

2C:20-39 & 2A:32-2
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2017 **CHAPTER:** 74

NJSA: 2C:20-39 & 2A:32-2 (Establishes certain penalties for operating or participating in pyramid promotional schemes.)

BILL NO: A2004 (Substituted for S731)

SPONSOR(S) Green and others

DATE INTRODUCED: 1/27/2016

COMMITTEE: **ASSEMBLY:** Consumer Affairs
 SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** 5/26/2016
 SENATE: 3/13/2017

DATE OF APPROVAL: 5/11/2017

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Assembly Committee Substitute enacted) Yes

A2004

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S731

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(Continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH/JA

§1 - C.2C:20-39

§2 - C.2A:32-2

§3 - Note

P.L.2017, CHAPTER 74, *approved May 11, 2017*

Assembly Committee Substitute for

Assembly, No. 2004

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

1 unencumbered products that are in commercially resalable
2 condition at a price not less than 90 percent of the amount actually
3 paid by the participant for the products being returned, less any
4 reasonable consideration as may have been received by the
5 participant for the purchase of the products being returned. In the
6 case of consumable or durable goods, a product is in commercially
7 resalable condition if it is unopened, unused, and within its
8 commercially reasonable use or shelf-life period. A product that is
9 no longer marketed by the business enterprise because it is a
10 discontinued, seasonal, or special promotional item shall be
11 considered commercially resalable, unless before the participant
12 purchased the product it was clearly disclosed to the participant and
13 the participant acknowledged in writing that the product was sold as
14 a discontinued, seasonal, or special promotional item and would not
15 be returnable. In the case of service products and intangible
16 property, including Internet websites, the unexpired portion of any
17 contract or agreement shall be deemed commercially resalable, and
18 the repurchase of any service products shall be on a pro rata basis.
19 Additionally, there shall be a clear description of the inventory
20 repurchase program in any recruiting literature or sales manual
21 provided to participants prior to their entry into the scheme or
22 course of conduct, and the details of the inventory repurchase
23 program, including the manner in which the repurchase is exercised,
24 shall be memorialized in the contract that obligated participation in
25 the scheme or course of conduct.

26 d. Nothing in subsection a. of this section shall be construed to
27 prohibit any scheme or course of conduct based solely upon the fact
28 that participants in the scheme or course of conduct give
29 consideration in return for the right to receive compensation based
30 upon purchases of goods, services, or intangible property by
31 participants for personal use, consumption, or resale.

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

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

40 g. As used in this section:

41 “Compensation” means payment of any money, thing of value, or
42 financial benefit.

43 “Consideration” means the payment of cash or the purchase of
44 goods, services, or intangible property, but does not include the
45 purchase of goods or services furnished at cost to be used in making
46 sales and not for resale, or the time and effort spent in pursuit of
47 sales or recruiting activities.

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

4 “Inventory” includes both goods and services, including but not
5 limited to promotional materials, sales aids, and sales kits produced
6 by or on behalf of the scheme or those engaged in the course of
7 conduct that are offered to participants for purchase by the scheme
8 or those engaged in the course of conduct.

9 “Inventory loading” means actions that require or encourage
10 participants in a scheme or course of conduct to purchase inventory
11 in an amount that exceeds that which a participant can reasonably
12 be expected to resell for ultimate consumption or, if purchased for
13 the participant’s own use or consumption, can reasonably be
14 expected to use or consume within a reasonable time period.

15

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

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

1 repurchase program in any recruiting literature or sales manual
2 provided to participants prior to their entry into the scheme or
3 course of conduct, and the details of the inventory repurchase
4 program, including the manner in which the repurchase is exercised,
5 shall be memorialized in the contract that obligated participation in
6 the scheme or course of conduct.

7 c. Nothing in subsection a. of this section shall be construed to
8 define any scheme or course of conduct as a pyramid promotional
9 scheme based solely upon the fact that participants in the scheme or
10 operation give consideration in return for the right to receive
11 compensation based upon purchases of goods, services, or
12 intangible property by participants for personal use, consumption,
13 or resale.

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

19 (2) The rights and remedies provided under this section are
20 independent of and supplemental to any other right or remedy for
21 any violation or conduct provided for in any other law, and nothing
22 contained herein shall be construed to diminish or to abrogate any
23 such right or remedy.

24 e. As used in this section:

25 “Compensation” means payment of any money, thing of value, or
26 financial benefit.

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

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

35 “Inventory” includes both goods and services, including but not
36 limited to promotional materials, sales aids, and sales kits produced
37 by or on behalf of the scheme or those engaged in the course of
38 conduct that are offered to participants for purchase by the scheme
39 or those engaged in the course of conduct.

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

42 “Pyramid promotional scheme” is any scheme or course of
43 conduct by which a person gives consideration for the opportunity
44 to receive compensation that is derived primarily from a person’s
45 introduction of another person to participate in the scheme or course
46 of conduct rather than from the sale of a product by a person
47 introduced into the scheme or course of conduct.

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

3

4

5

6

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

ASSEMBLY, No. 2004

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Co-Sponsored by:

Assemblymen Gusciora, Conaway, Wisniewski, Greenwald, Wolfe, Diegnan, Bramnick, Assemblywoman Jimenez, Assemblymen Caputo and Johnson

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.

3

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

6

7 1. a. As used in this section:

8 "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
12 and marketable inventory purchased and maintained by the
13 participant for resale, use or consumption, and plan or operation
14 clearly describes the program in its recruiting literature, sales
15 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 "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 the service products
23 shall 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 "Compensation" means payment of any money, thing of value, or
27 financial benefit.

28 "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
32 sales or recruiting activities.

33 "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 websites,
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 "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 "Inventory loading" means that the plan or operation requires or
47 encourages its independent salespersons to purchase inventory in an
48 amount that unreasonably exceeds that which the salesperson can

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

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

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

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

9 "Pyramid promotional scheme" means any plan or operation in
10 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 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 a 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
27 intangible property by participants for personal use, consumption,
28 or resale, and the plan or operation does not promote inventory
29 loading and implements an appropriate inventory repurchase
30 program.

31

32 2. This act shall take effect immediately.

33

34

35

STATEMENT

36

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

44 The bill makes it a crime of the third degree to knowingly
45 promote or sell a pyramid promotional scheme. Under the bill, a
46 "pyramid promotional scheme" is defined as any plan or operation
47 in which a participant gives consideration for the right to receive
48 compensation that is derived primarily from the recruitment of other

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1 persons as participants in the plan or operation, rather than from the
2 sales of goods, services, or intangible property by the participant or
3 by participants to others. "Consideration" is defined as the payment
4 of cash or the purchase of goods, services, and intangible property,
5 and does not include the purchase of goods or services furnished at
6 cost to be used in making sales and not for resale.

7 The bill also provides that knowing participation in a pyramid
8 promotional scheme is a crime of the fourth degree, unless the
9 amount the person contributed to the scheme was \$100 or less, in
10 which case it is a disorderly persons offense.

11 The bill specifically exempts plans or operations in which
12 consideration is given by participants in return for the right to
13 receive compensation based on their sales or personal use of goods,
14 services, or intangible property. The bill also exempts plans and
15 operations that implement an appropriate inventory repurchase
16 program and that do not promote inventory loading.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2004

STATE OF NEW JERSEY

DATED: MAY 12, 2016

The Assembly Consumer Affairs Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2004.

This committee substitute establishes penalties for promoting and participating in “pyramid promotional schemes.” A pyramid promotional scheme requires participants to recruit other individuals into the scheme in order for the original participants to receive any compensation, and is designed to compensate only those participants who initially join the pyramid while later participants lose money.

The committee substitute makes it a crime of the second degree to be a pyramid promotional scheme leader, who conspires with any other person as an organizer, supervisor, financier, or manager of the scheme. A crime of the second degree is punishable by five to 10 years imprisonment, a fine, or both. The bill provides that a fine not to exceed \$250,000 may be imposed on a leader, and a conviction as a leader of a pyramid promotional scheme cannot be merged with the conviction for any offense which is the object of the conspiracy.

The committee substitute makes it a crime of the fourth degree to be a pyramid promotional scheme recruiter, if the person solicits or induces any other person to participate in the pyramid promotional scheme. A crime of the fourth degree is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both.

The committee substitute also provides that the court may impose an extended term of imprisonment on a person convicted of being a pyramid promotional scheme leader or recruiter.

A “pyramid promotional scheme” is defined as any scheme or course of conduct by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person’s introduction of another person to participate in the scheme or course of conduct rather than from the sale of a product by a person introduced into the scheme or course of conduct.

The committee substitute provides that it would be an affirmative defense to a prosecution if the defendant proves that: (1) participants in the pyramid scheme give consideration in return for the right to receive compensation based upon purchases of goods, services, or

intangible property by participants for personal use, consumption, or resale; (2) the scheme does not promote inventory loading; and (3) the scheme implements an inventory repurchase program that meets the requirements set forth in the bill.

To qualify as an inventory repurchase program, there must be an enforceable agreement to repurchase all unencumbered products that are in commercially resalable condition at a price not less than 90 percent of the amount actually paid by the participant for the products being returned, less any reasonable consideration as may have been received by the participant for the purchase of the products being returned. Additionally, a clear description of the inventory repurchase program is to be included in any recruiting literature or sales manual provided to participants.

The committee substitute provides that a participant, other than a leader, in a pyramid promotional scheme, may declare the related sale or contract for sale void and, unless the defendant made available to the participant an inventory repurchase program, may bring an action to recover the consideration (the payment of cash or the purchase of goods, services, or intangible property) the participant paid to participate in the scheme. In addition to any judgment awarded to the plaintiff, the court will require the defendant to pay interest, reasonable attorneys' fees, and costs.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2004

STATE OF NEW JERSEY

DATED: FEBRUARY 6, 2017

The Senate Judiciary Committee reports favorably Assembly Bill No. 2004 ACS.

This substitute bill would establish new crimes for leading or recruiting participants for a criminal “pyramid promotional scheme,” as well as provide civil remedies for participants victimized by such schemes.

As described in the bill, a criminal pyramid promotional scheme is a scheme or course of conduct by which a person gives consideration (cash payment, or the purchase of goods, services, or intangible property) for the opportunity to be compensated in some fashion derived primarily from that participant’s introduction of another person to participate in the scheme or course of conduct, rather than from a participant’s sale of a product. This on-going pattern of linking compensation primarily to ever-increasing participation numbers eventually leads to a market saturation or an unattainable amount of new participants needed in order for existing participants to receive compensation. The resulting outcome is that only the earliest participants, at the “top” of the pyramid scheme, are significantly compensated, while those at the “bottom” around the time the pyramid scheme stops working receive little or no compensation, even losing financially because they may never recoup all of the consideration given to “buy in” on the scheme.

It would be a crime to act as a *leader* of a pyramid promotional scheme. A leader is defined in the bill as someone who “conspires with any other person as an organizer, supervisor, financier, or manager” in order to engage in a pyramid promotional scheme. This crime would be graded as a crime of the second degree, which is punishable by a term of imprisonment of five to 10 years, an enhanced fine not to exceed \$250,000 (the maximum ordinary fine amount is \$150,000), or both. Additionally, a conviction for being a leader of a pyramid promotional scheme would not merge with a conviction for any offense associated with the conspiracy that resulted in the scheme.

Acting as a *recruiter* for a pyramid promotional scheme would be a crime of the fourth degree. A crime of the fourth degree is ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

For either crime, the bill provides that a court could forego imposing an ordinary term of imprisonment and instead impose an

extended term pursuant to N.J.S.2C:43-7. Under paragraphs (3) and (5) of that statute, an extended term for a second degree crime is between 10 and 20 years, and an extended term for a fourth degree crime is between three and five years.

The bill would permit a person subject to prosecution as a leader or recruiter for a pyramid promotional scheme the opportunity to present an affirmative defense to demonstrate that the operation of the scheme or course of conduct was not criminal. The person would be required to prove, by a preponderance of the evidence presented, that: (1) participants in the scheme or course of conduct give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale; (2) the scheme or course of conduct does not promote inventory loading, by which participants are required or encouraged to purchase inventory in an amount that exceeds an amount a participant can reasonably be expected to resell or consume within a reasonable time period; and (3) the scheme or course of conduct implements an inventory repurchase program that meets the following requirements:

- there is an enforceable agreement to repurchase all unencumbered products that are in commercially resalable condition at a price not less than 90 percent of the amount actually paid by the participant for the products being returned, less any reasonable consideration as may have been received by the participant for the purchase of those products being returned;
- if a product is no longer marketed because it is discontinued, seasonal, or a special promotional item, it remains commercially resalable, unless it was clearly disclosed as not being returnable before the participant purchased the product;
- there is a clear description of the inventory repurchase program in any recruiting literature or sales manual provided to participants prior to their entry into the scheme or course of conduct; and
- the details of the inventory repurchase program are memorialized in participants' contracts to enter the scheme or course of conduct.

As to civil remedies for victimized participants, any participant in a criminal pyramid promotional scheme, other than a leader, may declare any sale or contract for sale related to the scheme void. Also, unless there is available to that participant an inventory repurchase program as described above, the participant could bring a court action to recover the consideration paid to participate in the scheme or course of conduct. In any such action, the court would, in addition to any judgement awarded to the participant, require the defendant to pay interest, reasonable attorneys' fees, and costs.

This substitute bill is identical to the Senate Committee Substitute for Senate Bill No. 731, also reported today by the committee.

SENATE, No. 731

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator JAMES BEACH

District 6 (Burlington and Camden)

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.

3

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

6

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.

30

31 2. This act shall take effect immediately.

32

33

34

STATEMENT

35

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

S731 CRUZ-PEREZ, BEACH

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.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 731

STATE OF NEW JERSEY

DATED: FEBRUARY 6, 2017

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 731.

This substitute bill would establish new crimes for leading or recruiting participants for a criminal “pyramid promotional scheme,” as well as provide civil remedies for participants victimized by such schemes.

As described in the bill, a criminal pyramid promotional scheme is a scheme or course of conduct by which a person gives consideration (cash payment, or the purchase of goods, services, or intangible property) for the opportunity to be compensated in some fashion derived primarily from that participant’s introduction of another person to participate in the scheme or course of conduct, rather than from a participant’s sale of a product. This on-going pattern of linking compensation primarily to ever-increasing participation numbers eventually leads to a market saturation or an unattainable amount of new participants needed in order for existing participants to receive compensation. The resulting outcome is that only the earliest participants, at the “top” of the pyramid scheme, are significantly compensated, while those at the “bottom” around the time the pyramid scheme stops working receive little or no compensation, even losing financially because they may never recoup all of the consideration given to “buy in” on the scheme.

It would be a crime to act as a *leader* of a pyramid promotional scheme. A leader is defined in the bill as someone who “conspires with any other person as an organizer, supervisor, financier, or manager” in order to engage in a pyramid promotional scheme. This crime would be graded as a crime of the second degree, which is punishable by a term of imprisonment of five to 10 years, an enhanced fine not to exceed \$250,000 (the maximum ordinary fine amount is \$150,000), or both. Additionally, a conviction for being a leader of a pyramid promotional scheme would not merge with a conviction for any offense associated with the conspiracy that resulted in the scheme.

Acting as a *recruiter* for a pyramid promotional scheme would be a crime of the fourth degree. A crime of the fourth degree is

ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

For either crime, the bill provides that a court could forego imposing an ordinary term of imprisonment and instead impose an extended term pursuant to N.J.S.2C:43-7. Under paragraphs (3) and (5) of that statute, an extended term for a second degree crime is between 10 and 20 years, and an extended term for a fourth degree crime is between three and five years.

The bill would permit a person subject to prosecution as a leader or recruiter for a pyramid promotional scheme the opportunity to present an affirmative defense to demonstrate that the operation of the scheme or course of conduct was not criminal. The person would be required to prove, by a preponderance of the evidence presented, that: (1) participants in the scheme or course of conduct give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale; (2) the scheme or course of conduct does not promote inventory loading, by which participants are required or encouraged to purchase inventory in an amount that exceeds an amount a participant can reasonably be expected to resell or consume within a reasonable time period; and (3) the scheme or course of conduct implements an inventory repurchase program that meets the following requirements:

- there is an enforceable agreement to repurchase all unencumbered products that are in commercially resalable condition at a price not less than 90 percent of the amount actually paid by the participant for the products being returned, less any reasonable consideration as may have been received by the participant for the purchase of those products being returned;

- if a product is no longer marketed because it is discontinued, seasonal, or a special promotional item, it remains commercially resalable, unless it was clearly disclosed as not being returnable before the participant purchased the product;

- there is a clear description of the inventory repurchase program in any recruiting literature or sales manual provided to participants prior to their entry into the scheme or course of conduct; and

- the details of the inventory repurchase program are memorialized in participants' contracts to enter the scheme or course of conduct.

As to civil remedies for victimized participants, any participant in a criminal pyramid promotional scheme, other than a leader, may declare any sale or contract for sale related to the scheme void. Also, unless there is available to that participant an inventory repurchase program as described above, the participant could bring a court action to recover the consideration paid to participate in the scheme or course of conduct. In any such action, the court would, in addition to any judgement awarded to the participant, require the defendant to pay interest, reasonable attorneys' fees, and costs.

This substitute bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2004, also reported today by the committee.

Governor Christie Takes Action On Pending Legislation

Thursday, May 11, 2017 Tags: [Bill Action](#)



Trenton, NJ - Governor Chris Christie today signed into law additional bills to support New Jersey's military members, veterans, and their families and show pride in the state's military history. On May 1, he signed a number of bills impacting veterans and the military, including a law creating a program to divert certain veterans accused of non-violent offenses from the criminal justice system and into appropriate mental health and substance use services.

Today, Governor Christie signed A450/S750 (Mazzeo, Andrzejczak, Mukherji, Moriarty, Benson, Daniels, Houghtaling/Beach, Van Drew) creating the Wounded Warrior Caregivers Relief Act, which provides a gross income tax credit of up to \$675 to family caregivers of totally disabled veterans whose injuries occurred as a result of serving on active duty on or after September 11, 2001.

"We must do all we can do to make it easier for military members who have been left with debilitating injuries in the line of duty and their family members who now care for them," said Governor Christie. "This compassionate new law provides a tax credit to ease some of the financial burden on those families and show our appreciation for the many sacrifices they have made to keep their loved ones safe and at home."

Other military and veterans bills signed by Governor Christie allow active duty members of the U.S. Armed Forces who have completed basic training to wear their dress uniform at their high school graduation and require the Department of Military and Veterans' Affairs to work with the Division of Travel and Tourism and the New Jersey Historical Commission to develop an online list with a historic tour of war battles fought and places of historical military significance in New Jersey and its State waters.

Governor Christie also took action on the following bills:

BILL SIGNINGS:

ACS for A-815/ACS for S-1088 (Land, Andrzejczak, Mosquera, Vainieri Huttle, Bramnick/Van Drew, T. Kean) - Concerns Code Blue alert plans to shelter at-risk individuals

A-837/S-468 (Jimenez, Green, Mukherji, Sumter, Munoz/Sacco, Greenstein) - Establishes "Hazardous Drug Safe Handling Act;" requires promulgation of standards and regulations concerning safe handling of hazardous drugs by certain health care personnel

A-1256/S-1381 (Caride, Singleton, Jasey, Wimberly/Bateman) - Requires State Board of Education regulations regarding school nurse certification to include certain minimum eligibility requirements

A-1649/S-853 (Schaer, Pintor Marin, Wimberly, Mukherji/Stack) - Requires local governments and authorities to obtain financing cost estimate from NJ Environmental Infrastructure Trust for certain projects

ACS for A-1973/SCS for S-2401 (Prieto, Handlin/Diegnan, Stack) - "Appraisal Management Company Registration and Regulation Act"

A-1991/S-2722 (Prieto, Jimenez, Oliver/Stack, Cunningham) - Provides two elected members of pension commission of closed Hudson County Employees' Pension Fund may be active or retired county employees

ACS for A-2004/SCS for S-731 (Green, Benson, Moriarty, Mukherji, Pintor Marin/Cruz-Perez, Beach) - Establishes certain penalties for operating or participating in pyramid promotional schemes

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[GOVERNOR'S STATEMENT UPON SIGNING ASSEMBLY BILL NO. 4146](#)

A-2087/SCS for S-2792 (Mukherji, Schaer, Downey, Quijano/Greenstein, Turner) - Grants drivers additional time to resolve parking violations prior to license or registration suspension

A-2340/S-2108 (Benson, Muoio, Gusciora/Greenstein, Diegnan) - Authorizes students in Marie H. Katzenbach school for the deaf to operate State vehicle for driver education and provides protection for such activity under tort claims act

A-2512/S-1899 (DeAngelo, Pintor Marin, Houghtaling/Whelan, Turner) - Requires BPU to render decision on case within 12 months of final public hearing or hold another public hearing prior to deciding case

A-2805/S-2726 (Caputo, Houghtaling, McKeon, Chiaravalloti/Codey, Pou) - Requires DMVA to develop online historic tour identifying locations of war battles and places of significance to war efforts in State

A-3011/S-2796 (Conaway, Singleton/Allen) - Modifies charter of Board of Island Managers of Burlington Island to move elections to November

AS for A-3351/S-2570 (Lampitt, Andrzejczak, Quijano, Holley, Jones, Space/Cruz-Perez, Oroho) - Creates license to manufacturer and sell hard cider and mead

A-3581/SCS for S-2582, 2092 (Downey, Mosquera, Danielsens, Houghtaling, Van Drew, Turner, Moriarty) - Requires Internet-connected baby monitors to include security features

A-3601/S-2209 (Schaer/Vitale, Gill) - Concerns regulation of guaranteed asset protection waivers by DOBI

A-3785/S-2396 (Downey, Houghtaling, Jasey, Singleton, Holley, Caride, Wimberly/Ruiz, Turner) - Requires State to pay educational costs of students who reside in homeless shelter outside district of residence for more than one year

A-4019/S-2491 (Mazzeo, Mukherji, Andrzejczak, Land, DeCroce, McKnight, Danielsens/Cruz-Perez, Madden) - Permits eligible students who are members of United States Armed Forces to wear military uniform at high school graduation

A-4146/S-2521 (Vainieri Huttie, Benson, Lampitt, Johnson, McKnight, Sumter/Vitale, Gordon) – STATEMENT UPON SIGNING - Provides for monitoring and evaluation of transition of mental health and substance use disorder treatment service system and developmental disability system to fee-for-service reimbursement model; makes appropriation

A-4284/S-2675 (Quijano, Benson, Muoio, Caride, Vainieri Huttie, McKnight, Wimberly, Sumter/Diegnan, Beach) - Provides that school districts and nonpublic schools may receive reimbursement for costs incurred on or after January 1, 2016 for testing school drinking water for lead

A-4344/S-2729 (Karabinchak, Pinkin, Coughlin, Wisniewski/Diegnan, Vitale) - Designates portion of Route 18 in East Brunswick as "State Trooper Werner Foerster Memorial Interchange"

AJR-76/SJR-16 (Vainieri Huttie, Holley, McKnight, Jasey/Gill) - Designates September "Affordable Housing Awareness Month"

AJR-130/SJR-92 (Vainieri Huttie, Lampitt/Vitale, Singer) - Designates January 23 of each year as "Maternal Health Awareness Day" in New Jersey

BILLS VETOED:

A-1850/S-2606 (Giblin, DeAngelo, Mukherji, Holley/Diegnan) – ABSOLUTE - Extends by two months seasonal retail consumption alcoholic beverage license

A-1869/S-668 (Wimberly, Vainieri Huttie, Oliver, Tucker, Quijano, Johnson/Rice, Cruz-Perez) - CONDITIONAL - Establishes Division of Minority and Women Business Development and State Chief Disparity Officer to monitor efforts to promote participation by minority-owned and women-owned businesses in State contracting

A-2353/S-367 (Vainieri Huttie, Jasey, Mukherji, Benson, Quijano/Codey, Turner) – CONDITIONAL - Establishes measures to deter steroid use among students; appropriates \$45,000 to DOE for New Jersey State Interscholastic Athletic Association testing of student-athletes for steroids and other performance enhancing substances

A-3091/S-2528 (Munoz, Gusciora, O'Scanlon, Oliver, Lagana, Lampitt, Mukherji, Sumter/Pou, Weinberg, Cunningham) - CONDITIONAL - Bars persons under age 18 from marrying or entering into a civil union

###

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