

Maryland State MLM Law

MLMLegal.com has tracked pyramid, consumer protection, endless chain, and MLM distribution statute legislation in each state.

The following is applicable legislation in Maryland State:

A BRIEF MLM STATE LAW PRIMER

Every state has adopted laws regulating MLM companies. Although much enforcement activity has come from the federal government through the FTC, SEC and U.S. Postal Service, the vast majority of enforcement activity has occurred at the state level.

From a historical standpoint, state regulation of multilevel marketing programs is a relatively recent phenomenon. For the most part, the three major direct selling companies that laid a foundation for the multilevel marketing industry for decades to come, Amway, Mary Kay and Shaklee, began their operations in the late 1950s. From a legal standpoint, matters went relatively smoothly until the major pyramid cases of the early 1970s involving Glen Turner's Dare to be Great and Koscot Interplanetary.

The Turner programs were prosecuted substantially www.mlmlegal.com under securities laws and various consumer fraud laws. Along the way, most states adopted various forms of anti-pyramid legislation. Although generally targeting the same type of activity, state MLM legislation has taken its form as pyramid statutes, endless chain scheme statutes, lottery statutes, sales referral laws and, most recently, multilevel distribution statutes.

Pyramid Statutes/Endless Chain Schemes Statutes.

Most state regulation of MLM companies comes under the auspices of pyramid statutes and endless chain scheme statutes. The language in these statutes is often quite similar. The comparison of two of these type statutes illustrates this point. For instance, compare California's endless chain statute with Oregon's pyramid law.

California Endless Chain Statute, California Penal Code '327:

"327. Endless chain schemes

"Every person who contrives, prepares, sets up, proposes, operates any endless chain is guilty of a misdemeanor. As used in this section, an 'endless chain' means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration 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. Compensation, as used in this section, does not mean or include payment based upon sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme."

Oregon Pyramid Statute:

"pyramid club" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and who may further perpetuate the chain of persons who are granted such license or right upon such condition. "Pyramid club" also includes any such sales device which does not involve the sale or distribution of any real estate, goods or services, including but not limited to a chain letter scheme. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting www.mlmlegal.com eligibility for such license or right to recruit or solicit or the receipt of economic gain therefrom, does not change the identity of the scheme as a pyramid club. As used herein "investment" means any acquisition, for a consideration other than personal services, of property, tangible or intangible, and includes without limitation, franchises, business opportunities and services. It does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale."

As a general matter, the pyramid and endless chain statutes prohibit the payment of a consideration for the right to recruit others for economic gain where the compensation is unrelated to the sale of products or services. This language is very ambiguous and has resulted in legions of cases, many inconsistent in outcome. The ambiguity of the statutes has also led to selective and inconsistent enforcement policies.

Two operative terms "consideration" and "compensation unrelated to sales" are often looked at as follows. A prohibited consideration is generally referring to: (1) an actual monetary fee for the right to engage in the multilevel business, (2) inflated product prices in which the excess product price is viewed as a prohibited consideration, (3) front-loading or inventorying of product in which excessive product purchases are viewed as prohibited consideration for the requirement that individuals make an initial investment of product purchased to engage in the opportunity, (5) where it appears that people are only buying product in order to "buy into the deal," and (6) many statutes, although not all statutes, exempt from the term "prohibited consideration," the purchase of an at cost sales kit or demonstration materials.

The receipt of compensation unrelated to sales typically references: (1) payment of actual headhunting fees for finding other recruits, (2) a program in which sponsors make all of their compensation from override commissions from loading recruits with unnecessary product, (3) a program in which there is no evidence of sales outside the network of distributors.

The following is applicable legislation in Maryland State:

MARYLAND

§ 14-301.

Business Regulation

In this subtitle, "multilevel distribution company" means a person who, for consideration, distributes goods or services through independent agents, contractors, or distributors at different levels of distribution with rates of pricing or discounting that differ from 1 level to another.

§ 14-302.

Business Regulation

(a) A multilevel distribution company may not require a participant in its marketing program to buy goods or services or pay any other consideration to participate in the marketing program unless the multilevel distribution company agrees to repurchase the goods:

(1) that are in resalable condition; and

(2) that the participant has been unable to sell 3 months after receipt of the goods first ordered.

(b) A multilevel distribution company shall state in writing in each contract of participation in its marketing program that:

(1) a participant may cancel the contract for any reason www.mlmlegal.com within 3 months after the date of receipt of goods or services first ordered by written notice to the multilevel distribution company; and

(2) on cancellation, the multilevel distribution company shall repurchase the goods.

(c) The repurchase price shall be at least 90% of the original price paid by the participant.

§ 14-303.

Business Regulation

A multilevel distribution company may not represent directly or indirectly that participants in its marketing program may or will earn a stated gross or net amount or represent in any way the past earnings of participants unless the stated gross amount, net amount, or past earnings:

(1) are those of a substantial number of participants in the community or geographic area where the representation is made; and

(2) accurately reflect the average earnings of participants under circumstances similar to those of the participant or prospective participant to whom the representation is made.

§ 14-304.

Business Regulation

(a) The Attorney General or a State's Attorney may sue to enjoin, wholly or partly, the activities of a multilevel distribution company that violate this subtitle.

(b) At least 10 days before seeking injunctive relief, the Attorney General or State's Attorney shall send written notice of the alleged violation by certified mail to the principal place of business of the multilevel distribution company.

§ 14-305.

Commercial Law

Any person who willfully violates any provision of this subtitle is guilty of a misdemeanor and, in addition to the injunctive relief provided for in Title 13, Subtitle 4 of this article, on conviction is subject to a fine of not more than \$1,000 or imprisonment of not www.mlmlegal.com more than one year or both.

§ 13-304.

Commercial Law

A seller may not use any general referral sales technique, plan, arrangement, or agreement by which a buyer is induced to purchase merchandise, real property, or intangibles on the representation or promise of the seller that if the buyer furnishes to the seller the names of other prospective buyers of like or identical merchandise, real property, or intangibles, he will receive a reduction in purchase price by means of a cash rebate, commission, or credit toward balance due or any other consideration.

§ 233D.

Crimes and Punishments

(a) In this section, the following words have the meanings indicated.

(1) "Compensation" includes payment based on a sale or distribution made to a person who is either a participant in a plan or operation or who, upon making payment, then has the right to become a participant.

(2) "Consideration" does not include:

(i) Payment for purchase of goods or services furnished at cost for use in making sales to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme;

(ii) Time or effort spent in pursuit of sales or recruiting activities; or

(iii) The right to receive a discount or rebate based on the purchase or acquisition of goods or services by a bona fide cooperative buying group or association.

(3) "Promote" means to induce one or more other persons to become a participant.

(4) "Pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation to be derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services, or other intangible property by www.mlmlegal.com the participant or other persons introduced into the plan or operation.

(b) A person may not establish, operate, advertise, or promote a pyramid promotional scheme.

(c) A person who violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$10,000 or imprisonment for not more than 1 year or both.

(d) It is not a defense to a prosecution under this section that:

(1) The plan or operation limits the number of persons who may participate or limits the eligibility of participants; or

(2) On payment of anything of value by a participant, the participant obtains any other property in addition to the right to receive compensation.

On any given day you can catch Jeffrey Babener, editor of www.mlmlegal.com, lecturing on Network Marketing at the University of Texas or the University of Illinois, addressing thousands of distributors in Los Angeles, Bangkok, Tokyo and Russia, or writing a new book on Network Marketing, an article for Entrepreneur Magazine or a chapter for a University textbook. Over two decades he has served as marketing and legal advisor to some of the world's largest direct selling companies, the likes of Avon, Nikken, Shaklee, Tupperware, Prepaid Legal, Longaberger, Melaleuca, Discovery Toys, Usana, Amazon Herb, NuSkin, Cell Tech, Sunrider.... and he has provided counsel to the most successful telecom network marketing companies...Excel, ACN, World Connect, ITI, Acceris, AOL Select and Network 2000. An active spokesperson for the industry, he has assisted in new legislation and served on the Lawyer's Council, Government Relations Committee and Internet Task Force of the Direct Selling Association (DSA) as well as serving as General Counsel for the Multilevel Marketing International Association. He is an MLM attorney supplier member of the DSA and has served as legal counsel and MLM consultant on MLM law issues for many DSA companies. He is author of multiple books, including, Network Marketing: What You Should Know, Network Marketer's Guide To Success, Tax Guide for MLM/Direct Sellers, Starting and Running the Successful MLM Company, The MLM Corporate Handbook and Window of Opportunity. He is author of countless articles on network marketing, many of which can be found at www.mlmlegal.com where he is the editor. You will see his articles and interviews in such publications as Money, Atlantic Monthly, Success, Entrepreneur, Business Startups, Home Office Computing, Inc., Money Makers Monthly, etc. He has been chairman of numerous industry conference series, including, Starting and Running the

Successful MLM Company, The MLM Entrepreneur Series and The MLM Masters series. He has served as the close advisor to scores of MLM Companies and their distributors, comprising millions of distributors and billions of dollars in sales. Mr. Babener is a graduate of the University of Southern California Law School, where he served as editor of the USC Law Review. After an appointment to be an advisor law clerk to a U.S. Federal Judge, he went on to become a member of the California and Oregon State Bar, where he has also served as chairman of the Oregon State Bar Committee on Judicial Administration. He has exclusively practiced in the area of direct selling for over 20 years. A Regulatory Update for MLM, Direct Selling, Network Marketing, Direct Sales, Party Plan Independent Distributors and Companies.