

By Senator Yarborough

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A bill to be entitled
An act relating to the prohibition of pyramid
promotional schemes; providing a short title; amending
s. 849.091, F.S.; deleting provisions relating to
pyramid sales schemes; creating s. 849.0913, F.S.;
defining terms; prohibiting a person from
establishing, promoting, operating, or participating
in a pyramid promotional scheme; providing
construction; requiring the Department of Legal
Affairs to issue and serve a complaint and cease and
desist order in certain instances; establishing
procedures for cease and desist orders; providing
penalties; providing for restitution; authorizing the
department to apply for an injunction; providing
requirements for an injunction; authorizing the court
to appoint a receiver; providing for the powers and
duties of such receivership; authorizing the court to
issue an order to stay certain actions and requiring
such actions be assigned to the judge who appointed
the receiver; providing that specified provisions and
penalties are in addition to civil, administrative, or
criminal actions provided by law; providing an
effective date.

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

Section 1. This act may be cited as the "Direct Sales
Consumer Protection Act."

Section 2. Section 849.091, Florida Statutes, is amended to

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30 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~~

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~~lottery, and whoever shall participate in any such lottery by becoming a member of or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, the term "consideration" and the term "investment" do not include the purchase of goods or services furnished at cost for use in making sales, but not for resale, or time and effort spent in the pursuit of sales or recruiting activities.~~

Section 3. Section 849.0913, Florida Statutes, is created to read:

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

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

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

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

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

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

(e) "Pyramid promotional scheme" means a plan or an operation in which a person pays or gives consideration for the

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right to receive compensation based on recruiting other persons into the plan or operation rather than from the sale and consumption of products, goods, services, or intangible property by a participant or other person introduced into the plan or operation. The term includes a plan or an operation in which the number of persons who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, or a plan or an operation in which a person, upon giving consideration, obtains any products, goods, services, or intangible property in addition to the right to receive compensation.

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

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

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

2. Implements a program in which a plan or an operation

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

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

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

2. "Current and marketable inventory" does not include any inventory that:

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

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

c. Has been used or opened.

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

(4) (a) Whenever the department has reason to believe that a person has been, or is, violating this section, and if it appears to the department that a cease and desist order against

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such person would be in the interest of the public, the department shall issue and serve upon such person a complaint and cease and desist order stating its charges in that respect and containing a notice of a hearing upon a day and at the place therein fixed at least 15 days after the service of the complaint. The hearing shall be held in conformity with chapter 120.

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

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

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

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

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

(g) A person who violates a cease and desist order of the department after it has become final and while such order is in effect shall forfeit and pay to the state a civil penalty of up to \$10,000 for each violation which shall accrue to the state and may be recovered in a civil action brought by the state. Each separate violation of such an order is a separate offense,

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except that in the case of a violation through continuing failure or neglect to obey a final order of the department, each day of continuance of such failure or neglect is deemed a separate offense.

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

(b) A person who is convicted of establishing, promoting, or operating a pyramid promotional scheme commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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issuance of an injunction.

(b) In addition to all other means provided by law for the enforcement of an injunction, the court in which such action is brought shall have power and jurisdiction to appoint one or more receivers for the property and business of a person who has been, or is, violating this section, including books, papers, documents, and records pertaining thereto, or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through, or by means of, the use of such property and business. The receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as is, from time to time, conferred upon him or her by the court. In any such action, the court may issue an order staying all pending civil actions and the court, in its discretion, may require that all civil actions be assigned to the circuit court judge who appointed the receiver.

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

Section 4. This act shall take effect July 1, 2026.