

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to pyramid promotional schemes; amending
7 s. 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; providing criminal penalties;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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

20 849.091 Chain letters, ~~pyramid clubs, etc.~~, declared a
21 lottery; penalty prohibited; ~~penalties~~---

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

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

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

58 Section 2. Section 849.09105, Florida Statutes, is created
 59 to read:

60 849.09105 Pyramid promotional schemes prohibited;
 61 penalties.--

62 (1) For purposes of this section:

63 (a) "Appropriate inventory repurchase program" means a
 64 program by which a plan or operation repurchases, upon request
 65 and upon commercially reasonable terms, when the salesperson's
 66 business relationship with the company ends, current and
 67 marketable inventory in the possession of the salesperson that
 68 was purchased by the salesperson for resale. Any such plan or
 69 operation shall clearly describe the program in its recruiting
 70 literature, sales manual, or contract with independent
 71 salespersons, including the disclosure of any inventory that is
 72 not eligible for repurchase under the program.

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

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

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

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

91 (f) "Inventory" includes both goods and services,
 92 including company-produced promotional materials, sales aids,
 93 and sales kits that the plan or operation requires independent
 94 salespersons to purchase.

95 (g) "Promote" means contrive, prepare, establish, plan,
 96 operate, advertise, or otherwise induce or attempt to induce
 97 another person to participate in a pyramid promotional scheme,
 98 including a pyramid promotional scheme run through the Internet,
 99 e-mail, or other electronic communications.

100 (h) "Pyramid promotional scheme" means any plan or
 101 operation by which a person gives consideration for the
 102 opportunity to receive compensation that is derived primarily
 103 from the introduction of other persons into the plan or
 104 operation rather than from the sale and consumption of goods,

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105 services, or intangible property by a participant or other
106 persons introduced into the plan or operation. The term includes
107 any plan or operation under which the number of persons who may
108 participate is limited either expressly or by the application of
109 conditions affecting the eligibility of a person to receive
110 compensation under the plan or operation, or any plan or
111 operation under which a person, on giving consideration, obtains
112 any goods, services, or intangible property in addition to the
113 right to receive compensation.

114 (2) No person may establish, promote, operate, or
115 participate in any pyramid promotional scheme. A limitation as
116 to the number of persons who may participate in or the presence
117 of additional conditions affecting eligibility for the
118 opportunity to receive compensation under a plan does not change
119 the identity of the plan as a pyramid promotional scheme. It is
120 not a defense under this section that a person, on giving
121 consideration, obtains goods, services, or intangible property
122 in addition to the right to receive compensation.

123 (3) Nothing in this section may be construed to prohibit a
124 plan or operation, or to define a plan or operation as a pyramid
125 promotional scheme, based on the fact that participants in the
126 plan or operation give consideration in return for the right to
127 receive compensation based upon purchases of goods, services, or
128 intangible property by participants for personal use,
129 consumption, or resale so long as the plan or operation does not
130 promote or induce inventory loading and the plan or operation
131 implements an appropriate inventory repurchase program.

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

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

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