

CHAMBER ACTION

1 The Committee on Commerce recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to pyramid sales schemes; amending s.
7 849.091, F.S.; deleting a provision declaring pyramid
8 sales schemes to be a lottery and providing a criminal
9 penalty for participating in such schemes; creating s.
10 849.09105, F.S.; providing definitions; prohibiting
11 establishing, promoting, operating, or participating in
12 pyramid promotional schemes; providing limitations;
13 providing construction; preserving the Attorney General's
14 authority to bring certain actions; providing that
15 violations of this act are also violations of part II of
16 chapter 501; providing criminal penalties; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 849.091, Florida Statutes, is amended
22 to read:

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23 849.091 Chain letters, ~~pyramid clubs, etc.~~, declared a
24 lottery; ~~prohibited; penalties.~~--

25 (1) The organization of any chain letter club, ~~pyramid~~
26 ~~club,~~ or other group organized or brought together under any
27 plan or device whereby fees or dues or anything of material
28 value to be paid or given by members thereof are to be paid or
29 given to any other member thereof, which plan or device includes
30 any provision for the increase in such membership through a
31 chain process of new members securing other new members and
32 thereby advancing themselves in the group to a position where
33 such members in turn receive fees, dues, or things of material
34 value from other members, is hereby declared to be a lottery,
35 and whoever shall participate in any such lottery by becoming a
36 member of, or affiliating with, any such group or organization
37 or who shall solicit any person for membership or affiliation in
38 any such group or organization commits a misdemeanor of the
39 first degree, punishable as provided in s. 775.082 or s.
40 775.083.

41 (2) ~~A "pyramid sales scheme," which is any sales or~~
42 ~~marketing plan or operation whereby a person pays a~~
43 ~~consideration of any kind, or makes an investment of any kind,~~
44 ~~in excess of \$100 and acquires the opportunity to receive a~~
45 ~~benefit or thing of value which is not primarily contingent on~~
46 ~~the volume or quantity of goods, services, or other property~~
47 ~~sold in bona fide sales to consumers, and which is related to~~
48 ~~the inducement of additional persons, by himself or herself or~~
49 ~~others, regardless of number, to participate in the same sales~~
50 ~~or marketing plan or operation, is hereby declared to be a~~

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51 ~~lottery, and whoever shall participate in any such lottery by~~
 52 ~~becoming a member of or affiliating with, any such group or~~
 53 ~~organization or who shall solicit any person for membership or~~
 54 ~~affiliation in any such group or organization commits a~~
 55 ~~misdemeanor of the first degree, punishable as provided in s.~~
 56 ~~775.082 or s. 775.083. For purposes of this subsection, the term~~
 57 ~~"consideration" and the term "investment" do not include the~~
 58 ~~purchase of goods or services furnished at cost for use in~~
 59 ~~making sales, but not for resale, or time and effort spent in~~
 60 ~~the pursuit of sales or recruiting activities.~~

61 Section 2. Section 849.09105, Florida Statutes, is created
 62 to read:

63 849.09105 Pyramid promotional schemes prohibited;
 64 penalties.--

65 (1) For purposes of this section:

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

69 (b) "Consideration" means the payment of cash or the
 70 purchase of goods, services, or intangible property. The term
 71 does not include the purchase of goods or services furnished at
 72 cost to be used in making sales and not for resale, or time and
 73 effort spent in pursuit of sales or recruiting activities.

74 (c) "Inventory" includes both goods and services,
 75 including company-produced promotional materials, sales aids,
 76 and sales kits that the plan or operation requires independent
 77 salespersons to purchase.

78 (d) "Promote" means contrive, prepare, establish, plan,
 79 operate, advertise, or otherwise induce or attempt to induce
 80 another person to participate in a pyramid promotional scheme,
 81 including a pyramid promotional scheme run through the Internet,
 82 e-mail, or other electronic communications.

83 (e) "Pyramid promotional scheme" means any plan or
 84 operation by which a person gives consideration for the
 85 opportunity to receive compensation that is derived primarily
 86 from the introduction of other persons into the plan or
 87 operation rather than from the sale and consumption of goods,
 88 services, or intangible property by a participant or other
 89 persons introduced into the plan or operation. The term includes
 90 any plan or operation under which the number of persons who may
 91 participate is limited either expressly or by the application of
 92 conditions affecting the eligibility of a person to receive
 93 compensation under the plan or operation, or any plan or
 94 operation under which a person, on giving consideration, obtains
 95 any goods, services, or intangible property in addition to the
 96 right to receive compensation.

97 (2) No person may establish, promote, operate, or
 98 participate in any pyramid promotional scheme. A limitation as
 99 to the number of persons who may participate in or the presence
 100 of additional conditions affecting eligibility for the
 101 opportunity to receive compensation under a plan does not change
 102 the identity of the plan as a pyramid promotional scheme. It is
 103 not a defense under this section that a person, on giving
 104 consideration, obtains goods, services, or intangible property
 105 in addition to the right to receive compensation.

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106 (3) Nothing in this section may be construed to prohibit a
107 plan or operation, or to define a plan or operation as a pyramid
108 promotional scheme, based on the fact that participants in the
109 plan or operation give consideration in return for the right to
110 receive compensation based upon purchases of goods, services, or
111 intangible property by participants for personal use,
112 consumption, or resale so long as the plan or operation:

113 (a) Does not require, encourage, promote, or induce its
114 independent salespersons to purchase inventory in an amount
115 which exceeds that which the salesperson can expect to resell
116 for ultimate consumption or consume in a reasonable time period,
117 or both.

118 (b) Provides a program to repurchase, upon request and
119 upon commercially reasonable terms, when a salesperson's
120 business relationship with the plan or operation ends, current
121 and marketable inventory in the possession of the salesperson
122 that was purchased by the salesperson for resale. Any such plan
123 or operation shall clearly describe such program in its
124 recruiting literature, sales manual, or contract with
125 independent salespersons, including the disclosure of any
126 inventory that is not eligible for repurchase under the program.
127 For purposes of this paragraph, the term "commercially
128 reasonable" means subject to repurchase within 12 months after
129 the date of purchase at not less than 90 percent of the original
130 net cost, less appropriate set offs and legal claims, if any.
131 Current and marketable inventory excludes inventory that:

132 1. Is no longer within its commercially reasonable use or
133 shelf-life period;

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134 2. That was clearly described to salespersons prior to
 135 purchase as seasonal, discontinued, or special promotion
 136 products not subject to the plan or operation's inventory
 137 repurchase program; or

138 3. Has been used or opened.

139 (4) The provisions of this section do not preclude,
 140 preempt, or prohibit the Attorney General from proceeding
 141 against any plan, operation, or scheme or any person involved
 142 with such plan, operation, or scheme under any other provision
 143 of law.

144 (5) Any violation of this section constitutes an unfair or
 145 deceptive trade practice within the meaning of s. 501.204 and
 146 may be the basis for a civil or administrative action by an
 147 enforcing authority pursuant to part II of chapter 501.

148 (6)(a) Any person who establishes, promotes, or operates a
 149 pyramid promotional scheme commits a felony of the third degree,
 150 punishable as provided in s. 775.082 or s. 775.083.

151 (b) Any person who participates in a pyramid promotional
 152 scheme commits a misdemeanor of the first degree, punishable as
 153 provided in s. 775.082 or s. 775.083.

154 Section 3. This act shall take effect upon becoming a law.