

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

24 DEC -4 P3:03

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SENATE
S. B. No. 2889

Introduced by Senator Robinhood Padilla

AN ACT
PROTECTING PRODUCT ENDORSERS FROM UNAUTHORIZED SALE OF
INVESTMENT CONTRACTS AND OTHER FORMS OF SECURITIES,
PROVIDING PENALTIES THERETO AND FOR OTHER PURPOSES

In the Philippines, marketing of products and services often use celebrities and known social media personalities because they are said to strongly influence consumer behavior. The following factors play a role in their influence:

1. Social Identity – consumers look up to celebrities and social media personalities as their role models and often identify with them by aligning themselves with their perceived image;
2. Persuasion and Credibility – they are perceived to be credible and their endorsement of a product would validate a consumer's assumption regarding its quality and desirability;
3. Emotional Connection – they are effective means of invoking emotions in a way that consumers themselves desire to experience the same emotions relayed by celebrities when consuming the products endorsed;
4. Social Proof – their endorsement creates an impression on the popularity and wide acceptance of the product giving consumers a sense of trust and reassurance; and

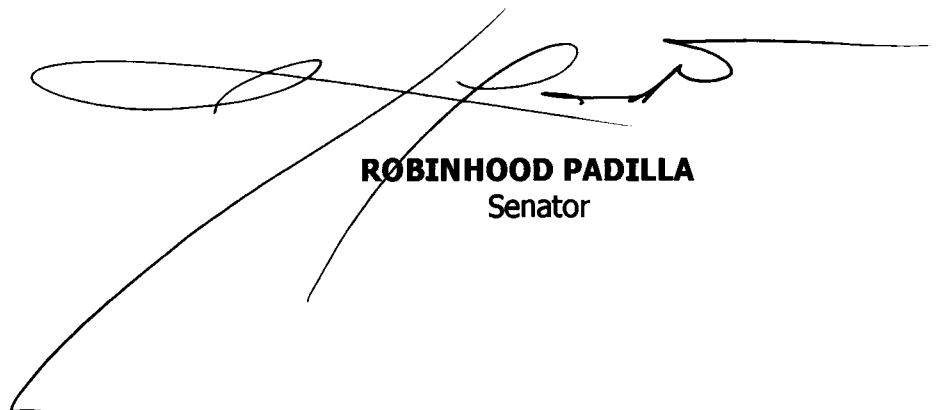
5. Halo Effect – the theory that the good qualities and attributes of the celebrity endorses passes on to the products they are endorsing which drives the consumer to proceed with the purchase.

Recent events reveal a growing concern for the welfare of endorsers whose names are dragged into various investment scams. Oftentimes, they are the first ones to be accused of crimes related thereto just because their names and faces were made prominent by companies who secured their services as endorsers.

This measure seeks to offer protection to endorsers by providing mandatory provisions into their engagement agreements that will clearly define not only their obligations but more importantly, their relationship with the company and their non-involvement in any sale of investment contracts and securities if the latter is engaged in such business.

Given the very technical provisions and lack of public information on the contents of the Securities Regulation Code, it is incumbent upon Congress to enact measures that would deter abuse on the lack of knowledge thereof.

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

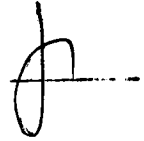


ROBINHOOD PADILLA
Senator

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

1 Section 1. *Short Title.* – This Act shall be known as the "Product Endorsers
2 Protection Act."

3 Sec. 2. *Definition of Terms.* – As used in this Act, the term:

4 a. *Broker* – refers to a person engaged in the business of buying and
5 selling securities for the account of others;

6 b. *Endorsement* – refers to any advertising message (including verbal
7 statements, demonstrations, or depictions of the name, signature,
8 likeness or other identifying personal characteristics of an individual
9 or the name or seal of an organization) that consumers are likely to
10 believe reflects the opinions, beliefs, findings, or experiences of a
11 party other than the sponsoring advertiser, even if the views
12 expressed by that party are identical to those of the sponsoring
13 advertiser. The party whose opinions, beliefs, findings, or experience
14 the message appears to reflect will be called the endorser and may
15 be an individual, group, or institution;

- 1 c. *Endorser* – refers any natural person, legal person or other
2 organization, other than the advertiser, that recommends and
3 testifies for a commodity or service in their own name or image;
- 4 d. *Investment contract* – refers to a contract, transaction, or scheme
5 where a person invests money in a common enterprise and is led to
6 expect profits primarily from the efforts of others;
- 7 e. *Product* – refers to any product, service, company or industry;
- 8 f. *Securities* – refers to shares, participation or interests in a corporation
9 or in a commercial enterprise or profit-making venture and evidenced
10 by a certificate, contract, instruments, whether written or electronic in
11 character. It includes:
- 12 i. Shares of stocks, bonds, debentures, notes evidences of
13 indebtedness, asset-backed securities;
- 14 ii. Investment contracts, certificates of interest or participation in
15 a profit sharing agreement, certificates of deposit for a future
16 subscription;
- 17 iii. Fractional undivided interests in oil, gas or other mineral
18 rights;
- 19 iv. Derivatives like option and warrants;
- 20 v. Certificates of assignments, certificates of participation, trust
21 certificates, voting trust certificates or similar instruments;
- 22 vi. Proprietary or nonproprietary membership certificates in
23 corporations; and
- 24 vii. Other instruments as may in the future be determined by the
25 Securities and Exchange Commission.

26 Sec. 3. *Product Endorsement Agreement*. – It is hereby declared mandatory
27 that all Product Endorsement Agreements contain the following:

- a. A full disclosure of the nature of the business or venture and all products to be covered by the subject endorsement for which the service of the endorser is sought;
- b. An accurate description of the parameters and limitations of the endorsement;
- c. A recognition that the endorser is not part of the management of the business or venture;
- d. A categorical statement as to whether or not the business or venture is engaged in the sale of investment contracts and other securities: Provided, that if the business or venture is engaged in the sale of investment contracts and other securities, the product endorser agreement shall specifically state that the amount/s received by the endorser shall represent the compensation for his/her service and shall not be construed as commissions or profit from any investments: Provided, further, that there is a caveat in the said agreement that only licensed brokers are allowed to sell investment contracts and other securities.

Sec. 4. *Businesses or Ventures engaged in Selling Investment Contracts and Other Forms of Securities.* – In the event that the business or venture is engaged in the sale of investment contracts or other securities, there must be a clear prohibition on the part of the endorser to engage in the promotion or sale thereof with an expectation to receive profits or commissions if the same is not a licensed broker as required under Republic Act No. 8799 otherwise known as "The Securities Regulation Code."

Businesses or ventures engaged in the sale of investment contracts and other forms of securities shall refuse to accept investments obtained through the efforts of any endorser if the same is not a registered broker. Such refusal shall be communicated in writing with efforts to notify the would-be investor on the lack of authority on the part of the endorser to represent the same in the said sale.

1 In the event that the endorser is a registered broker, his/her authority to sell
2 securities or to act as an agent thereof as well as the right to receive a remuneration
3 or share in the profits shall be subject to a separate written contract.

4 Sec. 5. Unauthorized Sale. – Endorsers who represent themselves as agent of
5 any business or venture unauthorized to sell investment contracts and other forms of
6 securities shall be solidarily liable for any claims filed against the latter without
7 prejudice to the filing of any criminal case relative thereto.

8 Sec. 6. *Penalty.* – The commission of any of the prohibited acts mentioned in
9 this Act shall be punishable with the following:

10 a. First Offense – a fine of One Hundred Thousand Pesos
11 (P100,000.00);

12 b. Second Offense – a fine of Three Hundred Thousand Pesos
13 (P300,000.00);

14 c. Third Offense – a fine not less than Five Hundred Thousand Pesos
15 (P500,000.00) but not more than One Million Pesos (P1,000,000.00)
16 and revocation of Certificate of Registration.

17 Sec. 7. *Separability Clause.* — If any provision of this Act shall be held
18 unconstitutional or invalid, the other provisions not otherwise affected shall remain in
19 full force and effect.

20 Sec. 8. *Repealing Clause.* — All laws, decrees, orders, issuances, and rules and
21 regulations or parts thereof inconsistent with the provisions of this Act are hereby
22 repealed or modified accordingly.

23 Sec. 9. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its
24 publication in the Official Gazette or in at least two (2) newspapers of general
25 circulation.

Approved,