

SENATE, No. 731

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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District 5 (Camden and Gloucester)

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning pyramid promotional schemes and
2 supplementing 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
9 program by which a plan or operation repurchases, upon request at
10 the termination of a participant's business relationship with the plan
11 or operation and based upon commercially reasonable terms,
12 current and marketable inventory purchased and maintained by the
13 participant for resale, use or consumption, and such plan or
14 operation clearly describes the program in its recruiting literature,
15 sales manual, or contracts with participants, including the manner in
16 which the repurchase is exercised, and disclosure of any inventory
17 that is not 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
23 must 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
27 value, or financial benefit.

28 (4) "Consideration" means the payment of cash or the purchase
29 of 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
32 sales or recruiting activities.

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

1 salesperson can expect to resell for ultimate consumption, or to use
2 or consume, in a reasonable time period.

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

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

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

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

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

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

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31 2. This act shall take effect immediately.

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STATEMENT

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

42 The bill would make it a crime of the third degree if a person
43 knowingly promotes or sells a pyramid promotional scheme. The
44 bill defines "pyramid promotional scheme" as any plan or operation
45 in which a participant gives consideration for the right to receive
46 compensation that is derived primarily from the recruitment of other
47 persons as participants in the plan or operation, rather than from the
48 sales of goods, services or intangible property by the participate or

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1 by participants to others. "Consideration" is defined as the payment
2 of cash or the purchase of goods, services, and intangible property,
3 and would not include the purchase of goods or services furnished
4 at cost to be used in making sales and not for resale or the time and
5 effort spent in pursuit of sales or recruiting activities.

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

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

17 This bill is modeled after Federal legislation, H.R.1220.