

THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES }
First Regular Session

'04 JUN 30 P11:12

SENATE

S. No. 800RECEIVED BY: 

INTRODUCED BY HON. MANUEL B. VILLAR, JR.

EXPLANATORY NOTE

The country's economic slump saw the proliferation of corporations engaged in various forms of economic fraud like chain distribution or pyramid schemes. We have witnessed the havoc brought about by these corporations to their investors, who find themselves unable to recover their money once the scheme collapses.


Unfortunately, pyramid schemes are likely to continue existing due to the inadequacy of our laws. Republic Act No. 7394 or the Consumer Act of the Philippines declares Multilevel Marketing as an accepted and legal way of marketing. However, the distinction between MLM and pyramid schemes is not distinct, causing confusion in implementing and apprehending persons engaged in pyramiding schemes.

This measure aims to curb the proliferation of investment schemes by providing a clear definition and distinction between Multi Level Marketing (MLM) and pyramid schemes.

It shall give the Department of Trade and Industry sufficient resources to pursue and monitor such schemes by requiring firms engaged in MLM to register for their business plan for approval of the DTI. The DTI shall likewise have original jurisdiction over charges of the employment of pyramid sales schemes.

Finally, any person, firm, company, association, or any other business entity engaged in pyramiding schemes shall be imposed a fine of not less than Php1 million but not more than Php5 million and a penalty of imprisonment from 12 to 20 years without bail. More importantly, the pyramiding entity shall be ordered to return to the investors any and all considerations given, with interest charges.

In view of the foregoing, immediate passage of this bill is earnestly sought.


MANUEL B. VILLAR, JR.

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ANT ACT
AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 7394 OTHERWISE
KNOWN AS THE CONSUMER ACT OF THE PHILIPPINES , PROHIBITING
PYRAMID SALES SCHEME , PROVIDING HIGHER PENALTIES THEREFORE
AND FOR OTHER PURPOSE

SECTION 1. Title I, Article 4, paragraph (k) of Republic Act No. 7394 is hereby amended to read as follows:

"Art. 4. Definition of Terms. - For purposes of this Act, the term:

xxa.

k) "CHAIN DISTRIBUTION PLANS" OR "PYRAMID SCHEMES" MEANS SALES DEVICES WHEREBY A PERSON, UPON A CONDITION THAT HE MAKES AN INVESTMENT, IS GRANTED BY THE MANUFACTURFR OR HIS REPRESENTATIVE, A RIGHT TO RECRUIT FOR PROFIT ONE OR MORE ADDITIONAL PERSONS WHO WILL ALSO BE GRANTED SUCH RIGHT TO RECRUIT UPON CONDITION OF MAKING SIMILAR INVESTMENTS; PROVIDED, THAT THE PROFITS OF THE PERSON EMPLOYING SUCH A PLAN ARE DERIVED PRIMARILY FROM THE RECRUITMENT AND INVESTMENT OF OTHER PERSONS INTO THE PLAN RATHER THAN FROM THE SALE OF CONSUMER PRODUCTS, SERVICES, AND CREDIT.

A LIMITATION AS TO THE NUMBER OF PERSONS WHO MAY PARTICIPATE, OR THE PRESENCE OF ADDITIONAL CONDITIONS AFFECTING THE ELIGIBILITY FOR THE RIGHT TO RECRUIT OR RECEIVE PROFITS THEREFROM, DOES NOT CHANGE THE NATURE OF THE PLAN.

"AS USED HEREIN, "INVESTMENT" MEANS ANY ACQUISITION, FOR CONSIDERATION OTHER THAN PERSONAL SERVICES, OF PROPERTY, TANGIBLE OR INTANGIBLE , AND INCLUDES WITHOUT LIMITATION, FRANCHISES, BUSINESS OPPORTUNITIES AND SERVICES, AND ANY OTHER MEANS, MEDIUM, FORM OR CHANNEL FOR THE TRANSFERRING OF FUNDS, WHETHER OR NOT RELATED TO THE PRODUCTION OR DISTRIBUTION OF GOODS OR SERVICES.

"CONSIDERATION" MEANS THE PAYMENT OF MONEY OR ITS EQUIVALENT, OR THE PURCHASE OF GOODS, SERVICES, CREDITS OR INTANGIBLE PROPERTY BUT DOES NOT INCLUDE:

- a. THE PURCHASE OF GOODS OR SERVICES FURNISHED AT COST TO BE USED IN MAKING SALES AND NOT FOR RESALE; AND
- b. TIME AND EFFORT SPENT IN PURSUIT OF SALES OR RECRUITING ACTIVITIES.

(k-1) "MULTILEVEL DISTRIBUTION" OR "MULTILEVEL MARKETING" IS A SALES DEVICE WHEREBY ANY PERSON, FIRM, CORPORATION OR ASSOCIATION OR OTHER BUSINESS ENTITY

WHICH SELLS, DISTRIBUTES, MANUFACTURES, OR SUPPLIES FOR VALUABLE CONSIDERATION, GOODS OR SERVICES THROUGH INDEPENDENT AGENTS, CONTRACTORS OR DISTRIBUTORS AT DIFFERENT LEVELS WHEREIN SUCH PARTICIPANTS MAY RECRUIT OTHER PARTICIPANTS WITHOUT REQUIRING, THE PAYMENT CHARGES, FEES, OR CONTRIBUTIONS AS A PREREQUISITE FOR ACCEPTANCE, AND WHEREIN COMMISSIONS, CROSS-COMMISSIONS, BONUSES, REFUNDS, DISCOUNTS, DIVIDENDS, OR OTHER CONSIDERATIONS IN THE PROGRAM ARE OR MAY BE PAID AS A RESULT OF THE SALE OF SUCH GOODS OR SERVICES OR THE RECRUITMENT, ACTIONS OR PERFORMANCES OF ADDITIONAL PARTICIPANTS.”

SECTION 2. Title III, Chapter I, Article 53 is hereby amended to read as follows:

“ART. 53. CHAIN DISTRIBUTION PLANS OR PYRAMID SALES SCHEMES. - NO PERSON, NATURAL OR JURIDICAL, SHALL ESTABLISH, OPERATE, ADVERTISE OR PROMOTE A CHAIN DISTRIBUTION PLAN OR PYRAMID SALES SCHEME.”

SECTION 3. Registration Requirements. - Any person, firm, company, association, or other business entity engaged in multi-level marketing shall file such plan with the Department of Trade and Industry (DTI) for approval by the Secretary or his duly authorized representative before its actual operation or implementation.

It shall be the duty of the DTI to regulate and monitor multi-level marketing plans and set the parameters for this purpose in order to determine the presence of the following factors that gives rise to the prima facie presumption that the person, firm, company, association, or other business entity is engaged in pyramiding scheme:

- a. Prohibitive entry requirements or headhunting fees
- b. Undisclosed drawback policies
- c. Front inventory loading
- d. Profits primarily derived from recruitment
- e. Unjust claims of unusually large returns on investments or get-rich-quick promises
- f. Absence of real market for a product; and
- g. Other similar pyramiding scheme

The presence of any or all factors shall automatically be a ground for the denial in the application for registration of business.

All existing multilevel marketing plans or schemes shall be registered to the Department within one (1) year from the date of the effectivity of this Act. Failure to comply herewith shall be a ground for revocation of any business certification or permit issued by the Department.

SECTION 4. Jurisdiction over prosecution. - The Department of Trade and Industry shall have original jurisdiction over charges of the employment of pyramid sales schemes. This does not deprive other government commissions, agencies and offices of jurisdiction granted by existing laws.

SECTION 5. Penalties. - Any person, firm, company, association or any other business entity engaged in pyramiding scheme shall be imposed with a fine of not less than One Million Pesos (P1,000,000.00) but not more than Five Million Pesos (P5,000,000.00) and a penalty of imprisonment from twelve (12) to twenty (20) years, without the benefit of bail, for violations of this Act. In case of violation by a firm, company, association or any other business entity, the penalty of imprisonment shall be imposed on the responsible president, manger, director or officer. This is without prejudice to other actions and remedies available to aggrieved parties and penalties imposed by existing laws. In addition, upon finality of conviction, all business licenses and permits issued shall be considered revoked.

In addition, the pyramiding entity shall he likewise ordered to return to the participants any and all considerations given, with interest charges at a rate to be computed from the time such payments were made. For purposes of the aforesaid reimbursement, the participants shall be considered preferred creditors under the New Civil Code.

SECTION 6. Repealing Clause. - All laws, presidential decrees, executive orders, presidential proclamations, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified according.

SECTION 7. Separability Clause. - If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION 8. Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least (2) newspapers of general circulation.

Approved,