

Prohibiting Pyramid Promotional Schemes

This Act defines and bans illegal pyramid promotional schemes and establishes penalties for establishing or operating an illegal pyramid scheme.

Submitted as:

South Dakota

HB 1183

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit Pyramid
2 Promotional Schemes.”

3
4 Section 2. [*Definitions.*] For the purposes of this Act:

5 “Promote” means contrive, prepare, establish, plan, operate, advertise, or otherwise
6 induce or attempt to induce another person to participate in a pyramid promotional scheme.

7 “Appropriate Inventory Repurchase Program” means a program by which a plan or
8 operation repurchases, upon request and upon commercially reasonable terms, when the
9 salesperson’s business relationship with the company ends, current and marketable inventory in
10 the possession of the salesperson that was purchased by the salesperson for resale. Any such
11 plan or operation shall clearly describe the program in its recruiting literature, sales manual, or
12 contract with independent salespeople, including the disclosure of any inventory which is not
13 eligible for repurchase under the program.

14 “Inventory” includes both goods and services, including company-produced promotional
15 materials, sales aids, and sales kits that the plan or operation requires independent salespeople to
16 purchase.

17 “Commercially Reasonable Terms” means the repurchase of current and marketable
18 inventory within [twelve months] from the date of purchase at not less than [ninety percent] of
19 the original net cost, less appropriate set-offs and legal claims, if any.

20 “Current and Marketable” excludes inventory that is no longer within its commercially
21 reasonable use or shelf-life period, that was clearly described to salespeople prior to purchase as
22 seasonal, discontinued, or special promotion products not subject to the plan or operation’s
23 inventory repurchase program, or that has been used or opened.

24 “Pyramid Promotional Scheme” means any plan or operation by which a person gives
25 consideration for the opportunity to receive compensation that is derived primarily from the
26 introduction of other people into the plan or operation rather than from the sale and consumption
27 of goods, services, or intangible property by a participant or other people introduced into the
28 plan or operation. The term includes any plan or operation under which the number of people
29 who may participate is limited either expressly or by the application of conditions affecting the
30 eligibility of a person to receive compensation under the plan or operation, or any plan or
31 operation under which a person, on giving any consideration, obtains any goods, services, or
32 intangible property in addition to the right to receive compensation.

33 “Compensation” means a payment of any money, thing of value, or financial benefit
34 conferred in return for inducing another person to participate in a pyramid promotional scheme.

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

39 “Inventory Loading” means that the plan or operation requires or encourages its
40 independent salespeople to purchase inventory in an amount, which exceeds that which the
41 salesperson can expect to resell for ultimate consumption or to consume in a reasonable time
42 period, or both.

43
44 Section 3. [*Participation in Any Pyramid Promotional Scheme: Penalties.*]

45 (A) No person may establish, promote, operate, or participate in any pyramid
46 promotional scheme. A limitation as to the number of people who may participate or the
47 presence of additional conditions affecting eligibility for the opportunity to receive
48 compensation under the plan does not change the identity of the plan as a pyramid promotional
49 scheme. It is not a defense under this section that a person, on giving consideration, obtains
50 goods, services, or intangible property in addition to the right to receive compensation.

51 (B) Any person who establishes or operates a pyramid promotional scheme is guilty of a
52 [Class 5 felony]. Any person who knowingly participates in a pyramid promotional scheme is
53 guilty of a [Class 1 misdemeanor].

54
55 Section 4. [*Participation in Any Pyramid Promotional Scheme: Exceptions.*]

56 (A) Nothing in this Act may be construed to prohibit a plan or operation, or to define a
57 plan or operation as a pyramid promotional scheme, based on the fact that participants in the
58 plan or operation give consideration in return for the right to receive compensation based upon
59 purchases of goods, services, or intangible property by participants for personal use,
60 consumption, or resale so long as the plan or operation does not promote or induce inventory
61 loading and the plan or operation implements an appropriate inventory repurchase program.

62 (B) The provisions of this Act do not preclude, preempt, or prohibit the [attorney
63 general] from proceeding against any plan or scheme or any person involved with such plan or
64 scheme under any other provision of law.

65
66 Section 5. [*Violations.*]

67 (A) If it appears to the [attorney general] that any person has engaged or is about to
68 engage in any act or practice constituting a violation of any provision of this Act, or any order
69 under this Act, the [attorney general] may do one or more of the following:

70 (1) Issue a cease and desist order, with or without prior hearing, against any
71 person engaged in the prohibited activities, directing such person to cease and desist from
72 further illegal activities;

73 (2) Bring an action in the [circuit court] to enjoin the acts or practices to enforce
74 compliance with this Act, or any order under this Act; or

75 (3) Impose by order and collect a civil penalty against any person found in an
76 administrative action to have violated any provision of this Act, or any order issued under this
77 Act, in an amount not to exceed [ten thousand dollars] per violation per person.

78 (B) The [attorney general] may bring actions to recover penalties pursuant to this
79 subdivision in [circuit court]. All civil penalties received shall be deposited in the [state general
80 fund].

81 (C) Any person named in a cease and desist order issued pursuant to this Act shall be
82 notified of his or her right to file, within [fifteen days] after the receipt of the order, a written
83 notice for a hearing with the [attorney general]. If the [attorney general] does not receive a

84 written request for a hearing within the time specified, the cease and desist order shall be
85 permanent and the person named in the order deemed to have waived all rights to a hearing.
86 Every such order shall state its effective date and shall concisely state its intent or purpose and
87 the grounds on which it is based. Any person aggrieved by a final order issued pursuant to this
88 Act may obtain a review of the order in the [circuit court] pursuant to the provisions of [insert
89 citation].

90 (D) Upon a proper showing a permanent or temporary injunction, restraining order, or
91 writ of mandamus shall be granted and a receiver or conservator may be appointed for the
92 defendant or defendant's assets. In addition, upon a proper showing by the [attorney general],
93 the [court] may enter an order of rescission, restitution, or disgorgement directed to any person
94 who has engaged in any act constituting a violation of any provision of this Act, or any order
95 under this Act. The court may not require the [attorney general] to post a bond. In addition to
96 fines or penalties, the [attorney general] shall collect costs and attorney fees.

97
98 Section 6. [*Burden of Showing Compliance.*] The burden of showing compliance with
99 the provisions of this Act lies with the plan, scheme, or person involved with such plan or
100 scheme.

101
102 Section 7. [*Severability.*] [Insert severability clause.]

103
104 Section 8. [*Repealer.*] [Insert repealer clause.]

105
106 Section 9. [*Effective Date.*] [Insert effective date.]