



How the “Anti”-Pyramid Promotional Scheme Act of 2003 Is Seeking to Legalize Pyramid Schemes in America

① It changes the definition of “Consideration”:

“Consideration” refers to the various ways a victim is induced to pay into the pyramid scheme in order to gain a position. Consideration establishes the source of the ill-gotten money

This definition of “consideration” means the perpetrator is allowed to use pyramid marketing to induce months or even years of a victim’s time and effort which are “excluded” from the definition.

The new definition also clears the way for the most notorious harm caused by the pyramid marketers, that is, selling bogus “success tools” such as books and seminars at “cost.” These “tools” serve as a huge profit center for the perpetrators. The bill excludes these expenses, along with the victim’s time and labor from being viewed as payments made to gain the falsely promised rewards.



Text of Bill: “Consideration” does not include-

1. The purchase of goods or services furnished at cost to be used in making sales and not for resale; or
2. Time and effort spent in pursuit of sales or recruiting activities.

Industry Bill Seeks to Legalize Pyramid Schemes by Redefining Pyramid Scheme

Text of Bill: PYRAMID PROMOTIONAL SCHEME. -The term “pyramid promotional scheme” means any plan or operation by which a participant gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other persons into the plan or operation rather than from the sale and consumption of goods, services, or intangible property by a participant or other persons introduced into the plan or operation so long as the plan or organization does not promote inventory loading and implements an appropriate inventory repurchase program.

② Changes the definition of “Compensation”:

“Compensation” refers to how the perpetrators get paid in the pyramid scheme. This new definition of “compensation” means that a perpetrator can be paid to introduce people into a pyramid scheme as long as the money is laundered as an override on goods or services purchased by the victim. Goods purchased for so called “actual use or consumption” – and never resold – serve as the pyramid’s currency of exchange.



Text of Bill: “Compensation”... does not include payment based on sale of a product to a person, including a participant, who purchases the product for actual use or consumption.

③ Redefines “Retailing”: The new definition includes wholesale sales to the scheme’s own sales representatives as “retail” and thereby establishes the classic pyramid scheme pattern – a closed system with fixed prices/fees to join the scheme. Without retailing, the business changes from a sales company to a pyramid recruitment scheme in which product purchases are part of the price to gain and hold a position on the chain.

④ Redefines the main harm of a pyramid as “inventory loading:”

The financial damage caused by a pyramid scheme is far greater than some unreturned inventory. The true and main harm are the deception used to induce purchases in the first place and the inevitable, predetermined financial failure of 99% of all participants. These harms are actually protected by the bill. Victims are deceptively lured to invest months or years of effort, to give up careers, and to take on debt. They are induced to buy products monthly, pay for costly training, seminars and marketing materials - as the price to be in the scheme. While appearing to help consumers the bill protects pyramid perpetrators, some of which have been prosecuted by the government while belonging to the group that is now sponsoring this bill.

What the US Congress and Regulators Need to Know about the **Anti-Pyramid Promotional Scheme Act of 2003**

1. Look at who is behind this bill:

The "Anti"-Pyramid Promotional Scheme Act is a wolf in sheep's clothing. It should be called a "pro-pyramid" act. The proposal's sponsor is the Direct Selling Association (DSA), the official trade group of the multi-level marketing (MLM) industry.

- * DSA's membership recently included the notorious pyramid scheme, Equinox International, prosecuted by the FTC and six states as an illegal pyramid scheme. The company agreed to shut down and pay millions in restitution to consumers.
- * One of the witnesses who testified in defense of Equinox was formerly a Board Member of the Direct Selling Association's Education Foundation.
- * The DSA submitted a "friend of the court" brief defending the MLM pyramid scheme, Omnitrition International. The federal court ruling on this case, which concluded that Omnitrition was a pyramid, became a landmark decision in defining a product-based pyramid scheme. The FTC bases its prosecution of pyramid schemes on this court ruling and the court's definition of a pyramid marketing scheme. The DSA defended Omnitrition and is now seeking to change the definition under which that scheme and all others like it are currently prosecuted.

2. Look at what the bill does to all the FTC's past and present regulation of pyramid marketers:

The DSA seeks to eliminate the requirement of a multi-level marketing company to sell products to consumers. All products can be sold only to its own sales reps in a closed system with fixed pricing. In doing this, the bill directly contradicts the definition of a pyramid scheme that the FTC uses to determine which multi-level marketing schemes engage in unfair and deceptive trade practices. How the FTC defines a pyramid determines all future regulatory actions. The bill seeks to dilute and weaken the basis of FTC regulation by redefining what a pyramid scheme is.

In a presentation to FTC and state Attorney General regulators, Kristine Lanning, Assistant Attorney General of North Carolina, stated:

"This (DSA bill) creates a loophole for pyramid schemes that sell products and services almost exclusively to new recruits as they join the program and to participants who make subsequent purchases to qualify for commissions.

"In addition, it renders retail requirements meaningless if all sales to the general public and all sales to participants meet the test, since by definition every possible sale is therefore a retail sale. This loophole would have allowed Destiny Telecom, International Heritage, Equinox and many other so-called multi-level marketing companies to remain in business instead of being shut down by government authorities who determined them to be operating as pyramid schemes."

Under the DSA plan, a perpetrator could be paid to introduce people into a pyramid scheme as long as the money is laundered as an override on goods or services purchased by the victim. Goods purchased for "actual use or consumption" – and never resold – become the pyramid's medium of exchange. This eliminates the need

Consumer Analysis of DSA's Expanded and Permissive Definition of a "Pyramid Promotional Scheme"

to require that goods ever be resold at retail value. Under this definition, a company can use deceptive pyramid income lures to gain sales. This changes the "company" from a sales organization to a recruitment scheme in which product purchases at fixed prices are the cost to gain and hold a position on the chain.

The bill seeks to legalize an "endless chain" in which the victim is induced to buy the goods for "actual use or consumption" and then to recoup that investment and make a promised profit by introducing others who get exactly the same proposition. Each new recruit is induced to buy a certain amount of products and then to try to recoup the value and make a profit by recruiting others, even though less than 1% can, by design, ever make a profit.

3. Look at what the bill does to Consumers

- * The bill would allow "endless chain" pyramid schemes – in which virtually no products are ever retailed to end-users – to aggressively prey upon consumers.
- * The pyramid business model structure must ultimately collapse and is designed so that 99% of investors must lose. Yet, the bill would allow pyramid marketers to induce consumers to purchase goods by promising them an "opportunity of a lifetime" and "unlimited income" based on a pyramid structure.
- * The bill would permit the most egregious offense of pyramid marketers today - selling costly so-called "success tools" to recruits as they pursue a misleading and deceptive pyramid "business opportunity." The proposed law would redefine a pyramid scheme so that the payments made by the participants – which directly reward the scheme's organizers – are not considered a payment to gain future rewards from the scheme.
- * The bill permits pyramid marketers to deceptively gain months, perhaps years, of a consumer's time and effort promoting the scheme. The proposed law would redefine a pyramid scheme so that the labor and time expended by the victims on behalf of the perpetrators are not considered a form of payment by the victim to gain future rewards from the scheme.

4. Look at what the bill does to the Marketplace

- * The DSA bill would legalize companies to sell goods to consumers by attaching a deceptive and misleading "income opportunity" to the product. The false "value" of an income opportunity unfairly induces consumer purchases from the pyramid marketer that would otherwise not have occurred.
- * The bill would allow companies to claim they are selling at "wholesale" prices when there is little or no retail selling occurring at all.
- * The bill would legalize an industry to sell its goods at fixed prices in a closed system only to its own so-called sales representatives. The goods or services cannot be profitably resold in the open retail market. Continuous fraud upon the new sales representatives would be institutionalized.
- * The bill would legalize companies to give enormous payments to its insiders - the ones who "got in early" - based on the number of new sales representatives the company can recruit. Funds for these insider payments would be generated directly from the payments made by the latest group of recruits.
- * The bill would legalize businesses to falsely promise "unlimited" income "potential" in a business model that cannot possibly fulfill that promise. Rather, by design, it must cause financial losses to nearly all who invest.

Summary:

The DSA statute establishes the legal basis for an endless chain pyramid in which the vast majority must – according to the laws of mathematics – lose and which ultimately must collapse as long as:

- * Money is laundered through product purchases.
- * Victims could potentially gain partial refunds on some purchases within a year, under specific restrictions.

Sales made by a pyramid marketer are gained through falsely and deceptively promising an income opportunity to consumers. The pyramid marketer, under the DSA bill, could represent itself as a "direct selling" organization when, in fact, no products have to be resold on a retail basis by any salespersons at all. The company could legally operate on the basis of selling goods – along with marketing and training products and programs – only to its own "distributors". These sales are deceptively gained by attaching a false "income opportunity" to the purchase. The pyramid marketer could base its compensation program on rewarding distributors from money gained through selling the company's goods and training materials to newly recruited distributors in an endless chain.

A payment plan based on "infinite" enrollment would be made legal under these conditions. Additionally, the payment plan can be structured so that the largest percentage of payments - per sale - are made to the perpetrators at the top of the pyramid. The pyramid structure and the "top-loaded" pay plan will assure that virtually all who invest in the scheme will lose their investments and the vast majority of payments go only to the scheme's organizers and chief promoters.

The absolute mathematical restriction on the number who could ever achieve "success" is not required to be disclosed. The perpetrators are also not required to disclose to enrollees:

- * The historical record of the scheme regarding average losses of all enrollees.
- * Actual numbers of current enrollees or numbers in previous time periods.
- * Average costs to participate.
- * Historical success and failure rates of enrollees.
- * Payments by percentile to ranks of memberships.
- * The percentage of products ever sold by distributors to actual end-users.

Typically, the mathematical odds against success for any but the few at the top result in the majority of all new recruits quitting the scheme within one year after incurring financial losses. Yet, without having to disclose basic financial or historical data about the scheme to those that are solicited, perpetrators of the scheme are able to replace the dropouts with even greater numbers of new recruits. They are allowed to represent the scheme as the "opportunity of a lifetime" or a viable and practical alternative to employment, professions or conventional business ownership.

Though little or no products are ever sold to any consumers who are not also part of the scheme itself, the perpetrators could portray themselves as legitimate "direct selling" companies and to represent the scheme as a legitimate "business opportunity."