

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1338

By: Voskuhl

AS INTRODUCED

An Act relating to crimes and punishments; enacting the Oklahoma Pyramid Promotional Scheme Act; defining terms; establishing crime; providing penalty; providing for restitution under certain circumstances; providing for civil action under certain conditions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1071 of Title 21, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Pyramid Promotional Scheme Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1072 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Pyramid Promotional Scheme Act:

1. "Compensation" means payment of money, thing of value or financial benefit. Compensation does not include:

- a. payment to participants based upon sales of products purchased for actual use and consumption, or
- b. payment to participants under reasonable commercial terms;

2. "Consideration" means the payment of cash or purchase of goods, services or intangible property. Consideration does not include:

- a. purchase of products furnished at cost to be used in making sales and not for resale,
- b. purchase of products where the seller offers to repurchase the participant's products under reasonable commercial terms, or
- c. participant's time and effort in pursuit of sales or recruiting activities;

3. "Participant" means a person who contributes money into a pyramid promotional scheme;

4. "Person" means an individual, a corporation, a partnership or any association or unincorporated organization;

5. "Promote" means:

- a. to contrive, prepare, establish, plan, operate or advertise, or
- b. to induce or attempt to induce other persons to be a participant;

6. "Pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from the person's introduction of other persons into the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation; and

7. "Reasonable commercial terms" means:

- a. seller shall repurchase all unencumbered products from participant which are unused and in commercially resalable condition within one (1) year from participant's date of purchase. Such repurchase by seller shall not be for less than ninety percent (90%) of the original cost to the participant. Original cost to the participant means the actual amount paid by the participant for the products, less any consideration received by the participant for purchase of the products being returned, or
- b. seller shall repurchase all unencumbered products from participants if the products are no longer marketed by a seller, unless the products sold to participants are clearly disclosed by the seller as being nonreturnable because the product is seasonal, a special purchase or discontinued, or
- c. participants may return all unencumbered products to seller within three (3) days and receive one hundred percent (100%) of participant's original cost back.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1073 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who promotes a pyramid promotional scheme shall be guilty of a felony and upon conviction shall be punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment in the State Penitentiary for not more than ten (10) years, or by both such fine and imprisonment, for each violation of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1074 of Title 21, unless there is created a duplication in numbering, reads as follows:

A district attorney may accept a written assurance of discontinuance of any practice in violation of this act from the person that has engaged in the unlawful practice. The district attorney may require in the agreement that by a certain date, restitution will be made to any person that has been a victim of a violation of this act. A person is not required to accept restitution pursuant to an assurance, however, acceptance of restitution pursuant to the assurance will bar that person from seeking damages from the same defendant for the same violations of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1075 of Title 21, unless there is created a duplication in numbering, reads as follows:

Except as provided in Section 4 of this act, any participant in a pyramid promotional scheme may declare their transaction void and bring a civil action in a court of competent jurisdiction to recover the consideration paid. In such an action, the court, in addition to any judgment awarded, shall require the defendant to pay reasonable attorney fees and the costs of the action, less any money paid to the participant as profit in the pyramid promotional scheme.

SECTION 6. This act shall become effective November 1, 1995.

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