

114TH CONGRESS
2D SESSION

H. R. 5230

To prohibit pyramid promotional schemes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2016

Mrs. BLACKBURN (for herself and Mr. VEASEY) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To prohibit pyramid promotional schemes, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Pyramid Pro-
5 motional Scheme Act of 2016”.

6 **SEC. 2. PROHIBITION ON PYRAMID PROMOTIONAL**
7 **SCHEMES.**

8 (a) IN GENERAL.—It shall be unlawful for any per-
9 son to establish, operate, promote or cause to be promoted
10 a pyramid promotional scheme.

1 (b) ENFORCEMENT BY THE FEDERAL TRADE COM-
2 MISSION.—A violation of subsection (a) shall be treated
3 as an unfair or deceptive act or practice in or affecting
4 commerce under section 5 of the Federal Trade Commis-
5 sion Act (15 U.S.C. 45). The Federal Trade Commission
6 shall enforce such subsection in the same manner, by the
7 same means, and with the same jurisdiction, powers, and
8 duties as though all applicable terms and provisions of the
9 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
10 were incorporated into and made a part of this Act.

11 **SEC. 3. DEFINITIONS.**

12 As used in this Act:

13 (1) APPROPRIATE INVENTORY REPURCHASE
14 AGREEMENT.—The term “appropriate inventory
15 purchase agreement” means a program by which a
16 plan or operation repurchases, upon request at the
17 termination of a participant’s business relationship
18 with the plan or operation and based upon commer-
19 cially reasonable terms, current and marketable in-
20 ventory purchased and maintained by the participant
21 for resale, use, or consumption, and such plan or op-
22 eration in its recruiting literature, sales manual, and
23 contracts with participants, including the manner in
24 which the repurchase is exercised, and disclosure of

1 any inventory that is not eligible for repurchase
2 under the program.

3 (2) COMMERCIALLY REASONABLE TERMS.—The
4 term “commercially reasonable terms” means the re-
5 purchase of current and marketable inventory within
6 12 months from the date of purchase at not less
7 than 90 percent of the original net cost to the par-
8 ticipant, less appropriate set-offs and legal claims, if
9 any.

10 (3) COMPENSATION.—The term “compensa-
11 tion” means the payment of any money, thing of
12 value, financial benefits, or position within the plan
13 or operation;

14 (4) CONSIDERATION.—The term “consider-
15 ation”—

16 (A) means the payment of money or an-
17 other thing of value or the purchase of a prod-
18 uct, good, service, intangible property; and

19 (B) does not include—

20 (i) the purchase of a product fur-
21 nished at cost to be used in making a sale
22 and not for resale; or

23 (ii) any time and effort spent in pur-
24 suit of sales or recruiting activities.

1 (5) CURRENT AND MARKETABLE.—The term
2 “current and marketable”, with respect to inven-
3 tory—

4 (A) means inventory that—

5 (i) in the case of consumable or dura-
6 ble goods, is unopened, unused, and within
7 its commercially reasonable use or shelf-life
8 period; and

9 (ii) in the case services and intangible
10 property, including Internet sites, rep-
11 resents the unexpired portion of any con-
12 tract or agreement; and

13 (B) does not include inventory that has
14 been clearly described to the participant prior
15 to purchase as discounted, seasonal, special pro-
16 motion item, or not subject to the plan or oper-
17 ation’s inventory repurchase program.

18 (6) INVENTORY.—The term “inventory” means
19 both goods and services, including company pro-
20 duced promotional material, sales aids, and sales
21 kits that the plan or operation requires participants
22 to purchase.

23 (7) INVENTORY LOADING.—The term “inven-
24 tory loading” means that the plan or operation re-
25 quires or encourages its participants to purchase in-

ventory in an amount that unreasonably exceeds that which the participant can expect to resell to ultimate users, or to use or consume, in a reasonable period of time.

(8) PARTICIPANT.—The term “participant” means a person who joins the plan or operation.

(9) PYRAMID PROMOTIONAL SCHEME.—The term “pyramid promotional scheme” means a plan or operation by which a person gives consideration to a participant for the right to receive compensation that is derived primarily from a participant’s introduction of another person into the plan or operation rather than from the sale of products to ultimate users.

(10) ULTIMATE USER.—The term “ultimate user” means a non-participant in the plan or operation, or a participant who purchases reasonable amounts of products, goods, services, or intangible property for personal use and whose purchase is not made solely for purposes of qualifying for increased compensation.

SEC. 4. LIMITATIONS.

Nothing in this Act shall be construed to—

(1) limit the authority of any Federal official from proceeding against pyramid promotional

1 schemes for other violations of Federal law, includ-
2 ing the Federal Trade Commission Act;

3 (2) allow for a defense to an enforcement action
4 under section 2 of this Act that the alleged pyramid
5 promotional scheme involved both a franchise to sell
6 a product and the authority to sell additional fran-
7 chises if the emphasis of the alleged pyramid pro-
8 motional scheme is on the sale of additional fran-
9 chises; or

10 (3) allow for a defense to an enforcement action
11 under section 2 of this Act that the alleged pyramid
12 promotional scheme included repurchase agreement
13 inventory loading programs if the emphasis of the
14 alleged pyramid promotional scheme is on the sale of
15 additional franchises.

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