

By the Committee on Commerce and Consumer Services; and
Senator Garcia

577-2147-05

1 A bill to be entitled

2 An act relating to pyramid promotional schemes;

3 amending s. 849.091, F.S.; deleting a provision

4 declaring pyramid sales schemes to be a lottery

5 and providing a criminal penalty for

6 participating in such schemes; creating s.

7 849.09105, F.S.; providing definitions;

8 prohibiting establishing, promoting, operating,

9 or participating in pyramid promotional

10 schemes; providing limitations; providing

11 construction; providing criminal penalties;

12 providing an effective date.

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

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

18 849.091 Chain letters, ~~pyramid clubs, etc.,~~ declared a
19 lottery; penalty prohibited; penalties.--

20 ~~(1)~~ The organization of any chain letter club, ~~pyramid~~
21 ~~club,~~ or other group organized or brought together under any
22 plan or device whereby fees or dues or anything of material
23 value to be paid or given by members thereof are to be paid or
24 given to any other member thereof, which plan or device
25 includes any provision for the increase in such membership
26 through a chain process of new members securing other new
27 members and thereby advancing themselves in the group to a
28 position where such members in turn receive fees, dues, or
29 things of material value from other members, is hereby
30 declared to be a lottery, and whoever shall participate in any
31 such lottery by becoming a member of, or affiliating with, any

1 such group or organization or who shall solicit any person for
2 membership or affiliation in any such group or organization
3 commits a misdemeanor of the first degree, punishable as
4 provided in s. 775.082 or s. 775.083.

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

25 Section 2. Section 849.09105, Florida Statutes, is
26 created to read:

27 849.09105 Pyramid promotional schemes prohibited;
28 penalties.--

29 (1) For purposes of this section:

30 (a) "Appropriate inventory repurchase program" means a
31 program by which a plan or operation repurchases, upon request

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

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

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

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

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

29 (f) "Inventory" includes both goods and services,
30 including company-produced promotional materials, sales aids,
31

1 and sales kits that the plan or operation requires independent
2 salespersons to purchase.

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

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

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

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

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

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

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

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20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 Senate Bill 2648

23 This committee substitute differs from the bill as filed in
24 that it deletes the provisions regarding the actions the
25 Attorney General may take against violators of the bill. This
26 committee substitute also deletes a provision that requires a
27 named person in a cease and desist order to be notified of his
28 or her right to file a notice for a hearing with the Attorney
29 General. This committee substitute also deletes a provision
30 for an injunction, restraining order, or writ of mandamus and
31 a provision that permits the court to enter an order of
rescission, restitution, or disgorgement for violations of any
provision of the bill.