

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 712

INTRODUCER: Senator Yarborough

SUBJECT: Prohibition of Pyramid Promotional Schemes

DATE: February 10, 2026 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Vaughan	Stokes	CJ	<u>Pre-meeting</u>
2.		ACJ	
3.		FP	

I. Summary:

SB 712, cited as the “Direct Sales Consumer Protection Act,” creates s. 849.0913, F.S., to prohibit a person from establishing, promoting, operating, or participating in a pyramid promotional scheme. This prohibition applies even if the person receives products, goods, services, or intangible property in addition to the right to receive compensation.

The bill provides exceptions for legitimate direct sales plans that compensate participants based on product sales for personal use, consumption, or resale, provided the plan does not require excessive inventory purchases and includes a repurchase program under commercially reasonable terms.

The bill authorizes the Department of Legal Affairs to issue and serve complaints and cease and desist orders, seek injunctions without bond, and request the appointment of receivers to manage assets of violators.

Violations of a cease and desist order may result in civil penalties of up to \$10,000 per violation.

The bill increases criminal penalties by elevating the offense of establishing, promoting, or operating such a scheme from a first degree misdemeanor¹ under current law to a third degree felony,² punishable by up to five years in prison and a \$5,000 fine. Participation in a pyramid scheme remains a first degree misdemeanor.

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine not exceeding \$1000, as provided in ss. 775.082 and 775.083, F.S.

² A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in ss. 775.082, 775.083, or 775.084, F.S.

Courts must order restitution to victims, including investigative costs and disgorgement of profits. The bill specifies that these remedies and penalties are in addition to any other civil, administrative, or criminal actions provided by law.

The bill deletes the existing definition of “pyramid sales scheme” and related provisions from s. 849.091, F.S., and redefines the term in s. 849.0913, F.S.

The bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections. *See Section V. Fiscal Impact Statement.*

The bill takes effect on July 1, 2026.

II. **Present Situation:**

Prohibited Pyramid Schemes, Chain Letters, and Lotteries

Section 849.091, F.S., classifies chain letters, pyramid clubs, and similar arrangements as lotteries and prohibits participation in such schemes. Individuals who organize, join, or solicit others to join such schemes commit a first degree misdemeanor.

Pyramid Schemes and Chain Letters

“Pyramid sales scheme,” refers to a sales or marketing plan where participants pay consideration or make an investment primarily to receive benefits from recruiting others rather than from the sale of goods or services. “Pyramid schemes” have existed in various forms for centuries. Pyramid scheme is a fraudulent business model that seeks to funnel revenue from recruited members to the scheme’s organizers by promising payments to members for recruiting new participants.³ The structure resembles a pyramid. The initial promoter recruits participants, who then recruit additional participants, and so on. Each level depends on continuous recruitment to sustain payouts.

Florida law provides that a pyramid sales scheme is defined as any sales or marketing plan or operation whereby a person pays a consideration of any kind, or makes an investment of any kind, in excess of \$100 and acquires the opportunity to receive a benefit or thing of value which is not primarily contingent on the volume or quantity of goods, services, or other property sold in bona fide sales to consumers, and which is related to the inducement of additional persons, by himself or herself or others, regardless of number, to participate in the same sales or marketing plan or operation, is hereby declared to be a lottery.⁴

³ Britannica, Law, Crime and Punishment, *Pyramid Scheme*, available at <https://www.britannica.com/topic/pyramid-scheme> (last visited February 9, 2026).

⁴ Section 849.091, F.S.

Any person who participates in any such lottery by becoming a member of, or affiliating with, any such group or organization, or who solicits another person for membership or affiliation in any such group or organization, commits a first degree misdemeanor.^{5,6}

Restitution

Restitution is “full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.”⁷ “Unlike civil damages, restitution is a criminal sanction. The purpose of restitution is not only to compensate the victim, but also to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.”⁸ In a unanimous opinion authored by Justice Kavanaugh, the Supreme Court held in *Ellinburg, Jr. v. United States*,⁹ that restitution under the Mandatory Victims Restitution Act constitutes criminal punishment for purposes of the Ex Post Facto Clause.

A crime victim has a state constitutional right to restitution. The State Constitution provides that a victim has the “right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.”¹⁰

A sentencing court must order the defendant to make restitution to the victim for damage or loss caused directly or indirectly by the defendant’s offense and damage or loss related to the defendant’s criminal episode, unless the court finds clear and compelling reasons not to order restitution. If ordered, restitution is a mandatory condition of probation.¹¹

How Restitution is Proved and Calculated

In general, the fair market value at the time of the offense is the appropriate value for purposes of restitution. However, the Florida Supreme Court in *Hawthorne*¹² ruled that “a court is not tied to fair market value as the sole standard for determining restitution amounts, but rather may exercise such discretion as required to further the purposes of restitution.”¹³ The court found that fair market value can be established either through direct testimony of the victim or through evidence of the following four factors:

- Original market cost;
- Manner in which the item was used;
- The general condition and quality of the item; and
- The percentage of depreciation.¹⁴

⁵ Section 849.091(2), F.S.

⁶ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine not exceeding \$1000; a second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500, as provided in ss. 775.082 and 775.083, F.S.

⁷ Black’s Law Dictionary (11th ed. 2019), *Restitution*.

⁸ *Tolbert v. State*, 268 So.3d 947 (1st DCA 2019).

⁹ *Ellinburg, Jr. v. Supreme Court of the United States*, 607 U.S. --- (2026)

¹⁰ Art. I, s. 16(b)(9), FLA. CONST.

¹¹ Section 775.089(1)(a), F.S.

¹² *State v. Hawthorne*, 573 So. 2d 330 (Fla. 1991).

¹³ *Id.* at 333.

¹⁴ *Id.* at 332-33.

A criminal trial and conviction must (unless waived) be heard before a jury and guilt must be proved beyond a reasonable doubt. Restitution, however, is a part of the sentencing process. A sentencing hearing is tried before the judge alone, and the essential facts need only be proved by a preponderance of the evidence.¹⁵

III. Effect of Proposed Changes:

The bill, cited as the “Direct Sales Consumer Protection Act,” creates s. 849.0913, F.S., to prohibit a person from establishing, promoting, operating, or participating in a pyramid promotional scheme. This prohibition applies even if the person receives products, goods, services, or intangible property in addition to the right to receive compensation.

The bill provides exceptions for legitimate direct sales plans that compensate participants based on product sales for personal use, consumption, or resale, provided the plan does not require excessive inventory purchases and includes a repurchase program under commercially reasonable terms. To qualify for this exception, the plan must:

- Avoid requiring independent salespersons to purchase inventory in amounts exceeding what they can reasonably expect to resell or consume within a reasonable time.
- Implement a repurchase program under commercially reasonable terms. Commercially reasonable terms is defined as repurchasing current and marketable inventory within 12 months of purchase at not less than 90 percent of the original net cost, less appropriate setoffs and legal claims. Inventory that is seasonal, discontinued, promotional, expired, or opened is excluded from repurchase eligibility.

The bill authorizes the Department of Legal Affairs to:

- Issue and serve complaints and cease and desist orders when violations are suspected.
- Seek temporary or permanent injunctions without bond in any circuit court to enforce compliance. A single act in violation of the section is sufficient to authorize an injunction.
- Request the appointment of one or more receivers to take custody of the violator’s property and business, including books and records, to prevent further violations or injury to the public. The court may also stay all pending civil actions and assign them to the judge who appointed the receiver.

Violations of a cease and desist order may result in civil penalties of up to \$10,000 per violation, with each day of continued noncompliance constituting a separate offense.

The bill increases criminal penalties by elevating the offense of establishing, promoting, or operating such a scheme from a first degree misdemeanor¹⁶ under current law to a third degree felony,¹⁷ punishable by up to five years in prison and a \$5,000 fine. Participation in a pyramid scheme remains a first degree misdemeanor.

¹⁵ Section 775.089(7), F.S.

¹⁶ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine not exceeding \$1000, as provided in ss. 775.082 and 775.083, F.S.

¹⁷ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in ss. 775.082, 775.083, or 775.084, F.S.

Courts must order restitution to victims, including investigative costs and disgorgement of profits. The bill specifies that these remedies and penalties are in addition to any other civil, administrative, or criminal actions provided by law.

The bill deletes the existing definition of “pyramid sales scheme” which is any sales or marketing plan or operation whereby a person pays consideration or makes an investment of more than \$100 to obtain the opportunity to receive a benefit that is not primarily contingent on bona fide sales to consumers, but instead depends on recruiting additional participants into the plan and related provisions from s. 849.091, F.S.

The bill takes effect on July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per FDLE, in FY 24-25, there were no arrests, guilty/convicted charges, or adjudication withheld charges for the current 1st degree misdemeanor that is deleted under this bill. Furthermore, there were no new commitments to prison for setting up, promoting, etc. or assisting therin, conducting or advertising drawing for prizes, or disposing of property or money by means of lottery. The magnitude of the impact on the prison system is not known for the act of establishing, promoting, or operating the newly defined pyramid promotional scheme.
- Per DOC, in FY 24-25, the incarceration rate for a Level 1, 3rd degree felony was 9.7%.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 849.091
This bill creates the following sections of the Florida Statutes: 849.0913

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁸ Office of Economic and Demographic Research, *SB 712-Prohibition of Pyramid Promotional Schemes*, (on file with the Senate Committee on Criminal Justice)