

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

904I0295

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1183 - 02/19/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Wick, Cutler, Deadrick (Thomas), Gillespie, Hennies, Madsen, McCaulley, Michels, and Smidt and Senators de Hueck and Knudson

1 FOR AN ACT ENTITLED, An Act to prohibit pyramid promotional schemes.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. For the purposes of this Act, the term, promote, means contrive, prepare,
4 establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to
5 participate in a pyramid promotional scheme.

6 Section 2. For the purposes of this Act, the term, appropriate inventory repurchase program,
7 means a program by which a plan or operation repurchases, upon request and upon commercially
8 reasonable terms, when the salesperson's business relationship with the company ends, current
9 and marketable inventory in the possession of the salesperson that was purchased by the
10 salesperson for resale. Any such plan or operation shall clearly describe the program in its
11 recruiting literature, sales manual, or contract with independent salespersons, including the
12 disclosure of any inventory which is not eligible for repurchase under the program.

13 For the purposes of this section, the term, inventory, includes both goods and services,
14 including company-produced promotional materials, sales aids, and sales kits that the plan or



1 operation requires independent salespersons to purchase.

2 The term, commercially reasonable terms, means the repurchase of current and marketable
3 inventory within twelve months from the date of purchase at not less than ninety percent of the
4 original net cost, less appropriate set-offs and legal claims, if any.

5 The term, current and marketable, excludes inventory that is no longer within its
6 commercially reasonable use or shelf-life period, that was clearly described to salespersons prior
7 to purchase as seasonal, discontinued, or special promotion products not subject to the plan or
8 operation's inventory repurchase program, or that has been used or opened.

9 Section 3. For the purposes of this Act, the term, pyramid promotional scheme, means any
10 plan or operation by which a person gives consideration for the opportunity to receive
11 compensation that is derived primarily from the introduction of other persons into the plan or
12 operation rather than from the sale and consumption of goods, services, or intangible property
13 by a participant or other persons introduced into the plan or operation. The term includes any
14 plan or operation under which the number of persons who may participate is limited either
15 expressly or by the application of conditions affecting the eligibility of a person to receive
16 compensation under the plan or operation, or any plan or operation under which a person, on
17 giving any consideration, obtains any goods, services, or intangible property in addition to the
18 right to receive compensation.

19 Section 4. For the purposes of this Act, the term, compensation, means a payment of any
20 money, thing of value, or financial benefit conferred in return for inducing another person to
21 participate in a pyramid promotional scheme.

22 Section 5. For the purposes of this Act, the term, consideration, means the payment of cash
23 or the purchase of goods, services, or intangible property. The term does not include the
24 purchase of goods or services furnished at cost to be used in making sales and not for resale, or

1 time and effort spent in pursuit of sales or recruiting activities.

2 Section 6. For the purposes of this Act, the term, inventory loading, means that the plan or
3 operation requires or encourages its independent salespersons to purchase inventory in an
4 amount, which exceeds that which the salesperson can expect to resell for ultimate consumption
5 or to consume in a reasonable time period, or both.

6 Section 7. No person may establish, promote, operate, or participate in any pyramid
7 promotional scheme. A limitation as to the number of persons who may participate or the
8 presence of additional conditions affecting eligibility for the opportunity to receive compensation
9 under the plan does not change the identity of the plan as a pyramid promotional scheme. It is
10 not a defense under this section that a person, on giving consideration, obtains goods, services,
11 or intangible property in addition to the right to receive compensation.

12 Any person who establishes or operates a pyramid promotional scheme is guilty of a Class
13 5 felony. Any person who knowingly participates in a pyramid promotional scheme is guilty of
14 a Class 1 misdemeanor.

15 Section 8. Nothing in this Act may be construed to prohibit a plan or operation, or to define
16 a plan or operation as a pyramid promotional scheme, based on the fact that participants in the
17 plan or operation give consideration in return for the right to receive compensation based upon
18 purchases of goods, services, or intangible property by participants for personal use,
19 consumption, or resale so long as the plan or operation does not promote or induce inventory
20 loading and the plan or operation implements an appropriate inventory repurchase program.

21 Section 9. The provisions of this Act do not preclude, preempt, or prohibit the attorney
22 general from proceeding against any plan or scheme or any person involved with such plan or
23 scheme under any other provision of law.

24 Section 10. If it appears to the attorney general that any person has engaged or is about to

1 engage in any act or practice constituting a violation of any provision of this Act, or any order
2 under this Act, the attorney general may do one or more of the following:

- 3 (1) Issue a cease and desist order, with or without prior hearing, against any person
4 engaged in the prohibited activities, directing such person to cease and desist from
5 further illegal activities;
- 6 (2) Bring an action in the circuit court to enjoin the acts or practices to enforce
7 compliance with this Act, or any order under this Act; or
- 8 (3) Impose by order and collect a civil penalty against any person found in an
9 administrative action to have violated any provision of this Act, or any order issued
10 under this Act, in an amount not to exceed ten thousand dollars per violation per
11 person. The attorney general may bring actions to recover penalties pursuant to this
12 subdivision in circuit court. All civil penalties received shall be deposited in the state
13 general fund.

14 Any person named in a cease and desist order issued pursuant to this Act shall be notified of
15 his or her right to file, within fifteen days after the receipt of the order, a written notice for a
16 hearing with the attorney general. If the attorney general does not receive a written request for
17 a hearing within the time specified, the cease and desist order shall be permanent and the person
18 named in the order deemed to have waived all rights to a hearing. Every such order shall state
19 its effective date and shall concisely state its intent or purpose and the grounds on which it is
20 based. Any person aggrieved by a final order issued pursuant to this Act may obtain a review of
21 the order in the circuit court pursuant to the provisions of chapter 1-26.

22 Upon a proper showing a permanent or temporary injunction, restraining order, or writ of
23 mandamus shall be granted and a receiver or conservator may be appointed for the defendant or
24 defendant's assets. In addition, upon a proper showing by the attorney general, the court may

1 enter an order of rescission, restitution, or disgorgement directed to any person who has engaged
2 in any act constituting a violation of any provision of this Act, or any order under this Act. The
3 court may not require the attorney general to post a bond. In addition to fines or penalties, the
4 attorney general shall collect costs and attorney fees.

5 Section 11. The burden of showing compliance with the provisions of this Act lies with the
6 plan, scheme, or person involved with such plan or scheme.