

Bill No. SB 2648

Barcode 681918

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Aronberg)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

(1) The organization of any chain letter club, ~~pyramid
club,~~ or other group organized or brought together under any
plan or device whereby fees or dues or anything of material
value to be paid or given by members thereof are to be paid or
given to any other member thereof, which plan or device
includes any provision for the increase in such membership
through a chain process of new members securing other new
members and thereby advancing themselves in the group to a
position where such members in turn receive fees, dues, or
things of material value from other members, is hereby

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1 | declared to be a lottery, and whoever shall participate in any
 2 | such lottery by becoming a member of, or affiliating with, any
 3 | such group or organization or who shall solicit any person for
 4 | membership or affiliation in any such group or organization
 5 | commits a misdemeanor of the first degree, punishable as
 6 | provided in s. 775.082 or s. 775.083.

7 | ~~(2) A "pyramid sales scheme," which is any sales or~~
 8 | ~~marketing plan or operation whereby a person pays a~~
 9 | ~~consideration of any kind, or makes an investment of any kind,~~
 10 | ~~in excess of \$100 and acquires the opportunity to receive a~~
 11 | ~~benefit or thing of value which is not primarily contingent on~~
 12 | ~~the volume or quantity of goods, services, or other property~~
 13 | ~~sold in bona fide sales to consumers, and which is related to~~
 14 | ~~the inducement of additional persons, by himself or herself or~~
 15 | ~~others, regardless of number, to participate in the same sales~~
 16 | ~~or marketing plan or operation, is hereby declared to be a~~
 17 | ~~lottery, and whoever shall participate in any such lottery by~~
 18 | ~~becoming a member of or affiliating with, any such group or~~
 19 | ~~organization or who shall solicit any person for membership or~~
 20 | ~~affiliation in any such group or organization commits a~~
 21 | ~~misdemeanor of the first degree, punishable as provided in s.~~
 22 | ~~775.082 or s. 775.083. For purposes of this subsection, the~~
 23 | ~~term "consideration" and the term "investment" do not include~~
 24 | ~~the purchase of goods or services furnished at cost for use in~~
 25 | ~~making sales, but not for resale, or time and effort spent in~~
 26 | ~~the pursuit of sales or recruiting activities.~~

27 | Section 2. Section 849.09105, Florida Statutes, is
 28 | created to read:

29 | 849.09105 Pyramid promotional schemes prohibited;
 30 | penalties.--

31 | (1) For purposes of this section:

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1 (a) "Appropriate inventory repurchase program" means a
2 program by which a plan or operation repurchases, upon request
3 and upon commercially reasonable terms, when the salesperson's
4 business relationship with the company ends, current and
5 marketable inventory in the possession of the salesperson that
6 was purchased by the salesperson for resale. Any such plan or
7 operation shall clearly describe the program in its recruiting
8 literature, sales manual, or contract with independent
9 salespersons, including the disclosure of any inventory that
10 is not eligible for repurchase under the program.

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

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

20 (d) "Consideration" means the payment of cash or the
21 purchase of goods, services, or intangible property. The term
22 does not include the purchase of goods or services furnished
23 at cost to be used in making sales and not for resale or time
24 and effort spent in pursuit of sales or recruiting activities.

25 (e) "Current and marketable" excludes inventory that
26 is no longer within its commercially reasonable use or
27 shelf-life period; was clearly described to salespersons prior
28 to purchase as seasonal, discontinued, or special promotion
29 products not subject to the plan or operation's inventory
30 repurchase program; or has been used or opened.

31 (f) "Inventory" includes both goods and services,

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1 including company-produced promotional materials, sales aids,
2 and sales kits that the plan or operation requires independent
3 salespersons to purchase.

4 (g) "Promote" means contrive, prepare, establish,
5 plan, operate, advertise, or otherwise induce or attempt to
6 induce another person to participate in a pyramid promotional
7 scheme, including a pyramid promotional scheme run through the
8 Internet, e-mail, or other electronic communications.

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

23 (2) No person may establish, promote, operate, or
24 participate in any pyramid promotional scheme. A limitation as
25 to the number of persons who may participate in or the
26 presence of additional conditions affecting eligibility for
27 the opportunity to receive compensation under a plan does not
28 change the identity of the plan as a pyramid promotional
29 scheme. It is not a defense under this section that a person,
30 on giving consideration, obtains goods, services, or
31 intangible property in addition to the right to receive

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1 compensation.

2 (3) Nothing in this section may be construed to
3 prohibit a plan or operation, or to define a plan or operation
4 as a pyramid promotional scheme, based on the fact that
5 participants in the plan or operation give consideration in
6 return for the right to receive compensation based upon
7 purchases of goods, services, or intangible property by
8 participants for personal use, consumption, or resale so long
9 as the plan or operation does not promote or induce inventory
10 loading and the plan or operation implements an appropriate
11 inventory repurchase program.

12 (4)(a) Any person who establishes, promotes, or
13 operates a pyramid promotional scheme commits a felony of the
14 third degree, punishable as provided in s. 775.082 or s.
15 775.083.

16 (b) Any person who knowingly participates in a pyramid
17 promotional scheme commits a misdemeanor of the first degree,
18 punishable as provided in s. 775.082 or s. 775.083.

19 Section 3. This act shall take effect October 1, 2005.

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22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25

26 and insert:

27 A bill to be entitled

28 An act relating to pyramid promotional schemes;
29 amending s. 849.091, F.S.; deleting a provision
30 declaring pyramid sales schemes to be a lottery
31 and providing a criminal penalty for

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1 participating in such schemes; creating s.
2 849.09105, F.S.; providing definitions;
3 prohibiting establishing, promoting, operating,
4 or participating in pyramid promotional
5 schemes; providing limitations; providing
6 construction; providing criminal penalties;
7 providing an effective date.

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