

Wyoming MLM State Law

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

The following is applicable legislation in Wyoming 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 Wyoming State:

WYOMING

CHAPTER 3

MULTILEVEL AND PYRAMID DISTRIBUTORSHIPS

40-3-101. Short title.

This act [40-3-101 through 40-3-125] may be cited as the "Wyoming Multilevel and Pyramid Distributorship Act."

40-3-102. Definitions.

(a) As used in this act [40-3-101 through 40-3-125]:

(i) "Multilevel distribution companies" means any person, firm, corporation or other business entity which sells, distributes or supplies for a valuable consideration, goods or services through independent agents, contractors or distributors, at different levels wherein such participants may recruit other participants, 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;

(ii) "Multilevel distribution marketing plan" means any agreement for a definite or indefinite period, either expressed or implied, in which a person agrees, for a valuable consideration, to distribute goods or services of a multilevel distribution www.mlmlegal.com company to members of the public or to persons who occupy different levels in the multilevel distribution company's distribution system;

(iii) "Distributor" means any independent contracted person, agent, employer or participant who has agreed to perform, at one (1) or more levels in a multilevel distribution marketing plan, the functions of distributing the goods or services of the multilevel distribution company or the recruitment of subordinate distributors or both functions;

(iv) "Resalable condition" means products that will pass without objection in the trade, or are still fit for the ordinary purposes for which the products are used;

(v) "Referral sale" means any inducement offered to a person, for the purpose of selling a product or service, which is the opportunity to receive compensation without exercising a bona fide and commensurate responsibility for the sale of the product or service to the ultimate customer; or any offer to a person of an opportunity to receive compensation related to the recruitment of third persons who will be entitled to substantially similar recruiting opportunities when the offer is used as an inducement for the payment of an entrance fee, given toward a purchase or other consideration, except for the actual cost of necessary sales materials by the persons to whom the offer is made;

(vi) "Endless chain" means any scheme or plan for the disposal or distribution of property or services whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one (1) or more additional persons into participation in the scheme or plan or for the chance to receive compensation when the person introduced by the participant introduces a new participant;

(vii) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, other tangible document or recording, reproductions of information stored magnetically, file layout, code conversion tables, computer programs to convert file to readable printout, wherever situate.

40-3-103. Endless chains and referral sales prohibited.

No person may contrive, prepare, set up, propose or operate an endless chain or referral sale.

40-3-104. Prohibitions and requirements.

Every multilevel distribution company shall provide in its contract of participation that the contract may be cancelled for any reason at any time by a participant upon notification in writing to the company of his election to cancel. If the participant has purchased products while the contract of participation was in effect, all unencumbered www.mlmlegal.com products in a resalable condition then in the possession of the participant shall be repurchased by the multilevel distribution company. The repurchase shall be at a price of not less than ninety percent (90%) of the original net cost to the participant returning such goods, taking into account any sales made by or through such participant prior to notification to the company of the election to cancel.

40-3-105. Restrictions on marketing programs.

(a) No multilevel distribution company, nor any participant, shall require participants in its marketing program to purchase products or services or pay any other consideration in order to participate in the marketing program unless the multilevel distribution company agrees in writing:

(i) To repurchase all or part of any products which are unencumbered and in a resalable condition at a price of not less than ninety percent (90%) of the original net cost to the participant, taking into account any sales made by or through such participant prior to notification to the company of election to cancel;

(ii) To repay not less than ninety percent (90%) of the original net cost of any services purchased by the participants; or

(iii) To refund not less than ninety percent (90%) of any other consideration paid by the participant in order to participate in the marketing program.

40-3-106. Additional restrictions in marketing programs.

(a) No multilevel distribution company or participant in its marketing program shall:

(i) Operate or, directly or indirectly, participate in the operation of any multilevel marketing program wherein the financial gains to the participants are primarily dependent upon the

continued, successive recruitment of other participants and where sales to nonparticipants are not required as a condition precedent to realization of the financial gains;

(ii) Offer to pay, pay or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration to any participant in a multilevel marketing program solely for the solicitation or recruitment www.mlmlegal.com of other participants therein;

(iii) Offer to pay, pay or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration to any participant in a multilevel marketing program in connection with the sale of any product or service unless the participant performs a bona fide supervisory, distributive, selling or soliciting function in the sale or delivery of the product or services to the ultimate consumer; or

(iv) Offer to pay, pay or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration to any participant:

(A) If payment thereof is or would be dependent on the element of chance dominating over the skill or judgment of the participant;

(B) If no amount of judgment or skill exercised by the participant has any appreciable effect upon any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration which the participant may receive; or

(C) If the participant is without that degree of control over the operation of the plan as to enable him substantially to affect the amount of finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration which he may receive or be entitled to receive.

40-3-107. Representations of prospective income restricted.

Multilevel distribution companies shall not represent directly or by implication that participants in a multilevel marketing program will earn or receive any stated gross or net amount, or represent in any manner the past earnings of participants. A written or verbal description of the manner in which the marketing plan operates shall not, standing alone, constitute a representation of earnings, past or future. Multilevel distribution companies shall not represent directly or by implication, that it is relatively easy to secure or retain additional distributors or sales personnel or that all or substantially all participants will succeed.

40-3-108. Licensed activities excluded.

Nothing in W.S. 40-3-101 through 40-3-125 shall apply to acts or practices permitted under the laws of this state or under rules, regulations or decisions interpreting the laws, or to any person who has procured a license as provided by W.S. 39-17-106(a) or (b).

40-3-109. Notice of activity and consent to service of process.

Each multilevel distribution company numbering among its participants any resident of this state shall file with the state's attorney general a statement giving notice of this fact and designating the secretary of state of this state its agent for service of process for any alleged violation of this act [40-3-101 through 40-3-125]. The written notice shall further set forth the intention of the multilevel distribution company to abide by the provisions of this act. Compliance with this section shall not subject any multilevel distribution www.mlmlegal.com company to the provisions or consequences of any other statute of this state.

40-3-110. Secretary of state agent for service of process for violations.

Any multilevel distribution company, which fails to comply with W.S. 40-3-109 is deemed to have thereby appointed the secretary of state its agent for service of process for any alleged violation of this act [40-3-101 through 40-3-125].

40-3-111. Investigatory powers.

(a) If the attorney general has reason to believe that a person has engaged in activity which violates the provisions of this act [40-3-101 through 40-3-125], he shall make an investigation to determine if this act has been violated, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(b) If the person's records are located outside this state, the person at his option shall either make them available to the attorney general at a convenient location within this state or pay the reasonable and necessary expenses for the attorney general or his representative to examine them at the place where they are maintained. The attorney general may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(c) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the attorney general may apply to the district court for an order compelling compliance.

40-3-112. Service of process.

(a) Service of any type of process authorized by this act [40-3-101 through 40-3-125] shall be personal within this state, but if such personal service cannot be obtained, substituted service may be made in the following manner:

(i) By service as provided by W.S. 40-3-109 and 40-3-110;

(ii) By service on the secretary of state;

(iii) Personal service without the state;

(iv) By registered or certified mail to the last known place of business, residence or abode of such persons for whom it is intended;

(v) As to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a www.mlmllegal.com civil action has been filed; or

(vi) By such service as a district court may direct in lieu of personal service within this state.

40-3-113. Venue of action for injunctive relief.

An action under this act [40-3-101 through 40-3-125] may be brought in the district court of the county in which the alleged violator resides or has his place of business or in the district court of Laramie county, Wyoming. 40-3-114. Injunctive relief against violations; remedy not exclusive.

The attorney general may, whenever it appears to him that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act [40-3-101 through 40-3-125] or any rule or order hereunder, bring an action in the name of the people of the state in a district court to enjoin the acts or practices or to enforce compliance with this act or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction or restraining order shall be granted.

The court shall not require the attorney general to post a bond. This section is not deemed to be exclusive of the remedies available to the state and the criminal penalties found in this act may also apply to individuals who are the subject of an action brought under this section.

40-3-115. Civil penalty for violating injunction.

The attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five thousand dollars (\$5,000.00) per violation from any person who violates the terms of an injunction issued under W.S. 40-3-114.

40-3-116. Acceptance of assurance of voluntary compliance authorized.

In the enforcement of this act [40-3-101 through 40-3-125], the attorney general may accept an assurance of voluntary compliance with respect to any act or practice alleged to be violative of this act from any person who has engaged in, is engaging in or is about to engage in such act or practice.

40-3-117. Jurisdiction retained by court.

The court shall retain jurisdiction in any case where an injunction is entered or a consent agreement is reached or an assurance of voluntary compliance is agreed upon.

40-3-118. Additional relief authorized; appointment of receiver.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest any monies or property, real or personal, which the court finds to have been acquired by means of any act or practice committed in violation of this act [40-3-101 through 40-3-125]. Such additional relief may include the appointment of a receiver whenever it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal or dispose of his property to the damage of persons to whom restoration would be made under this act.

40-3-119. Receiver's power to acquire and dispose of property.

Any receiver appointed pursuant to W.S. 40-3-118 has the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, monies and effects, land and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description derived in violation of this act [40-3-101 through 40-3-125] by any multilevel distribution company or any distributor in any multilevel distribution marketing plan sponsored by such company, including property which has been commingled with company or distributor property, if it cannot be identified in kind because of such commingling, and to sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

40-3-120. Civil penalty for willful violation; willful violation defined.

In any action brought pursuant to this act [40-3-101 through 40-3-125], if the court finds that any person has engaged in prohibited activities in willful violation of or in reckless disregard for any provision of this act, the attorney general or county attorney www.mlmllegal.com in any county in which the violation occurred, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than two thousand dollars (\$2,000.00) per violation. For purposes of this section, a willful or reckless disregard occurs when the party committing the violation knew or should have known that his conduct was a violation of this act.

40-3-121. Property acquisition and disposition remedy available in action for private remedy.

The remedy provided by W.S. 40-3-119 is available to any person in any action brought for a private remedy against any multilevel distribution company or any distributor in the multilevel distribution marketing plan sponsored by the company.

40-3-122. Penalties for violations; other criminal remedies unimpaired.

Any person who willfully violates any provision of this act [40-3-101 through 40-3-125], or who willfully violates any rule or order under this act, shall upon conviction be fined not more than five hundred dollars (\$500.00) or imprisoned in a county jail for not more than one (1) year, or be punished by both such fine and imprisonment, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

40-3-123. Limitation of actions.

No action shall be maintained to enforce any liability created under this act [40-3-101 through 40-3-125] unless brought before the expiration of three (3) years after the act or transaction constituting the violation or the expiration of one (1) year after the discovery by the plaintiff of the fact constituting the violation.

40-3-124. Causes of action under other law unimpaired.

Nothing in this act [40-3-101 through 40-3-125] shall in any way affect causes of action arising under other laws of this state or under the common law brought by any private person.

40-3-125. Severability of provisions.

If a part of this act [40-3-101 through 40-3-125] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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.