As Amended by Senate Committee

Session of 2021

HOUSE BILL No. 2231

By Committee on Commerce, Labor and Economic Development

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AN ACT concerning crimes, punishment and criminal procedure; relating
to conducting a pyramid promotional scheme; exemptions; amending
K.S.A. 2020 Supp. 21-5838 and repealing the existing section.

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

Section 1. K.S.A. 2020 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 any plan or operation by
which a participant person gives consideration for the opportunity to
receive compensation which 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. 2020 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.