



AN ACT INCLUDING PONZI SCHEMES IN THE LAW CRIMINALIZING THE CONDUCT OR PROMOTION OF PYRAMID PROMOTIONAL SCHEMES; INCREASING THE PENALTIES FOR OPERATING A PYRAMID PROMOTIONAL SCHEME; AND AMENDING SECTIONS 30-10-324 AND 30-10-325, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-324, MCA, is amended to read:

"30-10-324. Definitions. As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment

adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from money obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

~~(b)~~(c) A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection (6)(b)(v), provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(iv) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(v) (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan

or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase."

Section 2. Section 30-10-325, MCA, is amended to read:

"30-10-325. Operating pyramid promotional scheme unlawful. (1) A person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.

(2) A person who willfully violates the provisions of subsection (1) shall, for each participant giving consideration, be fined an amount not more than ~~\$10,000~~ \$100,000 or be imprisoned for not more than 10 years, or both.

(3) A person who violates the provisions of subsection (1) shall, for each participant giving consideration, be assessed a civil penalty in an administrative proceeding in an amount not to exceed \$10,000."

- END -

I hereby certify that the within bill,
HB 0667, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 667

INTRODUCED BY HARRIS, BRANAE, CALLAHAN, COHENOUR, CYR, DOWELL, ERICKSON,
FORRESTER, FRITZ, GALLIK, GALLUS, GIBSON, GUTSCHE, JACOBSON, JENT, LASLOVICH,
LENHART, MOOD, RASER, B. RYAN, SMITH, WANZENRIED, WEISS, WILSON, WINDY BOY

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