

115TH CONGRESS  
2D SESSION

# S. 3

To amend the Federal Trade Commission Act to prohibit pyramid promotional schemes to ensure that compensation is not based upon recruitment of participants into a plan or operation, but instead based primarily on sales to individuals who use, resell, or consume the products or services sold, protect participants, prohibit inventory loading, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2018

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Federal Trade Commission Act to prohibit pyramid promotional schemes to ensure that compensation is not based upon recruitment of participants into a plan or operation, but instead based primarily on sales to individuals who use, resell, or consume the products or services sold, protect participants, prohibit inventory loading, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Anti-Pyramid Pro-  
3 motional Scheme Act of 2018”.

4 **SEC. 2. PROHIBITION ON PYRAMID PROMOTIONAL**  
5 **SCHEMES; OTHER REQUIREMENTS.**

6 The Federal Trade Commission Act (15 U.S.C. 41  
7 et seq.) is amended by inserting after section 5 the fol-  
8 lowing:

9 “SEC. 5A. (a) It shall be unlawful for any person to  
10 establish, operate, promote, or cause to be promoted a pyr-  
11 amid promotional scheme.

12 “(b) It shall be unlawful for any person to establish,  
13 operate, promote, or cause to be promoted any plan or  
14 operation which sells or solicits the sale of consumer prod-  
15 ucts or services in the home or otherwise than in a perma-  
16 nent retail establishment, and which sells products or serv-  
17 ices directly or indirectly to independent salespeople for  
18 resale, to operate without a bona fide inventory repurchase  
19 agreement.

20 “(c) It shall be unlawful for any person to establish,  
21 operate, promote, or cause to be promoted a plan or oper-  
22 ation which causes inventory loading.

23 “(d) Nothing in this Act may be construed to prohibit  
24 a plan or operation, or to define a plan or operation as  
25 a pyramid promotional scheme, based upon the fact that  
26 participants in the plan or operation give consideration in

1 return for the right to receive compensation based upon  
2 purchases of goods or services or intangible property by  
3 participants for personal use, consumption, or resale so  
4 long as the plan or operation does not cause inventory  
5 loading and the plan or operation implements a bona fide  
6 inventory repurchase agreement.

7 “(e) A violation of subsection (a), (b), or (c) shall  
8 be treated as a violation under section 5.”.

9 **SEC. 3. DEFINITIONS.**

10 Section 4 of the Federal Trade Commission Act (15  
11 U.S.C. 44) is amended by adding at the end the following:

12 “‘Bona fide inventory repurchase agreement’ means  
13 a program by which a plan or operation—

14 “(1) repurchases, on commercially reasonable  
15 terms, current and marketable inventory purchased  
16 and maintained by a participant for resale, upon re-  
17 quest at the termination of the participant’s busi-  
18 ness relationship with the plan or operation; and

19 “(2) clearly communicates such terms in its re-  
20 cruiting literature, sales manual, or contracts with  
21 participants, including the manner in which the re-  
22 purchase is to be exercised and disclosure of any in-  
23 ventory not eligible for repurchase under the pro-  
24 gram.

1       “‘Commercially reasonable’ means, with respect to  
 2 the terms of repurchase by a plan or operation of current  
 3 and marketable inventory from a participant, that the in-  
 4 ventory is repurchased not later than 12 months after the  
 5 date of purchase at not less than 90 percent of the original  
 6 net cost to the participant, less appropriate set-offs and  
 7 legal claims, if any.

8       “‘Compensation’ means the payment of any money,  
 9 thing of value, or financial benefit.

10      “‘Consideration’—

11           “(1) means the payment of money or another  
 12 thing of value or the purchase of a product, good,  
 13 service, or intangible property; and

14           “(2) does not include—

15               “(A) the purchase of a product or service  
 16 furnished at cost to be used in making a sale  
 17 and not for resale; or

18               “(B) any time and effort spent in pursuit  
 19 of sales or recruiting activities.

20      “‘Current and marketable’—

21           “(1) means, with respect to inventory, that the  
 22 inventory—

23               “(A) in the case of consumable or durable  
 24 goods, is unopened, unused, and within its com-  
 25 mercially reasonable use or shelf-life period; and

1           “(B) in the case of services and intangible  
2           property, including internet sites, represents the  
3           unexpired portion of any contract or agreement;  
4           and

5           “(2) does not include inventory that has been  
6           clearly described by a plan or operation to a partici-  
7           pant prior to purchase as discounted, seasonal, a  
8           special promotion item, or not subject to the plan or  
9           operation’s bona fide inventory repurchase agree-  
10          ment.

11          “‘Inventory’ means both goods and services, includ-  
12          ing company-produced promotional material, sales aids,  
13          and sales kits that a plan or operation requires partici-  
14          pants to purchase.

15          “‘Inventory loading’ means a practice in which a plan  
16          or operation requires or encourages its participants to pur-  
17          chase inventory in an amount exceeding that which the  
18          participant can reasonably expect to use, consume, or re-  
19          sell to ultimate users.

20          “‘Participant’ means a person who joins a plan or  
21          operation.

22          “‘Pyramid promotional scheme’ means any plan or  
23          operation in which individuals pay consideration for the  
24          right to receive compensation that is primarily based upon  
25          recruiting other individuals into the plan or operation

1 rather than related to the sale of products or services to  
 2 ultimate users.

3 “‘Ultimate user’ means, with respect to a product or  
 4 service sold by a plan or operation, an individual who con-  
 5 sumes or uses the product or service, whether or not the  
 6 individual is a participant in the plan or operation.”.

7 **SEC. 4. LIMITATIONS.**

8 (a) OTHER VIOLATIONS OF FEDERAL LAW.—Noth-  
 9 ing in this Act or the amendments made by this Act shall  
 10 be construed to limit the authority of any Federal official  
 11 from proceeding against pyramid promotional schemes (as  
 12 defined in section 4 of the Federal Trade Commission Act  
 13 (15 U.S.C. 44)) for other violations of Federal law, includ-  
 14 ing the Federal Trade Commission Act.

15 (b) STATE LAW.—Nothing in this Act or the amend-  
 16 ments made by this Act prohibits an authorized State offi-  
 17 cial from proceeding in a State court of competent juris-  
 18 diction on the basis of an alleged violation of any civil or  
 19 criminal statute of such State.

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