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## SENATE BILL NO. 95

Offered January 9, 2008

Prefiled December 26, 2007

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

Patron—Reynolds

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 18.2-239 of the Code of Virginia is 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. A limitation as to the number of persons who may participate in, or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under, a plan does not change the identity of the plan as a pyramid promotional scheme. It is not a defense under this section that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation.

C. 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. 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.

D. 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 for resale. 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.

"Consideration" means 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.

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

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

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