

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2004

STATE OF NEW JERSEY
217th LEGISLATURE

ADOPTED MAY 12, 2016

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Johnson, Holley, Webber and Assemblywoman Pinkin

SYNOPSIS

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

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Consumer Affairs Committee.

(Sponsorship Updated As Of: 3/15/2017)

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

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

7
8 1. a. (1) A person is a leader of a pyramid promotional scheme
9 if he conspires with any other person as an organizer, supervisor,
10 financier, or manager to engage in a scheme or course of conduct by
11 which a person gives consideration for the opportunity to receive
12 compensation that is derived primarily from a person's introduction
13 of another person to participate in the scheme or course of conduct
14 rather than from the sale of a product by a person introduced into
15 the scheme or course of conduct. Leader of a pyramid promotional
16 scheme is a crime of the second degree. Notwithstanding the
17 provisions of subsection a. of N.J.S.2C:43-3, the court may impose
18 a fine not to exceed \$250,000.

19 (2) A person is a recruiter for a pyramid promotional scheme if
20 he solicits or induces any other person to participate in a scheme or
21 course of conduct by which a person gives consideration for the
22 opportunity to receive compensation that is derived primarily from
23 a person's introduction of another person to participate in the
24 scheme or course of conduct rather than from the sale of a product
25 by a person introduced into the scheme or course of conduct.
26 Recruiter for a pyramid promotional scheme is a crime of the fourth
27 degree.

28 b. It is an affirmative defense to a prosecution for a violation of
29 paragraph (1) or (2) of subsection a. of this section if the defendant
30 proves by a preponderance of the evidence all of the following:

31 (1) participants in the scheme or course of conduct give
32 consideration in return for the right to receive compensation based
33 upon purchases of goods, services, or intangible property by
34 participants for personal use, consumption, or resale;

35 (2) the scheme or course of conduct does not promote inventory
36 loading; and

37 (3) the scheme or course of conduct implements an inventory
38 repurchase program as set forth in subsection c. of this section.

39 c. To qualify as an inventory repurchase program for the
40 purposes of subsection b. of this section, there shall be an
41 enforceable agreement by the business enterprise to repurchase all
42 unencumbered products that are in commercially resalable
43 condition at a price not less than 90 percent of the amount actually
44 paid by the participant for the products being returned, less any
45 reasonable consideration as may have been received by the
46 participant for the purchase of the products being returned. In the
47 case of consumable or durable goods, a product is in commercially
48 resalable condition if it is unopened, unused, and within its

1 commercially reasonable use or shelf-life period. A product that is
2 no longer marketed by the business enterprise because it is a
3 discontinued, seasonal, or special promotional item shall be
4 considered commercially resalable, unless before the participant
5 purchased the product it was clearly disclosed to the participant and
6 the participant acknowledged in writing that the product was sold as
7 a discontinued, seasonal, or special promotional item and would not
8 be returnable. In the case of service products and intangible
9 property, including Internet websites, the unexpired portion of any
10 contract or agreement shall be deemed commercially resalable, and
11 the repurchase of any service products shall be on a pro rata basis.
12 Additionally, there shall be a clear description of the inventory
13 repurchase program in any recruiting literature or sales manual
14 provided to participants prior to their entry into the scheme or
15 course of conduct, and the details of the inventory repurchase
16 program, including the manner in which the repurchase is exercised,
17 shall be memorialized in the contract that obligated participation in
18 the scheme or course of conduct.

19 d. Nothing in subsection a. of this section shall be construed to
20 prohibit any scheme or course of conduct based solely upon the fact
21 that participants in the scheme or course of conduct give
22 consideration in return for the right to receive compensation based
23 upon purchases of goods, services, or intangible property by
24 participants for personal use, consumption, or resale.

25 e. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction
26 of leader of a pyramid promotional scheme shall not merge with the
27 conviction for any offense which is the object of the conspiracy.

28 f. Nothing contained in this act shall prohibit the court from
29 imposing an extended term pursuant to N.J.S.2C:43-7, nor shall this
30 act be construed in any way to preclude or limit the prosecution or
31 conviction of any person for conspiracy under N.J.S.2C:5-2 or for
32 any other offense.

33 g. As used in this section:

34 “Compensation” means payment of any money, thing of value, or
35 financial benefit.

36 “Consideration” means the payment of cash or the purchase of
37 goods, services, or intangible property, but does not include the
38 purchase of goods or services furnished at cost to be used in making
39 sales and not for resale, or the time and effort spent in pursuit of
40 sales or recruiting activities.

41 “Financier” means a person who, with the intent to derive a
42 profit, provides money or credit or other thing of value in order to
43 finance the operations of a scheme or course of conduct.

44 “Inventory” includes both goods and services, including but not
45 limited to promotional materials, sales aids, and sales kits produced
46 by or on behalf of the scheme or those engaged in the course of
47 conduct that are offered to participants for purchase by the scheme
48 or those engaged in the course of conduct.

1 “Inventory loading” means actions that require or encourage
2 participants in a scheme or course of conduct to purchase inventory
3 in an amount that exceeds that which a participant can reasonably
4 be expected to resell for ultimate consumption or, if purchased for
5 the participant’s own use or consumption, can reasonably be
6 expected to use or consume within a reasonable time period.

7
8 2. a. Notwithstanding any agreement to the contrary, a
9 participant, other than a leader, in a pyramid promotional scheme,
10 may declare the related sale or contract for sale void and, unless the
11 defendant made available to the participant an inventory repurchase
12 program as set forth in subsection b. of this section, may bring an
13 action in a court of competent jurisdiction to recover the
14 consideration the participant paid to participate in the scheme or
15 course of conduct. In any action the court shall, in addition to any
16 judgment awarded to the plaintiff, require the defendant to pay
17 interest, reasonable attorneys’ fees, and costs.

18 b. To qualify as an inventory repurchase program for the
19 purposes of subsection a. of this section, there shall be an
20 enforceable agreement by the business enterprise to repurchase all
21 unencumbered products that are in commercially resalable
22 condition at a price not less than 90 percent of the amount actually
23 paid by the participant for the products being returned, less any
24 reasonable consideration as may have been received by the
25 participant for the purchase of the products being returned. In the
26 case of consumable or durable goods, a product is in commercially
27 resalable condition if it is unopened, unused, and within its
28 commercially reasonable use or shelf-life period. A product that is
29 no longer marketed by the business enterprise because it is a
30 discontinued, seasonal, or special promotional item shall be
31 considered commercially resalable, unless before the participant
32 purchased the product it was clearly disclosed to the participant and
33 the participant acknowledged in writing that the product was sold as
34 a discontinued, seasonal, or special promotional item and would not
35 be returnable. In the case of service products and intangible
36 property, including Internet websites, the unexpired portion of any
37 contract or agreement shall be deemed commercially resalable, and
38 the repurchase of any service products shall be on a pro rata basis.
39 Additionally, there shall be a clear description of the inventory
40 repurchase program in any recruiting literature or sales manual
41 provided to participants prior to their entry into the scheme or
42 course of conduct, and the details of the inventory repurchase
43 program, including the manner in which the repurchase is exercised,
44 shall be memorialized in the contract that obligated participation in
45 the scheme or course of conduct.

46 c. Nothing in subsection a. of this section shall be construed to
47 define any scheme or course of conduct as a pyramid promotional
48 scheme based solely upon the fact that participants in the scheme or

1 operation give consideration in return for the right to receive
2 compensation based upon purchases of goods, services, or
3 intangible property by participants for personal use, consumption,
4 or resale.

5 d. (1) The provisions of subsection a. of this section shall not be
6 waived or modified by contract or agreement. Any effort to waive
7 or modify the remedy established by subsection a. of this section
8 through a contract for indemnification or otherwise, that is executed
9 or renewed after the date of enactment of this act, shall be void.

10 (2) The rights and remedies provided under this section are
11 independent of and supplemental to any other right or remedy for
12 any violation or conduct provided for in any other law, and nothing
13 contained herein shall be construed to diminish or to abrogate any
14 such right or remedy.

15 e. As used in this section:

16 “Compensation” means payment of any money, thing of value, or
17 financial benefit.

18 “Consideration” means the payment of cash or the purchase of
19 goods, services, or intangible property, but does not include the
20 purchase of goods or services furnished at cost to be used in making
21 sales and not for resale, or the time and effort spent in pursuit of
22 sales or recruiting activities.

23 “Financier” means a person who, with the intent to derive a
24 profit, provides money or credit or other thing of value in order to
25 finance the operations of a scheme or course of conduct.

26 “Inventory” includes both goods and services, including but not
27 limited to promotional materials, sales aids, and sales kits produced
28 by or on behalf of the scheme or those engaged in the course of
29 conduct that are offered to participants for purchase by the scheme
30 or those engaged in the course of conduct.

31 “Leader” is a person who conspires with any other person as an
32 organizer, supervisor, financier, or manager.

33 “Pyramid promotional scheme” is any scheme or course of
34 conduct by which a person gives consideration for the opportunity
35 to receive compensation that is derived primarily from a person’s
36 introduction of another person to participate in the scheme or course
37 of conduct rather than from the sale of a product by a person
38 introduced into the scheme or course of conduct.

39

40 3. This act shall take effect on the first day of the fourth month
41 next following enactment.