

HOUSE BILL No. 2231

AN ACT concerning crimes, punishment and criminal procedure; relating to conducting a pyramid promotional scheme; exemptions; amending K.S.A. 2021 Supp. 21-5838 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2021 Supp. 21-5838 is hereby amended to read as follows: 21-5838. (a) Conducting a pyramid promotional scheme is knowingly establishing, operating, advertising or promoting any pyramid promotional scheme.

(b) Conducting a pyramid promotional scheme is a severity level 9, nonperson felony.

(c) A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme.

(d) It is not a defense under this section that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

(e) *The provisions of this section shall not be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, if the participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services or intangible property for personal use, consumption or resale if the plan or operation does not cause inventory loading.*

(f) The attorney general, or county attorney or district attorney, or both, may institute criminal action to prosecute this offense.

(g) As used in this section:

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

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

(3) "Consideration" means the payment of cash or the purchase of goods, services or intangible property. "Consideration" does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities. "Consideration" does not include payment for sales demonstration, equipment and materials furnished at cost for use in making sales and not for resale.

(4) "Inventory" means both goods and services, including, but not limited to, company-produced promotional materials, sales aids and sales kits that an entity requires independent salespersons to purchase.

(5) "Inventory loading" means the requirement or encouragement by a plan or operation to have the independent salesperson of the plan or operation purchase inventory in an amount that exceeds the amount that the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period, or both.

(6) "Person" means an individual, corporation, trust, estate, partnership, unincorporated association or any other legal or commercial entity.

(7) "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.

Sec. 2. K.S.A. 2021 Supp. 21-5838 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.