19 equipment. The failure of a manufacturer, importer,  
20 distributor, or motor vehicle dealer to give notice of damage  
21 below the threshold constituting "material damage" shall not  
22 provide grounds for revocation of the sale nor shall such  
23 failure constitute a material misrepresentation or omission of  
24 fact.

25 "d. Each manufacturer, importer, or distributor of  
26 new motor vehicles shall indemnify and hold harmless the motor  
27 vehicle dealer obtaining a vehicle from the manufacturer,

1 importer, or distributor from and against any liability,  
2 including reasonable attorneys' fees, which the motor vehicle  
3 dealer may have to the purchaser of the vehicle as a result of  
4 damage to the new motor vehicle which was known to the  
5 manufacturer, importer, or distributor, which occurred prior  
6 to delivery of the vehicle to the dealer, and which was not  
7 disclosed in writing to the dealer prior to delivery of the  
8 vehicle. This indemnity obligation of the manufacturer,  
9 importer, or distributor shall apply regardless of whether the  
10 damage constitutes "material damage" as defined herein.

11 ~~"(23)~~ (22) Affixing an Alabama revenue stamp,  
12 including local municipal or county stamps, to, or upon, any  
13 package of cigarettes, or selling or holding for sale any  
14 package of cigarettes to which an Alabama revenue stamp,  
15 including local municipal or county stamps, has been affixed,  
16 if:

17 "a. The package differs in any respect with the  
18 requirements of the Federal Cigarette Labeling and Advertising  
19 Act (15 U.S.C. Sec. 1331 and following), for the placement of  
20 labels, warnings, or any other information upon a package of  
21 cigarettes that is to be sold within the United States;

22 "b. The package is labeled "For Export Only," "U.S.  
23 Tax Exempt," "For Use Outside U.S.," or similar wording  
24 indicating that the manufacturer did not intend that the  
25 product be sold in the United States;

26 "c. The package, or a package containing  
27 individually stamped packages, has been altered by adding or

1 deleting the wording, labels, or warnings described in  
2 paragraph a. or b. of this subdivision;

3 "d. With respect to the cigarettes any person is not  
4 in compliance with 15 U.S.C. Sec. 1335a (relating to  
5 submission of ingredient information to federal authorities),  
6 19 U.S.C. Sec. 1681-1681b (relating to imports of certain  
7 cigarettes), 26 U.S.C. Sec. 5754 (relating to previously  
8 exported tobacco products), or any other federal law or  
9 implementing federal regulations; or

10 "e. The package in any way violates federal  
11 trademark or copyright laws.

12 "For the purposes of this subdivision, the term  
13 "package" means a pack, carton, or container of any kind in  
14 which cigarettes are offered for sale, sold, or otherwise  
15 distributed, or intended for distribution, to consumers. Also  
16 for the purposes of this subdivision, the term "Alabama  
17 revenue stamp" means the stamp or stamps by the use of which  
18 the tax levied under Article 1 of Chapter 25 of Title 40, is  
19 paid.

20 "(24) Engaging in the sale, distribution,  
21 possession, acquisition, importation, or transportation of any  
22 cigarettes that do not comply with all applicable requirements  
23 imposed by or pursuant to federal law and federal implementing  
24 regulations.

25 "(25) Engaging in a scheme or artifice to defraud by  
26 telephone communication. For purposes of this subdivision, a  
27 "scheme or artifice to defraud" means a systematic, ongoing

1 course of conduct with the specific intent to defraud one or  
2 more persons in order to obtain property from that person by a  
3 telephone communication; and "telephone communication" means  
4 the transmission of information by the use of the telephone,  
5 with the specific intent of defrauding a person by a material  
6 misrepresentation and obtaining property from that person as a  
7 result of the fraud. Puffing or puffery does not constitute a  
8 scheme or artifice to defraud.

9 "(26) Making any communication by telephone directly  
10 to another person which offers to the other person a gift,  
11 award, or prize, where the person making the communication has  
12 actual knowledge at the time of making the communication that  
13 the communication was materially false and the person making  
14 the communication specifically intended to deprive the other  
15 person of real or personal property as a result of the false  
16 communication.

17 "(27) Engaging in any other unconscionable, false,  
18 misleading, or deceptive act or practice in the conduct of  
19 trade or commerce."

20 Section 2. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.