

CHAPTER 74

AN ACT concerning pyramid promotional schemes and supplementing Title 2A and chapter 20 of Title 2C of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.2C:20-39 Participation in pyramid promotional scheme, crime, penalties.

1. a. (1) A person is a leader of a pyramid promotional scheme if he conspires with any other person as an organizer, supervisor, financier, or manager to engage in a scheme or course of conduct by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of another person to participate in the scheme or course of conduct rather than from the sale of a product by a person introduced into the scheme or course of conduct. Leader of a pyramid promotional scheme is a crime of the second degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000.

(2) A person is a recruiter for a pyramid promotional scheme if he solicits or induces any other person to participate in a scheme or course of conduct by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of another person to participate in the scheme or course of conduct rather than from the sale of a product by a person introduced into the scheme or course of conduct. Recruiter for a pyramid promotional scheme is a crime of the fourth degree.

b. It is an affirmative defense to a prosecution for a violation of paragraph (1) or (2) of subsection a. of this section if the defendant proves by a preponderance of the evidence all of the following:

(1) participants in the scheme or course of conduct give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale;

(2) the scheme or course of conduct does not promote inventory loading; and

(3) the scheme or course of conduct implements an inventory repurchase program as set forth in subsection c. of this section.

c. To qualify as an inventory repurchase program for the purposes of subsection b. of this section, there shall be an enforceable agreement by the business enterprise to repurchase all unencumbered products that are in commercially resalable condition at a price not less than 90 percent of the amount actually paid by the participant for the products being returned, less any reasonable consideration as may have been received by the participant for the purchase of the products being returned. In the case of consumable or durable goods, a product is in commercially resalable condition if it is unopened, unused, and within its commercially reasonable use or shelf-life period. A product that is no longer marketed by the business enterprise because it is a discontinued, seasonal, or special promotional item shall be considered commercially resalable, unless before the participant purchased the product it was clearly disclosed to the participant and the participant acknowledged in writing that the product was sold as a discontinued, seasonal, or special promotional item and would not be returnable. In the case of service products and intangible property, including Internet websites, the unexpired portion of any contract or agreement shall be deemed commercially resalable, and the repurchase of any service products shall be on a pro rata basis. Additionally, there shall be a clear description of the inventory repurchase program in any recruiting literature or sales manual provided to participants prior to their entry into the scheme or course of conduct, and the details of the inventory repurchase program, including the manner in which the repurchase is exercised, shall be memorialized in the contract that obligated participation in the scheme or course of conduct.

d. Nothing in subsection a. of this section shall be construed to prohibit any scheme or course of conduct based solely upon the fact that participants in the scheme or course of

conduct give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale.

e. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of leader of a pyramid promotional scheme shall not merge with the conviction for any offense which is the object of the conspiracy.

f. Nothing contained in this act shall prohibit the court from imposing an extended term pursuant to N.J.S.2C:43-7, nor shall this act be construed in any way to preclude or limit the prosecution or conviction of any person for conspiracy under N.J.S.2C:5-2 or for any other offense.

g. As used in this section:

“Compensation” means payment of any money, thing of value, or financial benefit.

“Consideration” means the payment of cash or the purchase of goods, services, or intangible property, but does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or the time and effort spent in pursuit of sales or recruiting activities.

“Financier” means a person who, with the intent to derive a profit, provides money or credit or other thing of value in order to finance the operations of a scheme or course of conduct.

“Inventory” includes both goods and services, including but not limited to promotional materials, sales aids, and sales kits produced by or on behalf of the scheme or those engaged in the course of conduct that are offered to participants for purchase by the scheme or those engaged in the course of conduct.

“Inventory loading” means actions that require or encourage participants in a scheme or course of conduct to purchase inventory in an amount that exceeds that which a participant can reasonably be expected to resell for ultimate consumption or, if purchased for the participant’s own use or consumption, can reasonably be expected to use or consume within a reasonable time period.

C.2A:32-2 Actions by participant to recover paid consideration, inventory repurchase program.

2. a. Notwithstanding any agreement to the contrary, a participant, other than a leader, in a pyramid promotional scheme, may declare the related sale or contract for sale void and, unless the defendant made available to the participant an inventory repurchase program as set forth in subsection b. of this section, may bring an action in a court of competent jurisdiction to recover the consideration the participant paid to participate in the scheme or course of conduct. In any action the court shall, in addition to any judgment awarded to the plaintiff, require the defendant to pay interest, reasonable attorneys’ fees, and costs.

b. To qualify as an inventory repurchase program for the purposes of subsection a. of this section, there shall be an enforceable agreement by the business enterprise to repurchase all unencumbered products that are in commercially resalable condition at a price not less than 90 percent of the amount actually paid by the participant for the products being returned, less any reasonable consideration as may have been received by the participant for the purchase of the products being returned. In the case of consumable or durable goods, a product is in commercially resalable condition if it is unopened, unused, and within its commercially reasonable use or shelf-life period. A product that is no longer marketed by the business enterprise because it is a discontinued, seasonal, or special promotional item shall be considered commercially resalable, unless before the participant purchased the product it was clearly disclosed to the participant and the participant acknowledged in writing that the product was sold as a discontinued, seasonal, or special promotional item and would not be

returnable. In the case of service products and intangible property, including Internet websites, the unexpired portion of any contract or agreement shall be deemed commercially resalable, and the repurchase of any service products shall be on a pro rata basis. Additionally, there shall be a clear description of the inventory repurchase program in any recruiting literature or sales manual provided to participants prior to their entry into the scheme or course of conduct, and the details of the inventory repurchase program, including the manner in which the repurchase is exercised, shall be memorialized in the contract that obligated participation in the scheme or course of conduct.

c. Nothing in subsection a. of this section shall be construed to define any scheme or course of conduct as a pyramid promotional scheme based solely upon the fact that participants in the scheme or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale.

d. (1) The provisions of subsection a. of this section shall not be waived or modified by contract or agreement. Any effort to waive or modify the remedy established by subsection a. of this section through a contract for indemnification or otherwise, that is executed or renewed after the date of enactment of this act, shall be void.

(2) The rights and remedies provided under this section are independent of and supplemental to any other right or remedy for any violation or conduct provided for in any other law, and nothing contained herein shall be construed to diminish or to abrogate any such right or remedy.

e. As used in this section:

“Compensation” means payment of any money, thing of value, or financial benefit.

“Consideration” means the payment of cash or the purchase of goods, services, or intangible property, but does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or the time and effort spent in pursuit of sales or recruiting activities.

“Financier” means a person who, with the intent to derive a profit, provides money or credit or other thing of value in order to finance the operations of a scheme or course of conduct.

“Inventory” includes both goods and services, including but not limited to promotional materials, sales aids, and sales kits produced by or on behalf of the scheme or those engaged in the course of conduct that are offered to participants for purchase by the scheme or those engaged in the course of conduct.

“Leader” is a person who conspires with any other person as an organizer, supervisor, financier, or manager.

“Pyramid promotional scheme” is any scheme or course of conduct by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person’s introduction of another person to participate in the scheme or course of conduct rather than from the sale of a product by a person introduced into the scheme or course of conduct.

3. This act shall take effect on the first day of the fourth month next following enactment.

Approved May 11, 2017.