

By: Senator(s) Burton

To: Judiciary, Division A

SENATE BILL NO. 2805

1 AN ACT TO CREATE NEW SECTIONS 75-24-71 THROUGH 75-24-77,
2 MISSISSIPPI CODE OF 1972, TO PROHIBIT PYRAMID PROMOTIONAL SCHEMES;
3 TO REGULATE RECRUITING LITERATURE AND INFORMATION OF BONA FIDE
4 INVENTORY REPURCHASE PROGRAMS; TO AMEND SECTIONS 75-24-51,
5 75-24-53 AND 75-24-59, MISSISSIPPI CODE OF 1972, TO REMOVE
6 REFERENCES TO PYRAMID SCHEMES; TO BRING FORWARD SECTIONS 75-24-55,
7 75-24-61 AND 75-24-63, MISSISSIPPI CODE OF 1972, WHICH REGULATE
8 FRANCHISE COMPANIES, FOR PURPOSES OF AMENDMENT; AND FOR RELATED
9 PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** The following shall be codified as Section
12 75-24-71, Mississippi Code of 1972:

13 75-24-71. As used in Sections 75-24-71 through 75-24-77, the
14 following words and phrases shall have the meanings as described
15 in this section, unless the context clearly indicates otherwise:

16 (a) "Bona fide inventory repurchase program" means a
17 program by which an entity repurchases from a salesperson current
18 and marketable inventory in the possession of the salesperson,
19 upon request and upon commercially reasonable terms, when the
20 salesperson's business relationship is terminated.



21 (b) "Commercially reasonable terms" means the
22 repurchase of current and marketable inventory within twelve (12)
23 months after the date of purchase at not less than ninety percent
24 (90%) of the original net cost, less appropriate set-offs and
25 legal claims, if any.

26 (c) "Compensation" means a payment of any money, thing
27 of value, or financial benefit conferred in return for inducing
28 another person to participate in a pyramid promotional scheme.

29 (d) "Consideration" as used in Sections 75-24-71
30 through 75-24-77 means the payment of cash or the purchase of
31 goods, services, or intangible property. The term does not
32 include the purchase of goods or services furnished at cost to be
33 used in making sales and not for resale, or time and effort spent
34 in pursuit of sales or recruiting activities.

35 (e) "Inventory" includes both goods and services,
36 including company-produced promotional materials, sales aids, and
37 sales kits that an entity requires independent salespersons to
38 purchase.

39 (f) "Inventory loading" means the requirement or
40 encouragement by a plan or operation that its independent
41 salesperson purchase inventory in an amount that exceeds the
42 amount that the salesperson can expect to resell for ultimate
43 consumption or to use or consume in a reasonable time period, or
44 both.



(g) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme.

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

SECTION 2. The following shall be codified as Section 75-24-73, Mississippi Code of 1972:

75-24-73. **Pyramid promotional scheme forbidden.** (1) A person may not establish, promote, or operate any pyramid promotional scheme. Any limitation regarding the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive



69 compensation under the plan does not change the identity of the
70 plan as a pyramid promotional scheme.

71 (2) The provisions of this section may not be construed to
72 prohibit a plan or operation, or to define a plan or operation as
73 a pyramid promotional scheme, if the participants in the plan or
74 operation give consideration in return for the right to receive
75 compensation based upon purchases of goods, services, or
76 intangible property by participants for personal use, consumption,
77 or resale if both of the following conditions are met: (a) the
78 plan or operation does not cause inventory loading, and (b) the
79 plan or operation implements a bona fide inventory repurchase
80 program.

81 (3) An entity must clearly describe a bona fide inventory
82 repurchase program in its recruiting literature, sales manual, or
83 contracts with independent salespersons. The recruiting
84 literature, sales manual, or contract must disclose any inventory
85 that is not eligible for repurchase under the program.

86 (4) A bona fide inventory repurchase program is not required
87 to apply to inventory that is no longer within the inventory's
88 commercially reasonable use or shelf life period or has been used
89 or opened.

90 (5) Before a salesperson of the entity purchases any
91 inventory, the entity must clearly describe the inventory that is
92 excluded from the entity's bona fide inventory repurchase program
93 as seasonal, discontinued, or special promotion products and the



inventory that is not subject to the entity's bona fide inventory repurchase program.

SECTION 3. The following shall be codified as Section 75-24-75, Mississippi Code of 1972:

75-24-75. **Injunctive relief.** In addition to other penalties and remedies provided in Sections 75-24-71 through 75-24-77, whenever it appears that any person is engaged or is about to engage in any act or practice which constitutes a pyramid sales scheme or which is prohibited by Sections 75-24-71 through 75-24-77, the Attorney General may bring an action in the name of the state pursuant to the provisions of Section 75-24-9 in order to enjoin any such act or practice.

SECTION 4. The following shall be codified as Section 75-24-77, Mississippi Code of 1972:

75-24-77. **Penalties.** Any person willfully violating any of the provisions of Section 75-24-73 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six (6) months or by both such fine and imprisonment.

SECTION 5. Section 75-24-51, Mississippi Code of 1972, is amended as follows:

75-24-51. As used in Sections 75-24-51 through 75-24-61, the following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:



119 * * *

120 (* * *a) The term "goods" includes any personal
121 property, real property, or any combination thereof;

122 * * *

123 (* * *b) The term "person" includes an individual,
124 corporation, trust, estate, partnership, unincorporated
125 association, or any other legal or commercial entity;

126 * * *

127 (* * *c) "Franchise" means a written arrangement for a
128 definite or indefinite period, in which a person for a
129 consideration grants to another person a license to use a trade
130 name, trademark, service mark, or related characteristic, and in
131 which there is a community of interest in the marketing of goods
132 or services at wholesale, retail, by lease, agreement or
133 otherwise; except that, the term "franchise" shall not apply to
134 persons engaged in sales from warehouses or like places of
135 storage, leased departments of retail stores, or places of
136 original manufacture; and

137 (* * *d) "Consideration" as used in Sections 75-24-51
138 through 75-24-61 does not include payment for sales demonstration
139 equipment and materials furnished at cost for use in making sales
140 and not for resale or payments amounting to less than One Hundred
141 Dollars (\$100.00) when computed on an annual basis.

142 **SECTION 6.** Section 75-24-53, Mississippi Code of 1972, is
143 amended as follows:



144 75-24-53. * * * No person who has granted a franchise to
145 another person shall cancel or otherwise terminate any such
146 franchise agreement without notifying such person of the
147 cancellation, termination or failure to renew in writing at least
148 ninety (90) days in advance of the cancellation, termination or
149 failure to renew, except that when criminal misconduct, fraud,
150 abandonment, bankruptcy or insolvency of the franchisee, or the
151 giving of a no account or insufficient funds check is the basis or
152 grounds for cancellation or termination, the ninety-day notice
153 shall not be required.

154 **SECTION 7.** Section 75-24-55, Mississippi Code of 1972, is
155 brought forward as follows:

156 75-24-55. Franchise companies shall not represent directly
157 or by implication that prospective participants may or will earn
158 any stated gross or net amount, or represent in any manner, the
159 past earnings of participants unless in fact the past earnings or
160 predicted gross or net amount represented are those of a
161 substantial number of participants in the community or
162 geographical area in which the representations are made and
163 accurately reflect the average earnings of those participants
164 under circumstances similar to those of the participant or
165 prospective participant to whom the representation is made.

166 **SECTION 8.** Section 75-24-59, Mississippi Code of 1972, is
167 amended as follows:



168 75-24-59. In addition to other penalties and remedies
169 provided in Sections 75-24-51 through 75-24-61, whenever it
170 appears that any person is engaged or is about to engage in any
171 act or practice which * * * is prohibited by Sections 75-24-51
172 through 75-24-61, the Attorney General may bring an action in the
173 name of the state pursuant to the provisions of Section 75-24-9 in
174 order to enjoin any such act or practice.

175 **SECTION 9.** Section 75-24-61, Mississippi Code of 1972, is
176 brought forward as follows:

177 75-24-61. Any person willfully violating any of the
178 provisions of Section 75-24-53 is guilty of a misdemeanor and,
179 upon conviction, shall be punished by a fine of not more than Five
180 Hundred Dollars (\$500.00) or by imprisonment in the county jail
181 for a term not to exceed six (6) months or by both such fine and
182 imprisonment.

183 **SECTION 10.** Section 75-24-63, Mississippi Code of 1972, is
184 brought forward as follows:

185 75-24-63. Sections 75-24-51 through 75-24-61, Mississippi
186 Code of 1972, shall not apply to retailers as defined in Section
187 75-77-1, Mississippi Code of 1972.

188 **SECTION 11.** This act shall take effect and be in force from
189 and after July 1, 2018.

