

1 A bill to be entitled
 2 An act relating to pyramid promotional schemes; amending
 3 s. 849.091, F.S.; deleting a provision declaring pyramid
 4 sales schemes to be a lottery and providing a criminal
 5 penalty for participating in such schemes; creating s.
 6 849.09105, F.S.; providing definitions; prohibiting
 7 establishing, promoting, operating, or participating in
 8 pyramid promotional schemes; providing limitations;
 9 providing construction; preserving the Attorney General's
 10 authority to bring certain actions; authorizing the
 11 Attorney General to issue certain orders, bring certain
 12 actions, and impose certain civil penalties; requiring
 13 notification of persons named in certain orders to a right
 14 to a hearing; providing for waiver of such right under
 15 certain circumstances; providing requirements for such
 16 orders; providing for granting certain injunctions,
 17 restraining orders, or writs of mandamus under certain
 18 circumstances; providing for appointment of a receiver or
 19 conservator for certain purposes; authorizing a court to
 20 enter certain additional orders for certain purposes;
 21 prohibiting a court from requiring the Attorney General to
 22 post a bond; requiring the Attorney General to collect
 23 certain costs and attorney fees in addition to fines and
 24 penalties; providing criminal penalties; providing an
 25 effective date.

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 27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Section 849.091, Florida Statutes, is amended
 30 to read:

31 849.091 Chain letters, ~~pyramid clubs, etc.,~~ declared a
 32 lottery; ~~prohibited; penalties.--~~

33 (1) The organization of any chain letter club, ~~pyramid~~
 34 ~~club,~~ or other group organized or brought together under any
 35 plan or device whereby fees or dues or anything of material
 36 value to be paid or given by members thereof are to be paid or
 37 given to any other member thereof, which plan or device includes
 38 any provision for the increase in such membership through a
 39 chain process of new members securing other new members and
 40 thereby advancing themselves in the group to a position where
 41 such members in turn receive fees, dues, or things of material
 42 value from other members, is hereby declared to be a lottery,
 43 and whoever shall participate in any such lottery by becoming a
 44 member of, or affiliating with, any such group or organization
 45 or who shall solicit any person for membership or affiliation in
 46 any such group or organization commits a misdemeanor of the
 47 first degree, punishable as provided in s. 775.082 or s.
 48 775.083.

49 (2) ~~A "pyramid sales scheme," which is any sales or~~
 50 ~~marketing plan or operation whereby a person pays a~~
 51 ~~consideration of any kind, or makes an investment of any kind,~~
 52 ~~in excess of \$100 and acquires the opportunity to receive a~~
 53 ~~benefit or thing of value which is not primarily contingent on~~
 54 ~~the volume or quantity of goods, services, or other property~~
 55 ~~sold in bona fide sales to consumers, and which is related to~~
 56 ~~the inducement of additional persons, by himself or herself or~~

57 ~~others, regardless of number, to participate in the same sales~~
58 ~~or marketing plan or operation, is hereby declared to be a~~
59 ~~lottery, and whoever shall participate in any such lottery by~~
60 ~~becoming a member of or affiliating with, any such group or~~
61 ~~organization or who shall solicit any person for membership or~~
62 ~~affiliation in any such group or organization commits a~~
63 ~~misdemeanor of the first degree, punishable as provided in s.~~
64 ~~775.082 or s. 775.083. For purposes of this subsection, the term~~
65 ~~"consideration" and the term "investment" do not include the~~
66 ~~purchase of goods or services furnished at cost for use in~~
67 ~~making sales, but not for resale, or time and effort spent in~~
68 ~~the pursuit of sales or recruiting activities.~~

69 Section 2. Section 849.09105, Florida Statutes, is created
70 to read:

71 849.09105 Pyramid promotional schemes prohibited;
72 penalties.--

73 (1) For purposes of this section:

74 (a) "Appropriate inventory repurchase program" means a
75 program by which a plan or operation repurchases, upon request
76 and upon commercially reasonable terms, when the salesperson's
77 business relationship with the company ends, current and
78 marketable inventory in the possession of the salesperson that
79 was purchased by the salesperson for resale. Any such plan or
80 operation shall clearly describe the program in its recruiting
81 literature, sales manual, or contract with independent
82 salespersons, including the disclosure of any inventory that is
83 not eligible for repurchase under the program.

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

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

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

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

102 (f) "Inventory" includes both goods and services,
103 including company-produced promotional materials, sales aids,
104 and sales kits that the plan or operation requires independent
105 salespersons to purchase.

106 (g) "Promote" means contrive, prepare, establish, plan,
107 operate, advertise, or otherwise induce or attempt to induce
108 another person to participate in a pyramid promotional scheme,
109 including a pyramid promotional scheme run through the Internet,
110 e-mail, or other electronic communications.

111 (h) "Pyramid promotional scheme" means any plan or
 112 operation by which a person gives consideration for the
 113 opportunity to receive compensation that is derived primarily
 114 from the introduction of other persons into the plan or
 115 operation rather than from the sale and consumption of goods,
 116 services, or intangible property by a participant or other
 117 persons introduced into the plan or operation. The term includes
 118 any plan or operation under which the number of persons who may
 119 participate is limited either expressly or by the application of
 120 conditions affecting the eligibility of a person to receive
 121 compensation under the plan or operation, or any plan or
 122 operation under which a person, on giving consideration, obtains
 123 any goods, services, or intangible property in addition to the
 124 right to receive compensation.

125 (2) No person may establish, promote, operate, or
 126 participate in any pyramid promotional scheme. A limitation as
 127 to the number of persons who may participate in or the presence
 128 of additional conditions affecting eligibility for the
 129 opportunity to receive compensation under a plan does not change
 130 the identity of the plan as a pyramid promotional scheme. It is
 131 not a defense under this section that a person, on giving
 132 consideration, obtains goods, services, or intangible property
 133 in addition to the right to receive compensation.

134 (3) Nothing in this section may be construed to prohibit a
 135 plan or operation, or to define a plan or operation as a pyramid
 136 promotional scheme, based on the fact that participants in the
 137 plan or operation give consideration in return for the right to
 138 receive compensation based upon purchases of goods, services, or

139 intangible property by participants for personal use,
140 consumption, or resale so long as the plan or operation does not
141 promote or induce inventory loading and the plan or operation
142 implements an appropriate inventory repurchase program.

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

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

152 (a) Issue a cease and desist order, with or without prior
153 hearing, against any person engaged in the prohibited
154 activities, directing such person to cease and desist from
155 further illegal activities;

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

159 (c) Impose by order and collect a civil penalty against
160 any person found in an administrative action to have violated
161 any provision of this section, or any order issued under this
162 section, in an amount not to exceed \$10,000 per violation per
163 person. The Attorney General may bring actions to recover
164 penalties pursuant to this paragraph in circuit court. All civil
165 penalties received shall be deposited in the General Revenue
166 Fund; or

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

169 (6) Any person named in a cease and desist order issued
 170 pursuant to this section shall be notified of his or her right
 171 to file, within 15 days after the receipt of the order, a
 172 written notice for a hearing with the Attorney General. If the
 173 Attorney General does not receive a written request for a
 174 hearing within the time specified, the cease and desist order
 175 shall be permanent and the person named in the order is deemed
 176 to have waived all rights to a hearing. Every such order shall
 177 state its effective date and shall concisely state its intent or
 178 purpose and the grounds on which such order is based. Any person
 179 aggrieved by a final order issued pursuant to this section may
 180 obtain a review of the order in the circuit court.

181 (7) Upon a proper showing, a permanent or temporary
 182 injunction, restraining order, or writ of mandamus shall be
 183 granted and a receiver or conservator may be appointed for the
 184 defendant or defendant's assets. In addition, upon a proper
 185 showing by the Attorney General, the court may enter an order of
 186 rescission, restitution, or disgorgement directed to any person
 187 who has engaged in any act constituting a violation of any
 188 provision of this section or any order under this section. The
 189 court may not require the Attorney General to post a bond. In
 190 addition to fines or penalties, the Attorney General shall
 191 collect costs and attorney fees.

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

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

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