

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1534 Session of
2019

INTRODUCED BY MATZIE, ROAE, HARKINS, SCHLOSSBERG, HILL-EVANS,
BULLOCK, KULIK, MILLARD, McNEILL, CALTAGIRONE, READSHAW,
NEILSON, CIRESI, HOWARD AND KENYATTA, JUNE 3, 2019

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 3, 2019

AN ACT

1 Amending the act of December 17, 1968 (P.L.1224, No.387),
2 entitled "An act prohibiting unfair methods of competition
3 and unfair or deceptive acts or practices in the conduct of
4 any trade or commerce, giving the Attorney General and
5 District Attorneys certain powers and duties and providing
6 penalties," further providing for definitions and for
7 unlawful acts or practices and exclusions.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2(4)(xiii) of the act of December 17,
11 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
12 Consumer Protection Law, is amended and the section is amended
13 by adding clauses to read:

14 Section 2. Definitions.--As used in this act.

15 * * *

16 (4) "Unfair methods of competition" and "unfair or deceptive
17 acts or practices" mean any one or more of the following:

18 * * *

19 (xiii) Promoting or engaging in any plan by which goods or
20 services are sold to a person for a consideration and upon the

1 further consideration that the purchaser secure or attempt to
2 secure one or more persons likewise to join the said plan; each
3 purchaser to be given the right to secure money, goods or
4 services depending upon the number of persons joining the plan.
5 In addition, promoting or engaging in any plan, commonly known
6 as or similar to the so-called ["Chain-Letter Plan" or "Pyramid
7 Club."] "Chain-Letter Plan," "Pyramid Club" or "Pyramid
8 Promotional Scheme." The terms "Chain-Letter Plan" or "Pyramid
9 Club" mean any scheme for the disposal or distribution of
10 property, services or anything of value whereby a participant
11 pays valuable consideration, in whole or in part, for an
12 opportunity to receive compensation for introducing or
13 attempting to introduce one or more additional persons to
14 participate in the scheme or for the opportunity to receive
15 compensation when a person introduced by the participant
16 introduces a new participant. The term "Pyramid Promotional
17 Scheme" means any plan or operation by which a person gives
18 consideration for the opportunity to receive compensation that
19 is derived primarily from the introduction of other persons into
20 the plan or operation rather than from the sale and consumption
21 of goods, services or intangible property by a participant or
22 other persons introduced into the plan or operation. The term
23 includes any plan or operation under which the number of people
24 who may participate is limited either expressly or by the
25 application of conditions affecting the eligibility of a person
26 to receive compensation under the plan or operation, and
27 includes any plan or operation under which a person, on giving
28 any consideration, obtains any goods, services or intangible
29 property in addition to the right to receive compensation. As
30 used in this subclause the term "consideration" means an

1 investment of cash or the purchase of goods, other property,
2 training or services, but does not include payments made for
3 sales demonstration equipment and materials for use in making
4 sales and not for resale furnished at no profit to any person in
5 the program or to the company or corporation, nor does the term
6 apply to a minimal initial payment of twenty-five dollars (\$25)
7 or less;

8 * * *

9 (5) "Bona fide inventory repurchase program" means a program
10 by which an entity repurchases from a salesperson current and
11 marketable inventory in possession of the salesperson, on
12 request and on commercially reasonable terms, when the
13 salesperson's business relationship is terminated.

14 (6) "Commercially reasonable terms" means the repurchase of
15 current and marketable inventory within twelve (12) months after
16 the date of purchase at not less than ninety percent (90%) of
17 the original net cost, less appropriate set-offs and legal
18 claims, if any.

19 (7) "Compensation" means a payment of any money, a thing of
20 value or financial benefit conferred in return for inducing
21 another person to participate in a Pyramid Promotional Scheme.

22 (8) "Consideration" means the payment of cash or the
23 purchase of goods, services or intangible property. The term
24 shall not include the purchase of goods or services furnished at
25 cost to be used in making sales and not for resale, or time and
26 effort spent in pursuit of sales or recruiting activities. The
27 term shall not include payment for sales demonstration,
28 equipment and materials furnished at cost for use in making
29 sales and not for resale.

30 (9) "Inventory" includes both goods and services, including

1 company-produced promotional materials, sales aids and sales
2 kits that an entity requires independent salespersons to
3 purchase.

4 (10) "Inventory loading" means the requirement or
5 encouragement by a plan or operation to have the independent
6 salesperson of the plan or operation purchase inventory in an
7 amount that exceeds the amount that the salesperson can expect
8 to resell for ultimate consumption or to use or consume in a
9 reasonable time period, or both.

10 (11) "Person" means an individual, corporation, trust,
11 estate, partnership, unincorporated association or any other
12 legal or commercial entity.

13 (12) "Promote" means to contrive, prepare, establish, plan,
14 operate, advertise or otherwise induce or attempt to induce
15 another person to participate in a Pyramid Promotional Scheme.

16 (13) "Current and marketable" excludes inventory that:
17 (i) is no longer within its commercially reasonable use or
18 shelf-life period;
19 (ii) was clearly described to salespersons prior to purchase
20 as seasonal, discontinued or special promotion products not
21 subject to the plan or organization's inventory repurpose
22 program; or
23 (iii) has been used or open.

24 Section 2. Section 3 of the act is amended to read:

25 Section 3. Unlawful Acts or Practices; Exclusions.--(a)
26 Unfair methods of competition and unfair or deceptive acts or
27 practices in the conduct of any trade or commerce as defined by
28 subclauses (i) through (xxi) of clause (4) of section 2 of this
29 act and regulations promulgated under section 3.1 of this act
30 are hereby declared unlawful. The provisions of this act shall

1 not apply to any owner, agent or employe of any radio or
2 television station, or to any owner, publisher, printer, agent
3 or employe of an Internet service provider or a newspaper or
4 other publication, periodical or circular, who, in good faith
5 and without knowledge of the falsity or deceptive character
6 thereof, publishes, causes to be published or takes part in the
7 publication of such advertisement.

8 **(b) The provisions of this act may not be construed to**
9 **prohibit a plan or operation, or to define a plan or operation**
10 **as a Pyramid Promotional Scheme, if the participants in the plan**
11 **or operation give consideration in return for the right to**
12 **receive compensation based upon purchases of goods, services or**
13 **intangible property for personal use, consumption or resale if**
14 **the plan or operation does not cause inventory loading, and the**
15 **plan or operation implements a bona fide inventory repurchase**
16 **program.**

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

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

26 **(c) Before a salesperson of the entity purchases any**
27 **inventory, the entity must clearly describe the inventory that**
28 **is excluded from the entity's bona fide inventory repurchase**
29 **program as seasonal, discontinued or special promotion products**
30 **and the inventory that is not subject to the entity's bona fide**

1 inventory repurchase program.

2 Section 3. This act shall take effect immediately.