PYRAMID PROMOTIONAL SCHEME ACT

Act 186 of 2018

AN ACT 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.

History: 2018, Act 186, Eff. Sept. 11, 2018

The People of the State of Michigan enact:

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445.2581 Short title.

Sec. 1.

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

History: 2018, Act 186, Eff. Sept. 11, 2018

445.2582 Definitions.

Sec. 2.

As used in this act:

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

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

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

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

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

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

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

(iii) Clearly and prominently communicates to a participant, before the purchase, in its recruiting literature, sales manual, or contracts with participants, what inventory is excluded from the inventory repurchase program, including inventory that is classified as seasonal, discontinued, special promotion, is no longer within the inventory's commercially reasonable use or shelf life period, or is otherwise not eligible for repurchase under the inventory repurchase program.

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

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

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

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

History: 2018, Act 186, Eff. Sept. 11, 2018

445.2583 Promotion or participation in pyramid promotional scheme; prohibition; penalties.

Sec. 3.

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

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

(a) Imprisonment for not more than 7 years.

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

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

History: 2018, Act 186, Eff. Sept. 11, 2018

445.2584 Reasonable cause; attorney general duties; cease and desist requirements; circuit court review.

Sec. 4.

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

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

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

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

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

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

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

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(a) The effective date of the order.

(b) The intent or purpose of the order.

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

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

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

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

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

History: 2018, Act 186, Eff. Sept. 11, 2018

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445.2585 Rebuttable presumption.

Sec. 5.

There is a rebuttable presumption that a plan or operation is not a pyramid promotional scheme if both of the following conditions are satisfied:

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

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

History: 2018, Act 186, Eff. Sept. 11, 2018

445.2586 Attorney general investigation; written demand to appear; failure to comply; hearing; confidentiality.

Sec. 6.

(1) If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object that is relevant to an investigation of a violation of this act, the attorney general, or a prosecuting attorney with the permission of or at the request of the attorney general, may serve on the person, before bringing any action in the circuit court, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying. The demand must include all of the following:

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

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

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

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

(e) Prescribe a reasonable time at which the person must appear to testify, within which to answer any written interrogatories, or within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be

filed with the attorney general, or with the prosecuting attorney with the permission of or at the request of the attorney general, on or before that time.

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

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

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

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

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