

Senate Study Bill 3051 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON CHAPMAN)

A BILL FOR

1 An Act prohibiting pyramid promotional schemes and making
2 penalties applicable.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 714.16, subsection 2, Code 2018, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *p.* (1) It is an unlawful practice for a
4 person to establish, promote, or operate a pyramid promotional
5 scheme.

6 (2) This paragraph shall not be construed to prohibit a
7 plan or operation, or define a plan or operation as a pyramid
8 promotional scheme, based on the fact that participants in
9 the plan or operation give consideration in return for the
10 right to receive compensation based upon purchases of goods,
11 services, or intangible property by participants for personal
12 use, consumption, or resale if the following conditions are
13 satisfied:

14 (a) The plan or operation does not result in inventory
15 loading.

16 (b) The plan or operation implements a bona fide inventory
17 repurchase program.

18 (3) For purposes of this paragraph:

19 (a) "*Bona fide inventory repurchase program*" means a program
20 by which a person repurchases current and marketable inventory
21 from an independent salesperson that was originally purchased
22 from the person for resale by the independent salesperson, upon
23 request and within twelve months after the date of original
24 purchase at no less than ninety percent of the original
25 net cost, less any appropriate incidental costs, when the
26 independent salesperson's business relationship with the person
27 ends, and which program was communicated to the independent
28 salesperson in writing.

29 (b) "*Compensation*" means payment of any money, thing of
30 value, or financial benefit conferred in return for inducing
31 another person to participate in a pyramid promotional scheme.

32 (c) "*Consideration*" means payment of any money or
33 the purchase of goods, services, or intangible property.
34 "*Consideration*" does not include the purchase of goods or
35 services furnished at no cost to be used in making sales and

1 not for resale, or time and effort spent in pursuit of sales or
2 recruitment activities.

3 (d) "*Current and marketable inventory*" means any goods or
4 services, including promotional materials, sales aids, and
5 sales kits, that an independent salesperson is required to
6 purchase pursuant to a bona fide inventory repurchase program.
7 "*Current and marketable inventory*" does not include inventory
8 that is no longer within its commercially reasonable use or
9 shelf life period, communicated in writing to an independent
10 salesperson prior to purchase as seasonal, discontinued, or
11 a special promotion product not subject to the bona fide
12 inventory repurchase program, or used or opened.

13 (e) "*Inventory loading*" means a plan or operation by which
14 a person requires or encourages an independent salesperson to
15 purchase inventory in an amount that exceeds the amount that
16 the independent salesperson can expect to resell for ultimate
17 consumption or to consume in a reasonable period, or both.

18 (f) "*Pyramid promotional scheme*" means a plan or operation
19 by which a person provides consideration for the opportunity
20 to receive compensation that is primarily derived from the
21 introduction of other persons into the plan or operation
22 and not from the sale or consumption of goods, services, or
23 intangible property by persons introduced into the plan or
24 operation. "*Pyramid promotional scheme*" includes a plan or
25 operation by which the number of persons who may participate is
26 limited either expressly or by the application of conditions
27 affecting the eligibility of persons to receive compensation
28 under the plan or operation, or a plan or operation by which a
29 person, upon providing consideration, obtains goods, services,
30 or intangible property in addition to the right to receive
31 compensation.

32 Sec. 2. Section 714H.3, subsection 2, paragraph f, Code
33 2018, is amended to read as follows:

34 f. Section 714.16, subsection 2, paragraphs "b" through "n",
35 and paragraph "p".

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EXPLANATION

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The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

3

4 This bill prohibits a person from establishing, promoting,
5 or operating a pyramid promotional scheme.

6 The bill defines a "pyramid promotional scheme" as a plan
7 or operation by which a person provides consideration for the
8 opportunity to receive compensation primarily derived from
9 introducing other persons into the plan or operation and not
10 from the sale or consumption of goods, services, or property.
11 The bill provides that a "pyramid promotional scheme" includes
12 a plan or operation by which the number of participants is
13 limited either expressly or by the application of conditions
14 affecting eligibility, or a plan or operation by which a
15 person, upon providing consideration, obtains goods, services,
16 or property in addition to the right to receive compensation.

17 The bill provides that it shall not be construed to
18 prohibit a plan or operation, or define a plan or operation
19 as a pyramid promotional scheme, based on the fact that
20 participants give consideration in return for the right to
21 receive compensation based upon purchases by participants for
22 personal use, consumption, or resale, if the plan or operation
23 does not result in inventory loading and implements a bona fide
24 inventory repurchase program as defined in the bill.

25 A violation of the bill constitutes an unlawful practice
26 under both the "Iowa Consumer Frauds Act" (Code section 714.16)
27 and the "Private Right of Action For the Iowa Consumer Frauds
28 Act" (Code chapter 714H). Under the "Iowa Consumer Frauds
29 Act", the attorney general may investigate, issue subpoenas,
30 and commence civil proceedings seeking restraining orders or
31 injunctions prohibiting persons from engaging in unlawful
32 practices or seeking termination of the business affairs of a
33 person engaging in unlawful practices. In addition, a civil
34 penalty of up to \$40,000 per violation may be imposed by a
35 court against a person found to have committed an unlawful

1 practice. Under the "Private Right of Action For the Iowa
2 Consumer Frauds Act", a consumer may sue to recover actual
3 damages and may seek punitive damages up to three times the
4 actual damages in cases of willful and wanton conduct by a
5 defendant. In addition, if the consumer prevails in a private
6 right of action lawsuit, the court must award reasonable
7 attorney fees.