

SENATE, No. 2288

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JANUARY 31, 2005

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Establishes criminal penalties for operating or participating in pyramid promotional schemes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pyramid promotional schemes and supplementing
2 chapter 20 of Title 2C of the New Jersey Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. a. As used in this section:

8 (1) "Appropriate inventory repurchase program" means a program
9 by which a plan or operation repurchases, upon request at the
10 termination of a participant's business relationship with the plan or
11 operation and based upon commercially reasonable terms, current and
12 marketable inventory purchased and maintained by the participant for
13 resale, use or consumption, and such plan or operation clearly
14 describes the program in its recruiting literature, sales manual, or
15 contracts with participants, including the manner in which the
16 repurchase is exercised, and disclosure of any inventory that is not
17 eligible for repurchase under the program.

18 (2) "Commercially reasonable terms" means the repurchase of
19 current and marketable inventory within 12 months from date of
20 purchase at not less than 90 percent of the original net cost to the
21 participant, less appropriate set-offs and legal claims, if any. In the
22 case of service products, the repurchase of such service products must
23 be on a pro rata basis, unless clearly disclosed otherwise to the
24 participant, to be within the meaning of "commercially reasonable
25 terms."

26 (3) "Compensation" means payment of any money, thing of value,
27 or financial benefit.

28 (4) "Consideration" means the payment of cash or the purchase of
29 goods, services, and intangible property, and does not include the
30 purchase of goods or services furnished at cost to be used in making
31 sales and not for resale or the time and effort spent in pursuit of sales
32 or recruiting activities.

33 (5) "Current and marketable" includes inventory that in the case of
34 consumable or durable goods, is unopened, unused, and within its
35 commercially reasonable use or shelf-life period; and in the case of
36 services and intangible property, including Internet sites, represents
37 the unexpired portion of any contract or agreement. "Current and
38 marketable" does not include inventory that has been clearly described
39 to the participant prior to purchase as seasonal, discontinued, or
40 special promotion products not subject to the plan or operation's
41 inventory repurchase program.

42 (6) "Inventory" includes both goods and services, including
43 company-produced promotional materials, sales aids, and sales kits
44 that the plan or operation requires independent salespersons to
45 purchase.

46 (7) "Inventory loading" means that the plan or operation requires

1 or encourages its independent salespersons to purchase inventory in an
2 amount that unreasonably exceeds that which the salesperson can
3 expect to resell for ultimate consumption, or to use or consume, in a
4 reasonable time period.

5 (8) "Participant" means a person who joins a plan or operation.

6 (9) "Person" means an individual, a corporation, a partnership, or
7 any association or unincorporated organization.

8 (10) "Promote" means to contrive, prepare, establish, plan,
9 operate, advertise or to otherwise induce or attempt to induce another
10 person to be a participant.

11 (11) "Pyramid promotional scheme" means any plan or operation
12 in which a participant gives consideration for the right to receive
13 compensation that is derived primarily from the recruitment of other
14 persons as participants in the plan or operation, rather than from the
15 sales of goods, services or intangible property by the participant or by
16 participants to others.

17 b. A person commits a crime of the third degree if he knowingly
18 promotes or sells a pyramid promotional scheme. It is a crime of the
19 fourth degree if a person knowingly participates in a pyramid
20 promotional scheme, except that if the amount of consideration which
21 the person contributed to the pyramid promotional scheme was
22 \$100.00 or less, it is a disorderly persons offense.

23 c. Nothing in this section shall be construed to prohibit a plan or
24 operation, or to define such plan or operation as a "pyramid
25 promotional scheme," based upon the fact that participants in the plan
26 or operation give consideration in return for the right to receive
27 compensation based upon purchases of goods, services or intangible
28 property by participants for personal use, consumption, or resale, and
29 the plan or operation does not promote inventory loading and
30 implements an appropriate inventory repurchase program.

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32 2. This act shall take effect immediately.
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35 STATEMENT

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37 This bill would prohibit pyramid promotional schemes. A pyramid
38 promotional scheme requires participants to recruit other individuals
39 into the scheme in order for the original participants to receive any
40 compensation. The scheme is designed to compensate only those
41 participants who initially join the pyramid, while later participants lose
42 money.

43 The bill would make it a crime of the third degree if a person
44 knowingly promotes or sells a pyramid promotional scheme. The bill
45 defines "pyramid promotional scheme" as any plan or operation in
46 which a participant gives consideration for the right to receive

1 compensation that is derived primarily from the recruitment of other
2 persons as participants in the plan or operation, rather than from the
3 sales of goods, services or intangible property by the participate or by
4 participants to others. "Consideration" is defined as the payment of
5 cash or the purchase of goods, services, and intangible property, and
6 would not include the purchase of goods or services furnished at cost
7 to be used in making sales and not for resale or the time and effort
8 spent in pursuit of sales or recruiting activities.

9 A person who knowingly participates in a pyramid promotional
10 scheme would be guilty of a crime of the fourth degree. However, if
11 the amount that the person contributed to the scheme was \$100.00 or
12 less, the person would be guilty of a disorderly persons offense.

13 The bill specifically exempts those plans or operations based upon
14 the fact that participants in the plan or operation give consideration in
15 return for the right to receive compensation based upon purchases of
16 goods, services or intangible property by participants for personal use,
17 consumption, or resale, and the plan does not promote inventory
18 loading or implements an appropriate inventory repurchase program.

19 This bill is modeled after Federal legislation, H.R.1220 of the 108th
20 Congress.