

**SUBSTITUTE FOR
HOUSE BILL NO. 5726**

A bill to prohibit pyramid promotional schemes; to provide for the powers and duties of certain state and local governmental officers and entities; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "pyramid promotional scheme act".

3 Sec. 2. As used in this act:

4 (a) "Compensation" means a payment of any money, thing of
5 value, or financial benefit conferred in return for inducing an
6 individual to participate in a pyramid promotional scheme.

7 (b) "Consideration" means the payment of cash or anything of
8 value or the purchase of goods, services, or intangible property.
9 The term does not include the purchase of goods or services

1 furnished at cost to be used in making sales and not for resale, or
2 time and effort spent in pursuit of sales or recruiting activities.

3 (c) "Inventory" means goods, including company-produced
4 promotional materials, sales aids, and sales kits, that a plan or
5 operation requires participants to purchase.

6 (d) "Inventory loading" means the requirement or encouragement
7 by a plan or operation that its participants purchase inventory in
8 an amount that exceeds the amount that the participant can expect
9 to resell for ultimate consumption or to consume in a reasonable
10 time period, or both.

11 (e) "Inventory repurchase program" means a program that does
12 all of the following:

13 (i) Upon request, repurchases all current and marketable
14 inventory in the possession of a participant within 12 months after
15 the date of purchase, at not less than 90% of the original net
16 cost, less appropriate setoffs, if any, when the participant's
17 business relation is terminated.

18 (ii) Clearly and prominently communicates the terms of the
19 inventory repurchase program in its recruiting literature, sales
20 manual, or contracts with participants, including the manner in
21 which the repurchase is to be exercised and how any setoffs are
22 calculated.

23 (iii) Clearly and prominently communicates to a participant,
24 before the purchase, in its recruiting literature, sales manual, or
25 contracts with participants, what inventory is excluded from the
26 inventory repurchase program, including inventory that is
27 classified as seasonal, discontinued, special promotion, is no

1 longer within the inventory's commercially reasonable use or shelf
2 life period, or is otherwise not eligible for repurchase under the
3 inventory repurchase program.

4 (f) "Participant" means an individual who joins a plan or
5 operation.

6 (g) "Promote" means to contrive, prepare, establish, plan,
7 operate, advertise, or otherwise induce or attempt to induce an
8 individual to participate in a pyramid promotional scheme.

9 (h) "Pyramid promotional scheme" means any plan or operation
10 in which an individual gives consideration for the opportunity to
11 receive compensation that is derived primarily from recruiting
12 other individuals into the plan or operation rather than from the
13 sale of products or services to ultimate users or from the
14 consumption or use of product or services by ultimate users.

15 (i) "Ultimate user" means an individual who consumes or uses a
16 product or service, whether or not the individual is a participant
17 in the plan or operation.

18 Sec. 3. (1) A person shall not promote or participate in a
19 pyramid promotional scheme. A limitation as to the number of
20 individuals who may participate or the presence of additional
21 conditions affecting eligibility for the opportunity to receive
22 compensation under a plan or operation does not change the identity
23 of the plan or operation as a pyramid promotional scheme.

24 (2) A person that promotes a pyramid promotional scheme is
25 guilty of a felony punishable by 1 or more of the following:

26 (a) Imprisonment for not more than 7 years.

27 (b) A fine of not more than \$10,000.00 per violation.

1 (3) A person that knowingly participates in a pyramid
2 promotional scheme is guilty of a misdemeanor punishable by
3 imprisonment for not more than 90 days or a fine of not more than
4 \$1,000.00, or both.

5 Sec. 4. (1) If the attorney general has reasonable cause to
6 believe that a person has engaged or is about to engage in any act
7 or practice that violates this act, or any order issued under this
8 act, the attorney general may do any of the following:

9 (a) Subject to subsections (2) and (3), issue a cease and
10 desist order against any person that is engaged in the prohibited
11 activities, directing the person to cease and desist from further
12 illegal activities.

13 (b) Bring an action in the circuit court for the county in
14 which the violation is believed to have occurred, or in the circuit
15 court for Ingham County, to do any of the following:

16 (i) Enjoin the acts or practices that violate this act.

17 (ii) Enforce compliance with this act or any order issued
18 under this act.

19 (iii) Recover a civil fine of not more than \$10,000.00 for
20 each violation. Fines assessed and recovered under this section
21 must be paid to the state treasurer and credited to the state
22 general fund.

23 (2) A cease and desist order issued under this section must
24 state all of the following:

25 (a) The effective date of the order.

26 (b) The intent or purpose of the order.

27 (c) The grounds on which the order is based.

1 (3) A person aggrieved by a cease and desist order issued
2 under this section may obtain a review of the order in the Ingham
3 County circuit court.

4 (4) Upon a proper showing to the circuit court, a permanent
5 injunction, temporary injunction, or restraining order may be
6 granted and a receiver or conservator may be appointed for a person
7 that is alleged to have violated this act or the assets of a person
8 that is alleged to have violated this act. In addition, upon a
9 proper showing by the attorney general, the circuit court may enter
10 an order of rescission, restitution, or disgorgement directed to
11 any person that has engaged in an act that violates this act or an
12 order issued under this act.

13 (5) A circuit court may award to the attorney general court
14 costs and attorney fees in an action brought under this section.

15 (6) This section does not bar the attorney general or a
16 prosecuting attorney from proceeding under any other provision of
17 law against a pyramid promotional scheme or any person that is
18 involved with a pyramid promotional scheme.

19 Sec. 5. There is a rebuttable presumption that a plan or
20 operation is not a pyramid promotional scheme if both of the
21 following conditions are satisfied:

22 (a) The plan or operation does not cause inventory loading.

23 (b) The plan or operation implements an inventory repurchase
24 program.

25 Sec. 6. (1) If the attorney general has reasonable cause to
26 believe that a person has information or is in possession, custody,
27 or control of any document or other tangible object that is

1 relevant to an investigation of a violation of this act, the
2 attorney general, or a prosecuting attorney with the permission of
3 or at the request of the attorney general, may serve on the person,
4 before bringing any action in the circuit court, a written demand
5 to appear and be examined under oath, and to produce the document
6 or object for inspection and copying. The demand must include all
7 of the following:

8 (a) Be served on the person in the manner required for service
9 of process in this state.

10 (b) Describe the nature of the conduct constituting the
11 alleged violation under investigation.

12 (c) Describe the document or object with sufficient
13 definiteness to permit it to be fairly identified.

14 (d) If demanded, contain a copy of any written
15 interrogatories.

16 (e) Prescribe a reasonable time at which the person must
17 appear to testify, within which to answer any written
18 interrogatories, or within which the document or object must be
19 produced, and advise the person that objections to or reasons for
20 not complying with the demand may be filed with the attorney
21 general, or with the prosecuting attorney with the permission of or
22 at the request of the attorney general, on or before that time.

23 (f) Specify a place for the taking of testimony or for
24 production and designate the person that shall be custodian of the
25 document or object.

26 (g) Contain a copy of subsection (2).

27 (2) If a person objects to or otherwise fails to comply with a

1 written demand served on the person under subsection (1), the
2 attorney general, or a prosecuting attorney with the permission of
3 or at the request of the attorney general, may file an action to
4 enforce the demand in the circuit court of the county in which the
5 person resides or maintains a principal place of business in this
6 state. Notice of hearing the action and a copy of all pleadings
7 must be served upon the person, and the person may appear in
8 opposition. If the court finds that the demand is proper, that
9 there is reasonable cause to believe that there was or is presently
10 occurring a violation of this act, and that the information sought
11 or document or object demanded is relevant to the investigation,
12 the court shall order the person to comply with the demand, subject
13 to any modification the court may prescribe. On motion by the
14 person and for good cause shown, the court may make any further
15 order in the proceedings that justice requires to protect the
16 person from unreasonable annoyance, embarrassment, oppression,
17 burden, or expense.

18 (3) The attorney general or a prosecuting attorney shall keep
19 any procedure, testimony taken, or material produced confidential
20 before bringing an action against a person under this act for a
21 violation under investigation, unless confidentiality is waived by
22 the person under investigation and the person that has testified,
23 answered interrogatories, or produced material, or unless
24 disclosure is authorized by the court.

25 Enacting section 1. This act takes effect 90 days after the
26 date it is enacted into law.

27 Enacting section 2. This act does not take effect unless all

1 of the following bills of the 99th Legislature are enacted into
2 law:

3 (a) House Bill No. 5727.

4 (b) House Bill No. 5729.