

# MONEY-MAKING SCHEMES

## *Referral Selling Plans*

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates unfair and deceptive business practices. DATCP has adopted a rule to prohibit “*referral selling plans*.” This rule is found in Wisconsin Administrative Code chapter ATCP 121. Violators may be prosecuted, and there is a private remedy for consumers.

- In a typical “referral selling plan,” a seller induces consumers to make purchases by offering to pay them for the names of other consumers who purchase in turn. The consumer buys, lured by the potential for future “referral” commissions that will offset (or *more* than offset) the consumer’s purchase cost. But those commissions are contingent on referral sales that *may never occur*. In fact, there is no guarantee that the promoter will even *try* to make the sales.
- Even if the promoter follows up on “referrals” and pays “referral” commissions when subsequent sales occur, the plan inevitably fails. In order for each successive group of purchasers to realize commissions, it must “refer” a still larger group of potential purchasers. The plan thus depends on an ever-expanding “pyramid” of referrals and purchases. The “pyramid” inevitably collapses, and consumers are left holding the bag. In this respect, a referral selling plan resembles a “pyramid” scheme (see above). It may also constitute a lottery, with its characteristic elements of *prize, chance* and *consideration*.
- ATCP 121 prohibits referral selling plans. The prohibition does not apply if the seller pays all of the potential referral commissions owed to each consumer *before* the seller makes any sale to *that* consumer (so there is no element of “chance”).

### **Rule Background**

DATCP adopted ATCP 121 as a *general order* (rule) under Wisconsin’s Unfair Business Practices Law, Wisconsin Statutes section 100.20. DATCP adopted ATCP 121 effective January 1, 1969 (DATCP Docket No. 809).

### **Rule Enforcement**

#### *Private Remedy*

A person who suffers a monetary loss because of a violation of ATCP 121 may sue the violator under Wisconsin Statutes section 100.20(5), and may recover twice the amount of the loss, together with costs and attorneys fees.

### ***Injunction and Restitution***

DATCP may seek a court order, under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 121 and ordering the violator to pay restitution to consumers. The Department of Justice or a district attorney may represent DATCP in court.

### ***Civil Forfeiture***

DATCP or any district attorney may start a court action, under Wisconsin Statutes section 100.26(6), to recover a civil forfeiture from a person who violates ATCP 121. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

### ***Criminal***

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a person who violates ATCP 121. A violator may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.