

- SUBJECT:** Pyramid promotional schemes
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Brimer, Brady, Corte, Crabb, Eiland, Giddings, Janek, Rhodes, Solomons
- 0 nays
- WITNESSES:** For — Teresa L. Jennings, The Direct Selling Association; Dirk C. Bluemendaal, Amway Corporation; Evelyn Jarvis-Ferris, Shaklee Corporation; Michael Lunceford, Mary Kay Cosmetics; Richard Taylor
- Against — None
- On — Thomas P. Perkins, Jr., Attorney General's Office
- BACKGROUND:** Pyramid schemes are fraudulent sales schemes in which a seller primarily receives compensation by persuading a purchaser to make a payment into a sales operation rather than by selling a product.
- Penal Code sec. 32.48 makes it a criminal offense to contrive, prepare, set up, propose, operate, promote or participate in an endless chain scheme, defined as any scheme for disposing or distributing property in which a participant pays for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant. The offense is a class B misdemeanor (maximum penalty 180 days in jail and a \$2,000 fine).
- DIGEST:** CSHB 1 would amend the Business and Commerce Code to make the contriving, preparing, establishing, operating, selling or promoting a pyramid scheme a state jail felony (maximum penalty of two years in jail and a \$10,000 fine). It would not be a defense to prosecution if the pyramid scheme involved both the sale of a franchise and the authority to sell other franchises if the emphasis on the scheme was on the sale of additional franchises.

The promotion of a pyramid scheme would be included on the Business and Commerce Code's list of deceptive practices.

A pyramid scheme would not include repurchase agreements if the seller makes an enforceable agreement to repurchase, on written request of the purchaser, all encumbered, unused, commercially resalable products at a price not less than 90 percent of the amount actually paid by the purchaser for the products being returned, less the value of any benefit received by the purchaser for purchase of the products being returned.

The bill would repeal Penal Code sec. 32.48 on endless chain schemes.

The bill would take effect September 1, 1995.

NOTES:

The committee substitute replaced the original non-legislative council draft and changed relevant sections of the Business and Commerce Code and the Penal Code to make current law conform with the intent of this legislation.