

Chapter ATCP 122

CHAIN DISTRIBUTOR SCHEMES

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Note: Chapter Ag 122 was renumbered chapter ATCP 122 under s. 13.93 (2m) (b) 1., Stats., *Register*, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

ATCP 122.01 Unfair trade practice. The promotional use of a chain distributor scheme in connection with the solicitation of business investments from members of the public is an unfair trade practice under s. 100.20, Stats. When so used the scheme serves as a lure to improvident and uneconomical investment. Many small investors lack commercial expertise and anticipate unrealistic profits through use of the chance to further perpetuate a chain of distributors, without regard to actual market conditions affecting further distribution and sale of the property purchased by them or its market acceptance by final users or consumers. Substantial economic losses to participating distributors have occurred and will inevitably occur by reason of their reliance on perpetuation of the chain distributor scheme as a source of profit.

Note: The rules in chapter ATCP 122 are valid regulations and do not violate freedom of speech or violate the vagueness and overbreadth doctrine. *HM Distributors of Milwaukee v. Dept. of Agriculture*, 55 W (2d) 261.

History: Cr. *Register*, March, 1970, No. 171, eff. 4-1-70.

ATCP 122.02 Definitions. (1) "Chain distributor scheme" is a sales device whereby a person, upon a condition that the person make an investment, is granted a license or right to recruit for profit one or more additional persons who also are

granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme.

(2) "Investment" is any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities and services. It does not include real estate, securities registered under ch. 551, Stats., or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.

(3) "Person" includes partnerships, corporations and associations.

History: Cr. *Register*, March, 1970, No. 171, eff. 4-1-70; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., *Register*, April, 1993, No. 448.

ATCP 122.03 Prohibition. No person shall promote, offer or grant participation in a chain distributor scheme.

History: Cr. *Register*, March, 1970, No. 171, eff. 4-1-70.

ATCP 122.04 Statutory exemption. This chapter does not apply to banks, savings and loan associations, insurance companies and public utilities to the extent exempted from department regulations under s. 93.01 (1m), Stats.

History: Cr. *Register*, March, 1970, No. 171, eff. 4-1-70; correction made under s. 13.93 (2m) (b) 7., Stats., *Register*, March, 1989, No. 399; correction made under s. 13.93 (2m) (b) 7., Stats., *Register*, June, 1999, No. 522.