



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 329

132nd General Assembly
(As Reported by S. Finance)

Reps. Pelanda, Dever, Anielski, Antonio, Arndt, Ashford, Blessing, Boyd, Brown, Craig, Galonski, Ginter, Green, Greenspan, Hambley, Holmes, Householder, Johnson, Koehler, Lanese, Lepore-Hagan, Manning, O'Brien, Patterson, Patton, Rogers, Ryan, Schaffer, K. Smith, Sweeney, Sykes, West, Young

Sen. Coley

BILL SUMMARY

- Modifies the law governing pyramid promotional schemes.
- Establishes that a violation against a pyramid promotional scheme is considered an unfair or deceptive act or practice in connection with a consumer transaction, which is a violation of the Consumer Sales Practices Act (CSPA).
- Permits the Attorney General to use all the powers and remedies existing under the CSPA to enforce violation of the prohibition against pyramid promotional schemes.

CONTENT AND OPERATION

Background

According to the Federal Trade Commission, in multilevel or network marketing, individuals sell products to the public often by word of mouth and direct sales. Typically, distributors earn commissions, not only for their own sales, but also for sales made by the people they recruit. Not all multilevel marketing plans are legitimate. If the money an individual makes is based on sales to the public, it may be a legitimate multilevel marketing plan, but if the money the individual makes is based on the number of people he or she recruits and the sales to them, it could be a pyramid scheme. According to the Federal Trade Commission, the vast majority of participants in a pyramid scheme lose money. Pyramid schemes are considered illegal under federal

law and under Ohio's Anti-Pyramid Sales Act.¹ The bill modifies the law governing pyramid promotional schemes by modifying the definition regarding what constitutes an illegal pyramid promotional scheme and brings a violation of the prohibition under the umbrella of Ohio's existing consumer protection law, the Consumer Sales Practices Act (CSPA).

Pyramid promotional schemes

The bill modifies the existing law that prohibits the proposition, planning, preparation, or operation of a "pyramid sales plan or program."²

Initially, it renames the prohibited plan or program a "**pyramid promotional scheme**" and defines that phrase as any plan or operation by which individuals pay consideration for the chance to receive compensation that is derived primarily from recruiting other individuals into the plan or operation *rather than* from (1) the sale of products or services to ultimate users or (2) the consumption or use of products or services by ultimate users.³ In this context:

"**Consideration**" means the payment of money or anything of value *or* the purchase of products, services, or intangible property, other than (1) payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale and (2) the time or effort spent in pursuit of sales or recruiting activities.

"**Compensation**" means money or anything of value, except for payment based upon sales made to persons who are not participants in a pyramid promotional scheme and who are not purchasing in order to participate.

"**Ultimate user**" means an individual who consumes or uses a product or service, whether or not the individual is a participant in the scheme.⁴

As under current law, any contract made in violation of the prohibition against proposing, planning, preparing, or operating a pyramid promotional scheme is void. An individual who has paid consideration for the chance to participate in a scheme has a right of action and may recover the amount paid, along with reasonable attorney fees,

¹ 15 U.S.C. 45(a)(1), R.C. 1333.91 to 1333.94, and Federal Trade Commission, Multilevel Marketing, <https://www.ftc.gov/tips-advice/business-center/guidance/multilevel-marketing>, July 2016 (accessed December 4, 2017).

² R.C. 1333.92.

³ R.C. 1333.91(A).

⁴ R.C. 1333.91(B) to (D).



from any participant who has received compensation (1) for introducing the individual into participation in the scheme or (2) when another participant has introduced the individual into participation in the scheme.⁵

In addition, under continuing law a violation of the prohibition subjects the offender to criminal penalties, the degree of which depends on the value of the compensation.

| Value of compensation | Penalty |
|---|----------------------------------|
| Less than \$1,000 | First degree misdemeanor |
| \$1,000 or more and less than \$7,500 | Fifth degree felony |
| \$7,500 or more and less than \$150,000 | Fourth degree felony |
| \$150,000 or more | Third degree felony ⁶ |

Under continuing law, whenever it appears that a person is violating or about to violate the prohibition, the Attorney General may seek a restraining order or injunction to enjoin the violation. The court issuing the order or injunction may impose a penalty of not more than \$5,000 for each day the order or injunction is violated.⁷ In addition, the bill establishes that a violation of the prohibition against a pyramid promotional scheme is considered an unfair or deceptive act or practice in connection with a consumer transaction, which is a violation of the CSPA. The bill expressly permits the Attorney General to use all the powers and remedies existing under the CSPA to enforce violations.⁸ The CSPA generally protects consumers from unfair, deceptive, or unconscionable acts or practices by sellers in connection with a consumer transaction. The Attorney General can enforce the CSPA and a consumer injured by a seller can bring an action against the seller for violating the CSPA or request the Attorney General do so on his or her behalf. There are a number of legal and administrative remedies

⁵ R.C. 1333.93.

⁶ R.C. 1333.99(G), not in the bill.

⁷ R.C. 1333.94(B)(1).

⁸ R.C. 1333.94(A) and (B)(2); R.C. 1345.01 to 1345.13, not in the bill.



available to consumers who are injured as a result of a seller violating the CSPA, including injunctive relief, declaratory judgments, and civil penalties.⁹

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 08-30-17 |
| Reported, H. Financial Institutions, Housing & Urban Development | 11-28-17 |
| Passed House (95-0) | 12-05-17 |
| Reported, S. Finance | 06-21-18 |

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⁹ R.C. Chapter 1345., not in the bill.

