



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

Yosef Schiff

### Sub. H.B. 329

132nd General Assembly  
(As Passed by the General Assembly)

**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, M. Sweeney, Sykes, West, Young

**Sens.** Coley, Brown, Dolan, Eklund, Gardner, Hackett, Hoagland, Kunze, Manning, O'Brien, Oelslager, Schiavoni, Tavares, Terhar, Thomas, Uecker, Yuko

**Effective date:** March 8, 2019

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## ACT 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.

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## 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

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\* This version updates the effective date.

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.<sup>1</sup>

The act modifies the law governing pyramid promotional schemes by modifying the definition regarding what constitutes an illegal pyramid promotional scheme. It 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 act modifies the law prohibiting the proposition, planning, preparation, or operation of a "pyramid sales plan or program" (renamed "**pyramid promotional scheme**" by the act).<sup>2</sup>

Under the act, a prohibited pyramid promotion scheme is 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.<sup>3</sup> This formulation is largely similar to prior law, but omits prior law's express inclusion of the situation in which an individual receives compensation when another participant has introduced a third person into participation in the plan or program – in other words, when the base of the pyramid expands.

In this context:

"**Consideration**" means 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 (similar to prior law) and (2) the time or effort spent in pursuit of sales or recruiting activities (added by the act). The act removes the exclusion from "consideration" the payment of promotional and administrative fees of \$25 or less.

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<sup>1</sup> 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.

<sup>2</sup> R.C. 1333.92.

<sup>3</sup> R.C. 1333.91(A).



"**Compensation**" means money or anything of value, except for payment based on sales 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. This term replaces prior law's term "participant," which was a person who purchases or offers the opportunity to take part in a pyramid sales plan or program.<sup>4</sup>

Under continuing 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 may sue to recover the amount paid, along with reasonable attorney fees, 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.<sup>5</sup>

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 <sup>6</sup>

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.<sup>7</sup>

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<sup>4</sup> R.C. 1333.91(B) to (D).

<sup>5</sup> R.C. 1333.93.

<sup>6</sup> R.C. 1333.99(G), not in the act.

<sup>7</sup> R.C. 1333.94(B)(1).



## Pyramid promotional schemes under the CSPA

The act additionally 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. It expressly permits the Attorney General to use all the powers and remedies existing under the CSPA to enforce violations.

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

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### 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
Passed Senate (32-0)	11-14-18

