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**HOUSE BILL NO. 990**

Offered January 9, 2008

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A *BILL to amend and reenact §§ 18.2-239 and 59.1-200 of the Code of Virginia, relating to definition of pyramid promotional schemes; penalty.*

Patrons—Bell, Athey, Cole, Lingamfelter, Merricks and Sherwood

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-239 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-239. Pyramid promotional schemes; misdemeanor; definitions; contracts void.

Every person who contrives, prepares, sets up, operates, advertises or promotes any pyramid promotional scheme shall be guilty of a Class 1 misdemeanor. For the purposes of this section:

(a) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant gives a valuable consideration for the opportunity to receive compensation or things of value in return for inducing other persons to become participants in the program;

(b) "Compensation" does not mean payment based on sales of goods or services to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme; and

(c) "Promotes" shall mean inducing one or more other persons to become a participant.

All contracts and agreements, now existing or hereafter formed, whereof the whole or any part of the consideration is given for the right to participate in pyramid promotional scheme programs, are against public policy, void and unenforceable.

A. Any person who establishes, promotes, operates, or participates in any pyramid promotional scheme is guilty of a Class 1 misdemeanor.

B. Nothing in this section may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and the plan or operation implements an appropriate inventory repurchase program.

C. For purposes of this section:

"Appropriate inventory repurchase program" means a program by which a plan or operation repurchases, upon request and upon commercially reasonable terms, when the salesperson's business relationship with the company ends, current and marketable inventory in the possession of the salesperson that was purchased by the salesperson. Any such plan or operation shall clearly describe the program in its recruiting literature, sales manual, or contract with independent salespersons, including the disclosure of any inventory that is not eligible for repurchase under the program.

"Commercially reasonable terms" means the repurchase of current and marketable inventory within 12 months from the date of purchase at not less than 90 percent of the original net cost, less appropriate set-offs and legal claims, if any.

"Compensation" means a payment of any money, thing of value, or financial benefit conferred in return for inducing another person to participate in a pyramid promotional scheme. "Compensation" does not mean payment based on sales of goods or services to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

"Consideration" means more than the payment of cash or the purchase of goods, services, or intangible property. The term does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale or time and effort spent in pursuit of sales or recruiting activities.

"Current and marketable" excludes inventory that is no longer within its commercially reasonable use or shelf-life period; was clearly described to salespersons prior to purchase as seasonal, discontinued, or special promotion products not subject to the plan or operation's inventory repurchase program; or has been used or opened.

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

"Promote" means contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme, including a pyramid promotional scheme run through the Internet, e-mail, or other electronic communications.

INTRODUCED

HB990

59 *"Pyramid promotional scheme" means any plan or operation by which a person gives consideration*  
60 *for the opportunity to receive compensation a majority of which is derived from the introduction of*  
61 *other persons into the plan or operation rather than from the sale and consumption of goods, services,*  
62 *or intangible property by a participant or other persons introduced into the plan or operation. The term*  
63 *includes any plan or operation under which the number of persons who may participate is limited either*  
64 *expressly or by the application of conditions affecting the eligibility of a person to receive compensation*  
65 *under the plan or operation, or any plan or operation under which a person, on giving consideration,*  
66 *obtains any goods, services, or intangible property in addition to the right to receive compensation.*

67 § 59.1-200. Prohibited practices.

68 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer  
69 transaction are hereby declared unlawful:

- 70 1. Misrepresenting goods or services as those of another;
- 71 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 72 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or  
73 services, with another;
- 74 4. Misrepresenting geographic origin in connection with goods or services;
- 75 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or  
76 benefits;
- 77 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 78 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,  
79 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first  
80 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods  
81 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"  
82 irregulars, imperfects or "not first class";
- 83 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell  
84 at the price or upon the terms advertised.

85 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or  
86 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
87 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph  
88 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such  
89 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or  
90 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement  
91 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

92 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts  
93 of price reductions;

94 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts  
95 installed;

96 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice  
97 or bill for merchandise or services previously ordered;

98 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"  
99 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the  
100 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in  
101 manufacturing the goods or services advertised or offered for sale;

102 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of  
103 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,  
104 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,  
105 or under federal statutes or regulations;

106 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection  
107 with a consumer transaction;

108 15. Violating any provision of § 3.1-796.78, 3.1-796.79, or 3.1-796.82, relating to the sale of certain  
109 animals by pet dealers which is described in such sections, is a violation of this chapter;

110 16. Failing to disclose all conditions, charges, or fees relating to:

111 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
112 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
113 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
114 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
115 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
116 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
117 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
118 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
119 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
120 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise

reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; and

45. (Effective January 1, 2007) Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1; and

**182**      *46. Violating any provision of § 18.2-239.*

**183**      B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
**184** lease solely by reason of the failure of such contract or lease to comply with any other law of the  
**185** Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
**186** provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
**187** such contract or lease.