

1 Be It Enacted by the Legislature of the State of Florida:

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

5 849.091 Chain letters, ~~pyramid clubs, etc.,~~ declared a
6 lottery; ~~prohibited; penalties.--~~

7 ~~(1)~~ The organization of any chain letter club, ~~pyramid~~
8 ~~club,~~ or other group organized or brought together under any
9 plan or device whereby fees or dues or anything of material
10 value to be paid or given by members thereof are to be paid or
11 given to any other member thereof, which plan or device
12 includes any provision for the increase in such membership
13 through a chain process of new members securing other new
14 members and thereby advancing themselves in the group to a
15 position where such members in turn receive fees, dues, or
16 things of material value from other members, is hereby
17 declared to be a lottery, and whoever shall participate in any
18 such lottery by becoming a member of, or affiliating with, any
19 such group or organization or who shall solicit any person for
20 membership or affiliation in any such group or organization
21 commits a misdemeanor of the first degree, punishable as
22 provided in s. 775.082 or s. 775.083.

23 ~~(2) A "pyramid sales scheme," which is any sales or~~
24 ~~marketing plan or operation whereby a person pays a~~
25 ~~consideration of any kind, or makes an investment of any kind,~~
26 ~~in excess of \$100 and acquires the opportunity to receive a~~
27 ~~benefit or thing of value which is not primarily contingent on~~
28 ~~the volume or quantity of goods, services, or other property~~
29 ~~sold in bona fide sales to consumers, and which is related to~~
30 ~~the inducement of additional persons, by himself or herself or~~
31 ~~others, regardless of number, to participate in the same sales~~

1 ~~or marketing plan or operation, is hereby declared to be a~~
2 ~~lottery, and whoever shall participate in any such lottery by~~
3 ~~becoming a member of or affiliating with, any such group or~~
4 ~~organization or who shall solicit any person for membership or~~
5 ~~affiliation in any such group or organization commits a~~
6 ~~misdemeanor of the first degree, punishable as provided in s.~~
7 ~~775.082 or s. 775.083. For purposes of this subsection, the~~
8 ~~term "consideration" and the term "investment" do not include~~
9 ~~the purchase of goods or services furnished at cost for use in~~
10 ~~making sales, but not for resale, or time and effort spent in~~
11 ~~the pursuit of sales or recruiting activities.~~

12 Section 2. Section 849.09105, Florida Statutes, is
13 created to read:

14 849.09105 Pyramid promotional schemes prohibited;
15 penalties.--

16 (1) For purposes of this section:

17 (a) "Appropriate inventory repurchase program" means a
18 program by which a plan or operation repurchases, upon request
19 and upon commercially reasonable terms, when the salesperson's
20 business relationship with the company ends, current and
21 marketable inventory in the possession of the salesperson that
22 was purchased by the salesperson for resale. Any such plan or
23 operation shall clearly describe the program in its recruiting
24 literature, sales manual, or contract with independent
25 salespersons, including the disclosure of any inventory that
26 is not eligible for repurchase under the program.

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

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

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

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

16 (f) "Inventory" includes both goods and services,
17 including company-produced promotional materials, sales aids,
18 and sales kits that the plan or operation requires independent
19 salespersons to purchase.

20 (g) "Promote" means contrive, prepare, establish,
21 plan, operate, advertise, or otherwise induce or attempt to
22 induce another person to participate in a pyramid promotional
23 scheme, including a pyramid promotional scheme run through the
24 Internet, e-mail, or other electronic communications.

25 (h) "Pyramid promotional scheme" means any plan or
26 operation by which a person gives consideration for the
27 opportunity to receive compensation that is derived primarily
28 from the introduction of other persons into the plan or
29 operation rather than from the sale and consumption of goods,
30 services, or intangible property by a participant or other
31 persons introduced into the plan or operation. The term

1 includes any plan or operation under which the number of
2 persons who may participate is limited either expressly or by
3 the application of conditions affecting the eligibility of a
4 person to receive compensation under the plan or operation, or
5 any plan or operation under which a person, on giving
6 consideration, obtains any goods, services, or intangible
7 property in addition to the right to receive compensation.

8 (2) No person may establish, promote, operate, or
9 participate in any pyramid promotional scheme. A limitation as
10 to the number of persons who may participate in or the
11 presence of additional conditions affecting eligibility for
12 the opportunity to receive compensation under a plan does not
13 change the identity of the plan as a pyramid promotional
14 scheme. It is not a defense under this section that a person,
15 on giving consideration, obtains goods, services, or
16 intangible property in addition to the right to receive
17 compensation.

18 (3) Nothing in this section may be construed to
19 prohibit a plan or operation, or to define a plan or operation
20 as a pyramid promotional scheme, based on the fact that
21 participants in the plan or operation give consideration in
22 return for the right to receive compensation based upon
23 purchases of goods, services, or intangible property by
24 participants for personal use, consumption, or resale so long
25 as the plan or operation does not promote or induce inventory
26 loading and the plan or operation implements an appropriate
27 inventory repurchase program.

28 (4) The provisions of this section do not preclude,
29 preempt, or prohibit the Attorney General from proceeding
30 against any plan, operation, or scheme or any person involved
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1 with such plan, operation, or scheme under any other provision
2 of law.

3 (5) If it appears to the Attorney General that any
4 person has engaged in any act or practice constituting a
5 violation of any provision of this section, or any order under
6 this section, the Attorney General may:

7 (a) Issue a cease and desist order, with or without
8 prior hearing, against any person engaged in the prohibited
9 activities, directing such person to cease and desist from
10 further illegal activities;

11 (b) Bring an action in the circuit court to enjoin the
12 acts or practices to enforce compliance with this section or
13 any order under this section;

14 (c) Impose by order and collect a civil penalty
15 against any person found in an administrative action to have
16 violated any provision of this section, or any order issued
17 under this section, in an amount not to exceed \$10,000 per
18 violation per person. The Attorney General may bring actions
19 to recover penalties pursuant to this paragraph in circuit
20 court. All civil penalties received shall be deposited in the
21 General Revenue Fund; or

22 (d) Bring an action in the circuit court under the
23 criminal laws of this state.

24 (6) Any person named in a cease and desist order
25 issued pursuant to this section shall be notified of his or
26 her right to file, within 15 days after the receipt of the
27 order, a written notice for a hearing with the Attorney
28 General. If the Attorney General does not receive a written
29 request for a hearing within the time specified, the cease and
30 desist order shall be permanent and the person named in the
31 order is deemed to have waived all rights to a hearing. Every

1 such order shall state its effective date and shall concisely
2 state its intent or purpose and the grounds on which such
3 order is based. Any person aggrieved by a final order issued
4 pursuant to this section may obtain a review of the order in
5 the circuit court.

6 (7) Upon a proper showing, a permanent or temporary
7 injunction, restraining order, or writ of mandamus shall be
8 granted and a receiver or conservator may be appointed for the
9 defendant or defendant's assets. In addition, upon a proper
10 showing by the Attorney General, the court may enter an order
11 of rescission, restitution, or disgorgement directed to any
12 person who has engaged in any act constituting a violation of
13 any provision of this section or any order under this section.
14 The court may not require the Attorney General to post a bond.
15 In addition to fines or penalties, the Attorney General shall
16 collect costs and attorney's fees.

17 (8)(a) Any person who establishes, promotes, or
18 operates a pyramid promotional scheme commits a felony of the
19 third degree, punishable as provided in s. 775.082 or s.
20 775.083.

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

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