

# HOUSE BILL No. 5726

March 15, 2018, Introduced by Reps. Leutheuser, Lucido, Marino, Hornberger, Iden and Noble and referred to the Committee on Commerce and Trade.

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) "Commercially reasonable terms" means the repurchase of  
5       current and marketable inventory within 12 months after the date of  
6       purchase at not less than 90% of the original net cost, less  
7       appropriate setoffs and legal claims, if any.

8       (b) "Compensation" means a payment of any money, thing of  
9       value, or financial benefit conferred in return for inducing an

1 individual to participate in a pyramid promotional scheme.

2 (c) "Consideration" means the payment of cash or the  
3 purchase of goods, services, or intangible property. The term does  
4 not include the purchase of goods or services furnished at cost to  
5 be used in making sales and not for resale, or time and effort  
6 spent in pursuit of sales or recruiting activities.

7 (d) "Inventory" includes both goods and services, including  
8 company-produced promotional materials, sales aids, and sales kits  
9 that a plan or operation requires participants to purchase.

10 (e) "Inventory loading" means the requirement or encouragement  
11 by a plan or operation that its participants purchase inventory in  
12 an amount that exceeds the amount that the participant can expect  
13 to resell for ultimate consumption or to consume in a reasonable  
14 time period, or both.

15 (f) "Inventory repurchase program" means a program by which a  
16 plan or operation does all of the following:

17 (i) Promises to repurchase all current and marketable  
18 inventory in the possession of a participant, upon request and upon  
19 commercially reasonable terms, when the participant's business  
20 relation is terminated.

21 (ii) Clearly communicates the terms described in subparagraph  
22 (i) in its recruiting literature, sales manual, or contracts with  
23 participants, including the manner in which the repurchase is to be  
24 exercised and disclosure of any inventory that is not eligible for  
25 repurchase under the program.

26 (g) "Participant" means an individual who joins a plan or  
27 operation.

1 (h) "Promote" means to contrive, prepare, establish, plan,  
2 operate, advertise, or otherwise induce or attempt to induce an  
3 individual to participate in a pyramid promotional scheme.

4 (i) "Pyramid promotional scheme" means any plan or operation  
5 by which an individual gives consideration for the opportunity to  
6 receive compensation that is derived primarily from the  
7 introduction of other individuals into the plan or operation rather  
8 than from the sale and consumption of goods, services, or  
9 intangible property by a participant or other individuals who are  
10 introduced into the plan or operation. The term includes any plan  
11 or operation under which the number of individuals who may  
12 participate is limited either expressly or by the application of  
13 conditions affecting the eligibility of an individual to receive  
14 compensation under the plan or operation, or any plan or operation  
15 under which an individual, on giving any consideration, obtains any  
16 goods, services, or intangible property in addition to the right to  
17 receive compensation.

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

24 (2) A person that establishes, promotes, or operates a pyramid  
25 promotional scheme is guilty of a felony punishable by imprisonment  
26 for not more than 4 years or a fine of not more than \$5,000.00, or  
27 both. A person that knowingly participates in a pyramid promotional

1 scheme is guilty of a misdemeanor punishable by imprisonment for  
2 not more than 90 days or a fine of not more than \$1,000.00, or  
3 both.

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

8 (a) Issue a cease and desist order, with or without a prior  
9 hearing, against any person engaged in the prohibited activities,  
10 directing the person to cease and desist from further illegal  
11 activities.

12 (b) Bring an action in the circuit court of the county in  
13 which the violation is believed to have occurred to do any of the  
14 following:

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

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

18 (c) Order payment of an administrative fine by any  
19 person that is found in an administrative proceeding to have  
20 violated this act or any order issued under this act. The amount of  
21 an administrative fine under this subdivision shall not exceed  
22 \$10,000.00 for each violation. The attorney general may bring an  
23 action in the circuit court of the county in which the violation  
24 occurred to recover an administrative fine imposed under this  
25 subdivision. The proceeds of any administrative fines under this  
26 subdivision shall be paid to the state treasurer and credited to  
27 the state general fund.

1           (2) The attorney general shall notify a person named in a  
2       cease and desist order issued under subsection (1) of the person's  
3       right to file, within 15 days after receiving the order, a written  
4       notice for a hearing. If the attorney general does not receive a  
5       written request for a hearing within the time specified, the cease  
6       and desist order is permanent and the person named in the order is  
7       considered to have waived all rights to a hearing.

8           (3) A cease and desist order issued under this section must  
9       state all of the following:

10          (a) The effective date of the order.

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

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

13          (4) A person aggrieved by a final order issued under this  
14       section may obtain a review of the order in the circuit court of  
15       the county in which the violations of this act are found to have  
16       occurred.

17          (5) Upon a proper showing to the appropriate circuit court, a  
18       permanent injunction, temporary injunction, restraining order, or  
19       writ of mandamus may be granted and a receiver or conservator may  
20       be appointed for the person alleged to have violated this act or  
21       the assets of the person alleged to have violated this act. In  
22       addition, upon a proper showing by the attorney general, the  
23       circuit court may enter an order of rescission, restitution, or  
24       disgorgement directed to any person that has engaged in any act  
25       violating this act or any order issued under this act.

26          (6) A circuit court may award to the attorney general court  
27       costs and attorney fees in an action brought under this section.

1           (7) This section does not bar the attorney general or a  
2 prosecuting attorney from proceeding under any other provision of  
3 law against a pyramid promotional scheme or any person involved  
4 with a pyramid promotional scheme.

5           Sec. 5. (1) This act shall not be construed to prohibit a plan  
6 or operation, or to define a plan or operation as a pyramid  
7 promotional scheme, based on the fact that participants in the plan  
8 or operation give consideration in return for the right to receive  
9 compensation based on purchases of goods, services, or intangible  
10 property by participants for personal use, consumption, or resale  
11 if both of the following conditions are satisfied:

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

13           (b) The plan or operation implements a bona fide inventory  
14 repurchase program that meets the requirements of this section.

15           (2) A person must clearly describe an inventory repurchase  
16 program in its recruiting literature, sales manual, or contracts  
17 with participants. The recruiting literature, sales manual, or  
18 contract must disclose any inventory that is not eligible for  
19 repurchase under the program.

20           (3) An inventory repurchase program is not required to apply  
21 to inventory that meets any of the following:

22           (a) It is no longer within the inventory's commercially  
23 reasonable use or shelf life period.

24           (b) It has been used or opened.

25           (4) A person must clearly describe to a participant, before  
26 the purchase, inventory that is excluded from the person's  
27 inventory repurchase program as seasonal, discontinued, or special

1 promotion products that are not subject to the person's inventory  
2 repurchase program.

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

5 Enacting section 2. This act does not take effect unless all  
6 of the following bills of the 99th Legislature are enacted into  
7 law:

8 (a) Senate Bill No. \_\_\_\_ or House Bill No. 5727 (request no.  
9 04879'17 a).

10 (b) Senate Bill No. \_\_\_\_ or House Bill No. 5729 (request no.  
11 04879'17 b).