

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

904I0295

HOUSE BILL NO. 1183

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. Terms used in this Act mean:

4 (1) "Participant," a person who gives consideration for the opportunity to receive
5 compensation in return for inducing others to join a pyramid promotional scheme;

6 (2) "Promote," contrive, prepare, establish, plan, operate, advertise, or otherwise induce
7 or attempt to induce another person to be a participant in a pyramid promotional
8 scheme.

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



1 For the purposes of this section, the term, inventory, includes both goods and services,
2 including company-produced promotional materials, sales aids, and sales kits that the plan or
3 operation requires independent salespersons to purchase.

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

7 The term, current and marketable, excludes inventory that is not longer within its
8 commercially reasonable use or shelf-life period, that was clearly described to salespersons prior
9 to purchase as seasonal, discontinued, or special promotion products not subject to the plan or
10 operation's inventory repurchase program, or that has been used or opened.

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

21 Section 4. For the purposes of this Act, the term, compensation, means a payment of any
22 money, thing of value, or financial benefit conferred in return for inducing another person to
23 become a participant in a pyramid promotional scheme. The term does not include payments that
24 are based on sales of goods or services by a person to others, including anyone who is

1 purchasing the goods or services for actual use or consumption, so long as the plan or operation
2 does not promote inventory loading and implements an appropriate inventory repurchase
3 program.

4 Section 5. For the purposes of this Act, the term, consideration, means the payment of cash
5 or the purchase of goods, services, or intangible property. The term does not include the
6 purchase of goods or services furnished at cost to be used in making sales and not for resale, or
7 time and effort spent in pursuit of sales or recruiting activities.

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

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

18 A violation of this section is a Class 6 felony. However, any subsequent violation of this
19 section that occurs within two years of a conviction of a Class 6 felony pursuant to this section
20 is a Class 5 felony. Any subsequent violation of this section that occurs within two years of a
21 conviction of a Class 5 felony pursuant to this section is a Class 4 felony.

22 Section 8. Nothing in this Act limits the authority of any state official from proceeding
23 against any pyramid promotional scheme for any other violation of state law.

24 Section 9. The attorney general may, upon finding any person is engaged in any act or

1 practice that constitutes a pyramid promotional scheme in violation of this Act, bring an action
2 to enjoin such act or practice and to obtain other appropriate relief. The court may grant a
3 temporary restraining order, or a preliminary or permanent injunction, or other appropriate relief.
4 Upon determination by the court of a violation of this Act, the attorney general may impose by
5 order and collect a civil penalty of not more than ten thousand dollars for each violation for each
6 person. The attorney general may bring an action in circuit court to recover a penalty pursuant
7 to this section. In determining the amount of the civil penalty, the attorney general shall consider
8 the magnitude of the offense, prior offenses and compliance history, the good faith of the person
9 charged in attempting to achieve compliance, and such other matters as justice may require. Any
10 penalty collected pursuant to this section shall be deposited in the state treasury.