3/19/18 3:33 P.m.

Chapter No. 394
18/SS01/R885
aj lcbm/sc

SENATE BILL NO. 2805

Originated in Senate _____ Secretary

SENATE BILL NO. 2805

AN ACT TO CREATE NEW SECTIONS 75-24-71 THROUGH 75-24-77, MISSISSIPPI CODE OF 1972, TO PROHIBIT PYRAMID PROMOTIONAL SCHEMES; TO REGULATE RECRUITING LITERATURE AND INFORMATION OF BONA FIDE INVENTORY REPURCHASE PROGRAMS; TO AMEND SECTIONS 75-24-51, 75-24-53 AND 75-24-59, MISSISSIPPI CODE OF 1972, TO REMOVE REFERENCES TO PYRAMID SCHEMES; TO BRING FORWARD SECTIONS 75-24-55, 75-24-61 AND 75-24-63, MISSISSIPPI CODE OF 1972, WHICH REGULATE FRANCHISE COMPANIES, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 75-24-71, Mississippi Code of 1972:

75-24-71. As used in Sections 75-24-71 through 75-24-77, the following words and phrases shall have the meanings as described in this section, unless the context clearly indicates otherwise:

(a) "Bona fide inventory repurchase program" means a program by which an entity repurchases from a salesperson current and marketable inventory in the possession of the salesperson, upon request and upon commercially reasonable terms, when the salesperson's business relationship is terminated.

(b) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months after the date of purchase at not less than ninety percent (90%) of the original net cost, less appropriate set-offs and legal claims, if any.

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

(d) "Consideration" as used in Sections 75-24-71 through 75-24-77 means the payment of cash or the purchase of goods, services, or intangible property. The term 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.

(e) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids, and sales kits that an entity requires independent salespersons to purchase.

(f) "Inventory loading" means the requirement or encouragement by a plan or operation that its independent salesperson 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.

(g) "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.

(h) "Pyramid promotional scheme" means any plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other persons into the plan or operation rather than from the sale and consumption of goods, services, or intangible property by a participant or other persons introduced into the plan or operation. The term includes any plan or operation under which the number of people who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, or any plan or operation under which a person, on giving any consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

SECTION 2. The following shall be codified as Section 75-24-73, Mississippi Code of 1972:

75-24-73. **Pyramid promotional scheme forbidden.** (1) A person may not establish, promote, or operate any pyramid promotional scheme. Any limitation regarding the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive

compensation under the plan does not change the identity of the plan as a pyramid promotional scheme.

(2) The provisions of this section may 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 by participants for personal use, consumption, or resale if both of the following conditions are met: (a) the plan or operation does not cause inventory loading, and (b) the plan or operation implements a bona fide inventory repurchase program.

(3) An entity must clearly describe a bona fide inventory repurchase program in its recruiting literature, sales manual, or contracts with independent salespersons. The recruiting literature, sales manual, or contract must disclose any inventory that is not eligible for repurchase under the program.

(4) A bona fide inventory repurchase program is not required to apply to inventory that is no longer within the inventory's commercially reasonable use or shelf life period or has been used or opened.

(5) Before a salesperson of the entity purchases any inventory, the entity must clearly describe the inventory that is excluded from the entity's bona fide inventory repurchase program as seasonal, discontinued, or special promotion products and the

inventory that is not subject to the entity's bona fide inventory repurchase program.

SECTION 3. The following shall be codified as Section 75-24-75, Mississippi Code of 1972:

75-24-75. **Injunctive relief.** In addition to other penalties and remedies provided in Sections 75-24-71 through 75-24-77, whenever it appears that any person is engaged or is about to engage in any act or practice which constitutes a pyramid sales scheme or which is prohibited by Sections 75-24-71 through 75-24-77, the Attorney General may bring an action in the name of the state pursuant to the provisions of Section 75-24-9 in order to enjoin any such act or practice.

SECTION 4. The following shall be codified as Section 75-24-77, Mississippi Code of 1972:

75-24-77. **Penalties.** Any person willfully violating any of the provisions of Section 75-24-73 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months or by both such fine and imprisonment.

SECTION 5. Section 75-24-51, Mississippi Code of 1972, is amended as follows:

75-24-51. As used in Sections 75-24-51 through 75-24-61, the following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

* * *

(* * *a) The term "goods" includes any personal property, real property, or any combination thereof;

* * *

(* * *b) The term "person" includes an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity;

* * *

(* * *c) "Franchise" means a written arrangement for a definite or indefinite period, in which a person for a consideration grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise; except that, the term "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, leased departments of retail stores, or places of original manufacture; and

(* * *d) "Consideration" as used in Sections 75-24-51 through 75-24-61 does not include payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale or payments amounting to less than One Hundred Dollars ($100.00) when computed on an annual basis.

SECTION 6. Section 75-24-53, Mississippi Code of 1972, is amended as follows:

75-24-53. * * * No person who has granted a franchise to another person shall cancel or otherwise terminate any such franchise agreement without notifying such person of the cancellation, termination or failure to renew in writing at least ninety (90) days in advance of the cancellation, termination or failure to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check is the basis or grounds for cancellation or termination, the ninety-day notice shall not be required.

SECTION 7. Section 75-24-55, Mississippi Code of 1972, is brought forward as follows:

75-24-55. Franchise companies shall not represent directly or by implication that prospective participants may or will earn any stated gross or net amount, or represent in any manner, the past earnings of participants unless in fact the past earnings or predicted gross or net amount represented are those of a substantial number of participants in the community or geographical area in which the representations are made and accurately reflect the average earnings of those participants under circumstances similar to those of the participant or prospective participant to whom the representation is made.

SECTION 8. Section 75-24-59, Mississippi Code of 1972, is amended as follows:

75-24-59. In addition to other penalties and remedies provided in Sections 75-24-51 through 75-24-61, whenever it appears that any person is engaged or is about to engage in any act or practice which * * * is prohibited by Sections 75-24-51 through 75-24-61, the Attorney General may bring an action in the name of the state pursuant to the provisions of Section 75-24-9 in order to enjoin any such act or practice.

SECTION 9. Section 75-24-61, Mississippi Code of 1972, is brought forward as follows:

75-24-61. Any person willfully violating any of the provisions of Section 75-24-53 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months or by both such fine and imprisonment.

SECTION 10. Section 75-24-63, Mississippi Code of 1972, is brought forward as follows:

75-24-63. Sections 75-24-51 through 75-24-61, Mississippi Code of 1972, shall not apply to retailers as defined in Section 75-77-1, Mississippi Code of 1972.

SECTION 11. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE SENATE
February 2, 2018

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 1, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/19/18
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