

By Senator Burton

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1 A bill to be entitled
2 An act relating to the prohibition of pyramid
3 promotional schemes; amending s. 849.091, F.S.;
4 deleting a provision relating to pyramid sales
5 schemes; creating s. 849.0913, F.S.; defining terms;
6 prohibiting a person from establishing, promoting,
7 operating, or participating in a pyramid promotional
8 scheme; providing construction; defining the terms
9 "inventory," "commercially reasonable terms," and
10 "current and marketable inventory"; requiring the
11 Department of Legal Affairs to issue and serve a
12 complaint and cease and desist order under certain
13 circumstances; establishing procedures for such cease
14 and desist orders; authorizing the department to
15 modify or set aside its cease and desist order at any
16 time by rehearing when it is in the interest of the
17 public welfare; requiring that such orders be in
18 compliance with the rules of judicial review;
19 requiring that such judicial reviews take precedence
20 over other pending civil cases; providing that such
21 orders do not become effective until a specific
22 timeframe lapses or a final order has been entered by
23 a certain court; prohibiting cease and desist orders
24 from acting as a limitation upon any other action or
25 remedy available; requiring the department to hold a
26 rehearing of such orders within a specified timeframe
27 after a court remands such orders to the department;
28 requiring the department, with the Office of Statewide
29 Prosecution, to prosecute persons believed to be

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30 participating in a pyramid promotional scheme;
31 providing civil and criminal penalties; providing for
32 restitution; requiring the court, in determining the
33 value of property loss, to consider certain expenses
34 from prosecuting such persons and any profits realized
35 in such pyramid promotional schemes; authorizing the
36 department to apply for an injunction under certain
37 circumstances; providing requirements for such
38 injunction; authorizing the court to appoint
39 receivers; providing for the powers and duties of such
40 receivers; authorizing the court to stay certain civil
41 actions and require that such actions be assigned to
42 the court that appointed the receiver; providing that
43 specified provisions and penalties are in addition to
44 civil, administrative, or criminal actions provided by
45 law; providing an effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Section 849.091, Florida Statutes, is amended to
50 read:

51 849.091 Chain letters, pyramid clubs, etc., declared a
52 lottery; prohibited; penalties.-

53 ~~(1)~~ The organization of any chain letter club, pyramid
54 club, or other group organized or brought together under any
55 plan or device whereby fees or dues or anything of material
56 value to be paid or given by members thereof are to be paid or
57 given to any other member thereof, which plan or device includes
58 any provision for the increase in such membership through a

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59 chain process of new members securing other new members and
60 thereby advancing themselves in the group to a position where
61 such members in turn receive fees, dues, or things of material
62 value from other members, is hereby declared to be a lottery,
63 and whoever participates ~~shall participate~~ in any such lottery
64 by becoming a member of, or affiliating with, any such group or
65 organization or who solicits ~~shall solicit~~ any person for
66 membership or affiliation in any such group or organization
67 commits a misdemeanor of the first degree, punishable as
68 provided in s. 775.082 or s. 775.083.

69 ~~(2) A "pyramid sales scheme," which is any sales or~~
70 ~~marketing plan or operation whereby a person pays a~~
71 ~~consideration of any kind, or makes an investment of any kind,~~
72 ~~in excess of \$100 and acquires the opportunity to receive a~~
73 ~~benefit or thing of value which is not primarily contingent on~~
74 ~~the volume or quantity of goods, services, or other property~~
75 ~~sold in bona fide sales to consumers, and which is related to~~
76 ~~the inducement of additional persons, by himself or herself or~~
77 ~~others, regardless of number, to participate in the same sales~~
78 ~~or marketing plan or operation, is hereby declared to be a~~
79 ~~lottery, and whoever shall participate in any such lottery by~~
80 ~~becoming a member of or affiliating with, any such group or~~
81 ~~organization or who shall solicit any person for membership or~~
82 ~~affiliation in any such group or organization commits a~~
83 ~~misdemeanor of the first degree, punishable as provided in s.~~
84 ~~775.082 or s. 775.083. For purposes of this subsection, the term~~
85 ~~"consideration" and the term "investment" do not include the~~
86 ~~purchase of goods or services furnished at cost for use in~~
87 ~~making sales, but not for resale, or time and effort spent in~~

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88 ~~the pursuit of sales or recruiting activities.~~

89 Section 2. Section 849.0913, Florida Statutes, is created
90 to read:

91 849.0913 Pyramid promotional schemes prohibited;
92 enforcement; remedies; penalties.-

93 (1) As used in this section, the term:

94 (a) "Compensation" means a payment of any money, thing of
95 value, or financial benefit conferred in return for inducing a
96 person to participate in a pyramid promotional scheme.

97 (b) "Consideration" means the payment of money or the
98 purchase of a product, good, service, or intangible property.
99 The term does not include the purchase of a product or service
100 furnished at cost to be used in making a sale and not for resale
101 or any time and effort spent in pursuit of sales or recruiting
102 activities.

103 (c) "Department" means the Department of Legal Affairs.

104 (d) "Participant" means a person who takes part in a
105 pyramid promotional scheme.

106 (e) "Pyramid promotional scheme" means a plan or operation
107 in which a person pays or gives consideration for the right to
108 receive compensation that is based on recruiting other persons
109 into the plan or operation rather than from the sale and
110 consumption of products, goods, services, or intangible property
111 by a participant or other person introduced into the plan or
112 operation. The term includes a plan or an operation in which the
113 number of persons who may participate is limited either
114 expressly or by the application of conditions affecting the
115 eligibility of a person to receive compensation under the plan
116 or operation, or a plan or an operation in which a person, upon

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117 giving consideration, obtains any products, goods, services, or
118 intangible property in addition to the right to receive
119 compensation.

120 (2) A person may not establish, promote, operate, or
121 participate in a pyramid promotional scheme, even if such
122 person, upon giving consideration, obtains products, goods,
123 services, or intangible property in addition to the right to
124 receive compensation.

125 (3) (a) This section does not prohibit a plan or an
126 operation in which participants give consideration in return for
127 the right to receive compensation based on the purchase of
128 products, goods, services, or intangible property by
129 participants for personal use, consumption, or resale so long as
130 the plan or operation:

131 1. Does not promote or induce a practice in which a pyramid
132 promotional scheme requires its independent salesperson to
133 purchase inventory in an amount exceeding that which the
134 salesperson can expect to resell for ultimate consumption or
135 consumption in a reasonable time period, or both; and

136 2. Implements a program in which a plan or an operation
137 repurchases from a salesperson, upon request and pursuant to
138 commercially reasonable terms, current and marketable inventory
139 in the possession of the salesperson which was purchased during
140 his or her business relationship for resale. Such plan or
141 operation must clearly describe the program in its business
142 recruiting literature, sales manual, or contract with
143 independent salespersons, including the disclosure of inventory
144 that is not eligible for repurchase under the program.

145 (b) For purposes of this subsection, the term:

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146 1. "Inventory" includes products, goods, and services,
147 including company-produced promotional materials, sales aids,
148 and sales kits that the plan or operation requires independent
149 salespersons to purchase.

150 2. "Commercially reasonable terms" means the repurchase of
151 current and marketable inventory within 12 months after the date
152 of purchase at not less than 90 percent of the original net
153 cost, less appropriate setoffs and legal claims, if any.

154 3. "Current and marketable inventory" does not include any
155 inventory that:

156 a. Is no longer within its commercially reasonable use or
157 shelf-life period;

158 b. Was clearly described to the salesperson before purchase
159 as being seasonal, discontinued, or special promotional goods,
160 products, or services that are not subject to the inventory
161 repurchase program; or

162 c. Has been used or opened.

163 (4) (a) If the department has reason to believe that a
164 person has been, or is, violating this section, and if it
165 appears to the department that a cease and desist order against
166 such person would be in the interest of the public welfare, the
167 department must issue and serve upon such person a complaint and
168 a cease and desist order stating its charges and containing a
169 notice of a hearing upon a day and at the place therein fixed at
170 least 15 days after the service of the complaint. The hearing
171 must be held in conformity with chapter 120.

172 (b) The department may modify or set aside its cease and
173 desist order at any time by rehearing upon its own motion when
174 such rehearing is in the interest of the public welfare.

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175 (c) Judicial review of orders of the department must be in
176 accordance with s. 120.68, must take precedence over other civil
177 cases pending, and must be expedited in every way.

178 (d) An order of the department to cease and desist does not
179 become effective until 10 days after all administrative action
180 has been concluded or, if appeal is made to the district court
181 of appeal and bond is posted, until a final order has been
182 entered by that court.

183 (e) A cease and desist order may not act as a limitation
184 upon any other action or remedy available.

185 (f) When a court remands an order of the department for
186 rehearing, such rehearing must be held within 45 days after the
187 remand.

188 (g) A person who violates a cease and desist order of the
189 department after it has become final, and while such order is in
190 effect, forfeits and must pay to the state a civil penalty of up
191 to \$10,000 for each violation that accrues to the state and that
192 may be recovered in a civil action brought by the state. Each
193 separate violation of such an order is a separate offense,
194 except that in the case of a violation through continuing
195 failure or neglect to obey a final order of the department, each
196 day of continuance of such failure or neglect is deemed a
197 separate offense.

198 (5) (a) If the department has reason to believe that a
199 person has been, or is, violating this section, the person must
200 be prosecuted by the department in accordance with s. 16.56.

201 (b) A person who is convicted of establishing, promoting,
202 or operating a pyramid promotional scheme commits a felony of
203 the third degree, punishable as provided in s. 775.082, s.

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204 775.083, or s. 775.084.

205 (c) A person who is convicted of participating in a pyramid
206 promotional scheme commits a misdemeanor of the first degree,
207 punishable as provided in s. 775.082 or s. 775.083.

208 (d) If a person is convicted of an offense under this
209 section, the court must, pursuant to s. 775.089, order the
210 person to pay restitution to the victim of the offense. In
211 determining the value of the property loss, the court shall
212 include any expenses incurred in the investigation or
213 prosecution of the offense as well as the disgorgement of any
214 profits realized by a person convicted of the offense.

215 (6) (a) In addition to the remedies provided in this
216 section, the department may apply to any circuit court of this
217 state for the issuance of a temporary or permanent injunction,
218 or both, for the purpose of enforcing this section. In any such
219 action, an order or judgment may be entered awarding such
220 temporary or permanent injunction as may be deemed proper. Such
221 injunction must be issued without bond. A single act in
222 violation of this section is sufficient to authorize the
223 issuance of an injunction.

224 (b) In addition to all other means provided by law for the
225 enforcement of an injunction, the court in which such action is
226 brought shall have power and jurisdiction to appoint one or more
227 receivers for the property and business of a person who violates
228 this section, including books, papers, documents, and records
229 pertaining thereto, or as much thereof as the court may deem
230 reasonably necessary to prevent violations of the law or injury
231 to the public through, or by means of, the use of such property
232 and business. The receiver shall have such powers and duties as

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233 to custody, collection, administration, winding up, and
234 liquidation of such property and business as is conferred upon
235 him or her by the court. In any such action, the court may issue
236 an order staying all pending civil actions and may require that
237 all civil actions be assigned to the circuit court judge who
238 appointed the receiver.

239 (7) The provisions and penalties set forth in this section
240 are in addition to any other civil, administrative, or criminal
241 action provided by law.

242 Section 3. This act shall take effect July 1, 2025.