



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 5726 (Substitute H-1 as reported without amendment)
House Bill 5727 (Substitute H-1 as reported without amendment)
House Bill 5728 (Substitute H-1 as reported without amendment)
House Bill 5729 (Substitute S-1 as reported)
Sponsor: Representative Eric Leutheuser (H.B. 5726)
Representative Pamela Hornberger (H.B. 5727)
Representative Jeffrey R. Noble (H.B. 5728)
Representative Brandt Iden (H.B. 5729)

House Committee: Commerce and Trade
Senate Committee: Commerce

CONTENT

House Bill 5726 (H-1) would enact the "Pyramid Promotional Scheme Act" to do the following:

- Prohibit a person from promoting or participating in a pyramid promotional scheme, and prescribe penalties for violations of the proposed Act.
- Allow the Attorney General to issue a cease and desist order if he or she had reasonable cause to believe that a person violated, or was about to violate, the Act.
- Allow the Attorney General to bring an action in circuit court to enjoin acts that violated the proposed Act, enforce compliance with the Act, or recover a maximum civil fine of \$10,000 per violation.
- Allow the Attorney General or a prosecuting attorney to issue a written demand for a person to appear and be examined and to produce documents or objects for inspection, before bringing an action in court.
- Establish a rebuttable presumption that a plan or operation was not a pyramid promotional scheme if certain conditions were met.
- Require the Attorney General or prosecuting attorney to keep testimony taken or material produced confidential before bringing an action, unless the person under investigation waived confidentiality or the court authorized disclosure.

House Bill 5727 (H-1) would amend the Franchise Investment Law to eliminate provisions prohibiting a person from offering or selling any form of participation in a pyramid or chain promotion; and prohibit the Department of the Attorney General from accepting for filing a franchise that involved a pyramid promotional scheme that violated the Pyramid Promotional Scheme Act.

House Bill 5728 (H-1) would amend the sentencing guidelines within the Code of Criminal Procedure to include the felony proposed by House Bill 5726 (H-1) as a Class F offense against the public trust with a statutory maximum of seven years' imprisonment, and remove the felony that House Bill 5727 (H-1) would eliminate.

House Bill 5729 (S-1) would amend the Michigan Consumer Protection Act to specify that "trade or commerce" would include a pyramid promotional scheme as defined in the proposed Act, instead of pyramid and chain promotions.

FISCAL IMPACT

House Bill 5726 (H-1) would require the Department of Attorney General to pursue legal action and enforce the regulation of pyramid promotional schemes. The amount of litigation and services is indeterminate and would depend on the number of legal actions brought pursuant to the bill. The Department has indicated that it could need additional resources, including one additional FTE equivalent that would be split 50% for an attorney and 50% for a support staff person at an estimated annual cost of \$125,000. The Department could receive payment for its costs and attorney fees, if ordered by the court.

The proposed civil fine could increase revenue to the General Fund.

The bill's criminal penalties would have an indeterminate fiscal impact on the State and local government. Along with House Bill 5727 (H-1), the bill would repeal a prohibition against offering or selling participation in a pyramid or chain promotion and replace it with a new prohibition against promoting or participating in a pyramid promotional scheme. The existing prohibition in the Franchise Investment Law is a Class D felony with a maximum penalty of imprisonment for up to seven years, a fine of up to \$10,000, or both. House Bill 5726 (H-1) would make promoting a pyramid promotional scheme a Class F felony subject to the same penalty. Knowingly participating in a pyramid promotional scheme would be a misdemeanor with a maximum penalty of imprisonment for up to 90 days, a fine of up to \$1,000, or both. It is unknown whether the changes would lead to more or fewer felony arrests and convictions. It also is unknown whether new misdemeanor arrests and convictions would be for violations that would not be charged or would be charged as felonies under the current statute.

More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

Conversely, fewer misdemeanor and felony arrests and convictions could reduce resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Any associated decrease in fine revenue would reduce funding to public libraries.

House Bill 5727 (H-1) would have no fiscal impact on State or local government.

House Bill 5728 (H-1) would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. The bill also would remove a guideline for a substantially similar crime. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

House Bill 5729 (S-1) would have no fiscal impact on State or local government.

Date Completed: 5-17-18

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.