

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
FIRST REGULAR SESSION)

'04 JUN 30 P12:55

SENATE
S.B. No. 92

RECEIVED BY: 

Introduced by **SENATOR LUISA "LOI" P. EJERCITO ESTRADA**

EXPLANATORY NOTE

The Constitution, Article 2, provides that:

Section 5. The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Pyramiding is basically deceptive because it is premised on the false assumption that all participants could recoup their large investments in the plan simply by recruiting additional participants. Representations used to promote pyramid schemes often emphasize the quick and sizable profits but what is not disclosed is ultimately, as the universe of potential recruits diminishes or exhausted or the point of rejection is reached the scheme collapses with many late entrants losing their investments.

Pyramid promotional schemes, chain letters, and related schemes constitute a threat in Philippine commerce, and to the financial well-being of the Filipino citizens.

This bill seeks to prohibit the pyramid promotional schemes.

Hence, immediate approval of this bill is earnestly requested.


LUISA "LOI" P. EJERCITO ESTRADA
Senator

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**AN ACT
TO PROHIBIT PYRAMID PROMOTIONAL SCHEMES**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. -- This Act shall be known as the "Anti-Pyramid Promotional Scheme Act of 2004".

SEC. 2. Declaration of Policy. -- It is hereby the policy of the State to protect the consumer from misleading advertisements and fraudulent pyramid promotional schemes, chain letters, and related schemes.

SEC. 3. Definition Of Terms. -- For purposes of this Act, the following terms are defined as:

(1) "Appropriate inventory repurchase program" means a program by which a plan or operation repurchases, upon request at the termination of a participant's business relationship with the plan or operation and based upon commercially reasonable terms, current and marketable inventory purchased and maintained by the participant for resale, use, or consumption, and such plan or operation clearly describes the program in its recruiting literature, sales manual, or contracts with participants, including the manner in which the repurchase is exercised, and disclosure of any inventory that is not eligible for repurchase under the program.

(2) "Commercially reasonable terms" means the repurchase of current and marketable inventory within 12 months from date of purchase at not less than 90 percent of the original net cost to the participant, less appropriate set-offs and legal claims, if any. In the case of service products, the repurchase of such service products must be on a pro rata basis (unless clearly disclosed otherwise to the participant) to be within the meaning of "commercially reasonable terms".

(3) "Compensation" means a payment of any money, thing of value, or financial benefit.

(4) "Consideration" means the payment of cash or the purchase of goods, services, or intangible property, and does not include--

(A) the purchase of goods or services furnished at cost to be used in making sales and not for resale; or

(B) time and effort spent in pursuit of sales or recruiting activities.

(5) Current and Marketable-

(A) The term "current and marketable" includes inventory that--

(i) in the case of consumable or durable goods, is unopened, unused, and within its commercially reasonable use or shelf-life period; and

(ii) in the case of services and intangible property, including Internet sites, represents the unexpired portion of any contract or agreement.

(B) The term "current and marketable" does not include inventory that has been clearly described to the participant prior to purchase as seasonal, discontinued, or special promotion products not subject to the plan or operation's inventory repurchase program.

(6) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase.

(7) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount that unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption, or to use or consume, in a reasonable time period.

(8) "Participant" means a person who joins a plan or operation.

(9) "Person" means an individual, a corporation, a partnership, or any association or unincorporated organization.

(10) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or to otherwise induce or attempt to induce another person to be a participant.

(11) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation, rather than from the sales of goods, services, or intangible property to participants or by participants to others.

SEC. 4. Rules to prohibit operating pyramid promotional scheme.

(a) In General- It shall be unlawful for any person, by the use of any means or instrumentality of transportation or communication within the Philippines, to promote, offer, sell, or attempt to sell a participation or the right to participate in a pyramid promotional scheme.

Not later than One (1) year after the enactment of this Act, the Secretary of the Department of Trade and Industry, in coordination with the Chairman of the Securities and Exchange Commission, and the Secretary of the Department of Justice, shall promulgate the necessary rules and regulations to implement this Act.

(b) Limitation- Nothing in this Act or in the rule to be promulgated pursuant to this Act shall be construed to prohibit a plan or operation, or to define such plan or operation as a "pyramid promotional scheme", based upon the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale, and the plan or operation does not promote inventory loading and implements an appropriate inventory repurchase program.

SEC. 5. Penalties. -- Any person who violate the provision of this Act or who otherwise engage in pyramid promotional scheme shall be punished by imprisonment of not less than six (6) year and a fine of not less than One Million Pesos (P1,000,000.00)

SEC. 6. Enforcement. -- Nothing in this Act prohibits an authorized government official from proceeding in any court on the basis of an alleged violation of any civil or criminal statute.

The Secretary of the Department of Justice, or its representative, upon finding that any person is engaged or is about to engage in any act or practice that constitutes a

pyramid promotional scheme in violation of the provision of this Act, or the rule promulgated under this Act, may bring an action in the appropriate court to enjoin such act or practice and to obtain other appropriate relief. Such court may grant a temporary restraining order, or a preliminary or permanent injunction, or other appropriate relief.

SEC. 7. *No limitation on other claims.* – Nothing in this Act or the rule promulgated shall limit the authority of any government official from proceeding against pyramid promotional schemes for other violations of the law.

SEC. 8. *Repealing Clause.* – Any law, presidential decree, issuance, executive order, letter of instruction, administrative order, rule and regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 9. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 10. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following its complete publication in two (2) newspapers of general circulation or in the official Gazette.

Approved,