

# Mississippi 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 Mississippi 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](http://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](http://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 Mississippi State:

## **MISSISSIPPI**

§ 75-24-51. Definitions.

As used in sections 75-24-51 to 75-24-61:

- (1) The term "sale or distribution" includes the acts of leasing, renting or consigning;
- (2) The term "goods" includes any personal property, real property, or any combination thereof;
- (3) The term "other property" includes a franchise, license distributorship or other similar right, privilege, or interest;
- (4) The term "person" includes an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity;
- (5) The term "pyramid sales scheme" includes any plan or [www.mlmlegal.com](http://www.mlmlegal.com) operation for the sale or distribution of goods, services, or other property wherein a person for a consideration acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services, or other property sold or distributed to be sold or distributed to persons for purposes of resale to consumers, and is based upon the inducement of additional persons, by himself or others, regardless of number, to participate in the same plan or operation;
- (6) "Franchise" means a written arrangement for a definite or indefinite period, in which a person for a consideration grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise; except that, the term "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, leased departments of retail stores, or places of original manufacture; and
- (7) "Consideration" as used in sections 75-24-51 to 75-24-61 does not include payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale or payments amounting to less than one hundred dollars (\$100.00) when computed on an annual basis.

SOURCES: Laws, 1975, ch. 362, § 1, eff from and after July 1, 1975.

§ 75-24-53. Sales of participation in pyramid sales scheme forbidden; franchises to be terminated only on ninety days' notice.

No person shall, directly or through the use of agents or intermediaries, in connection with the sale, distribution, or lease of goods, services, or other property, sell, offer or attempt to sell a participation or the right to participate in a pyramid sales scheme. No person who has granted a franchise to another person shall cancel or otherwise terminate any such franchise agreement without notifying such person of the cancellation, termination or failure to renew in writing at least ninety (90) days in advance of the cancellation, termination or failure to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check is the basis or grounds for cancellation or termination, the ninety-day notice shall not be required.

SOURCES: Laws, 1975, ch. 362, § 2, eff from and after July 1, 1975.

§ 75-24-55. Statements by franchisors as to past or potential earnings.

Franchise companies shall not represent directly or by implication that prospective participants may or will earn any stated gross or net amount, or represent in any manner, the past earnings of participants unless in fact the past earnings or predicted gross or net amount represented are those of a substantial number of participants in the community or geographical area in which the representations are made and accurately reflect the average earnings of those participants under circumstances similar to those of the participant or prospective participant to whom the representation is made.

§ 75-24-57. Sales contract for pyramid sales scheme void; actions for damages.

Any sales contract for a pyramid sales scheme made in violation of section 75-24-53 is void and any person who, directly or through the use of agents or intermediaries, induces or causes another person to participate in a pyramid sales scheme will be subject to the remedy and proceedings authorized in section 75-24-15.

A franchisee suffering damage as a result of the failure [www.mlmllegal.com](http://www.mlmllegal.com) to give notice as required of the cancellation or termination of a franchise, may institute legal proceedings under the provisions of sections 75-24-51 to 75-24-61 against the franchisor who canceled or terminated his franchise in the county in which the franchisor or his agent resides or can be located or where the franchisee resides. When the franchisee prevails in any such action he may be awarded a recovery of damages sustained to include loss of goodwill, costs of the suit, and any equitable relief that the court deems proper.

SOURCES: Laws, 1975, ch. 362, § 4, eff from and after July 1, 1975.

§ 75-24-59. Injunctive relief.

In addition to other penalties and remedies provided in sections 75-24-51 to 75-24-61, whenever it appears that any person is engaged or is about to engage in any act or practice which constitutes a pyramid sales scheme or which is prohibited by sections 75-24-51 to 75-24-61, the attorney general may bring an action in the name of the state pursuant to the provisions of section 75-24-9 in order to enjoin any such act or practice.

SOURCES: Laws, 1975, ch. 362, § 5, eff from and after July 1, 1975.

§ 75-24-61. Penalties.

Any person willfully violating any of the provisions of section 75-24-53 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six (6) months or by both such fine and imprisonment.

SOURCES: Laws, 1975, ch. 362, § 6, eff from and after July 1, 1975.

*On any given day you can catch Jeffrey Babener, editor of [www.mlmlegal.com](http://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](http://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.*