

115TH CONGRESS  
1ST SESSION

# H. R. 3409

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2017

Mrs. BLACKBURN (for herself, Mr. VEASEY, Mr. LANCE, Mr. THOMPSON of Mississippi, Mr. BISHOP of Utah, Mrs. BEATTY, Mr. BISHOP of Michigan, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal Trade Commission Act to prohibit pyramid promotional schemes and to ensure that compensation is not based upon recruitment of participants into a plan or operation, but on sales to individuals who use and consume the products or services sold, 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 2017”.

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) Any person who establishes, operates, promotes,  
13 or causes to be promoted any plan or operation which sells  
14 or solicits the sale of consumer products or services in the  
15 home or otherwise than in a permanent retail establish-  
16 ment, and which sells products or services directly or indi-  
17 rectly to independent salespeople, shall have a bona fide  
18 inventory repurchase agreement.

19       “(c) Nothing in this Act may be construed to prohibit  
20 a plan or operation, or to define a plan or operation as  
21 a pyramid promotional scheme, based upon the fact that  
22 participants in the plan or operation give consideration in  
23 return for the right to receive compensation based upon  
24 purchases of goods or services or intangible property by  
25 participants for personal use, consumption, or resale so  
26 long as the plan or operation does not require inventory

1 loading and the plan or operation implements a bona fide  
2 inventory repurchase agreement.

3 “(d) A violation of subsection (a) or (b) shall be treat-  
4 ed as an unfair or deceptive act or practice in or affecting  
5 commerce under section 5.”.

6 **SEC. 3. DEFINITIONS.**

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

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

11 “(1) promises to repurchase, on commercially  
12 reasonable terms, current and marketable inventory  
13 purchased and maintained by a participant for use,  
14 consumption, or resale, upon request at the termi-  
15 nation of the participant’s business relationship with  
16 the plan or operation; and

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

23 “‘Commercially reasonable’ means, with respect to  
24 the terms of repurchase by a plan or operation of current  
25 and marketable inventory from a participant, that the in-

1 inventory is repurchased not later than 12 months after the  
2 date of purchase at not less than 90 percent of the original  
3 net cost to the participant, less appropriate set-offs and  
4 legal claims, if any.

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

7 “‘Consideration’—

8 “(1) means the payment of money or another  
9 thing of value or the purchase of a product, good,  
10 service, or intangible property; and

11 “(2) does not include—

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

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

17 “‘Current and marketable’—

18 “(1) means, with respect to inventory, that the  
19 inventory—

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

23 “(B) in the case of services and intangible  
24 property, including internet sites, represents the

1 unexpired portion of any contract or agreement;  
2 and

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

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

12 “‘Inventory loading’ means a practice in which a plan  
13 or operation requires or encourages its participants to pur-  
14 chase inventory in an amount exceeding that which the  
15 participant can reasonably expect to use, consume, or re-  
16 sell to ultimate users, and that is not subject to a bona  
17 fide repurchase agreement.

18 “‘Participant’ means a person who joins a plan or  
19 operation.

20 “‘Pyramid promotional scheme’ means any plan or  
21 operation in which individuals pay consideration for the  
22 right to receive compensation that is based upon recruiting  
23 other individuals into the plan or operation rather than  
24 primarily related to the sale of products or services to ulti-  
25 mate users.

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

5 **SEC. 4. LIMITATIONS.**

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

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

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