

# Montana 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 Montana 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 Montana State:

## **MONTANA**

Montana Code

MCA 30-10-324

TITLE 30. TRADE AND COMMERCE

CHAPTER 10. SECURITIES REGULATION  
PART 3. OFFENSES AND PENALTIES

Current through the September 13, 2002 Special Session

30-10-324. Definitions

As used in 30-10-324 through 30-10-326, the following definitions apply:

- (1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.
  - (b) Compensation does not include:
    - (i) payments to a participant based upon the [www.mlmlegal.com](http://www.mlmlegal.com) sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or
    - (ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.
- (2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.
  - (b) Consideration does not include:
    - (i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or
    - (ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.
- (3) (a) "Multilevel distribution company" means a person that:
  - (i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;
  - (ii) may recruit other participants in the company; and
  - (iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.
  - (b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.
- (4) "Participant" means a person involved in a sales plan or operation.
- (5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.
- (6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from

the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

- (b) A pyramid promotional scheme does not include a sales plan or operation that:
- (i) subject to the provisions of subsection (6)(b)(v), provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;
  - (ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;
  - (iii) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;
  - (iv) (A) provides each person joining the sales plan or operation with a written agreement containing or a written [www.mlmllegal.com](http://www.mlmllegal.com) statement describing the material terms of participating in the sales plan or operation;
  - (B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and
  - (C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and
  - (v) (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and
  - (B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

MCA 30-10-326

MONTANA CODE ANNOTATED  
TITLE 30. TRADE AND COMMERCE  
CHAPTER 10. SECURITIES REGULATION  
PART 3. OFFENSES AND PENALTIES

Current through the September 13, 2002 Special Session

30-10-326. Notice of activity -- consent to service

- (1) A multilevel distribution company with a participant that is a resident of this state shall file with the securities commissioner on a form prescribed by the commissioner:
  - (a) an annual notice of the company's operation in this state; and
  - (b) an irrevocable consent designating the commissioner as its agent for service of process for any alleged violation of 30-10-325.
- (2) Compliance with this section may not by itself subject a [www.mlmllegal.com](http://www.mlmllegal.com) company to the provisions of any other statute of this state or to any taxes, licenses, or fees.
- (3)
  - (a) The commissioner may require a multilevel distribution company to disclose the following substantive information:
    - (i) the names, home or business addresses, social security numbers and birth dates, and titles of the multilevel distribution company's officers, directors, and trustees;
    - (ii) the corporate name; the headquarters street, mailing, and e-mail addresses, as well as telephone and telefax numbers; and the state of domicile and state of incorporation of the multilevel distribution company; and
    - (iii) a detailed description of the levels of distribution in the multilevel distribution company, the manner of compensating participants, and the compensation structure of the marketing plan.
  - (b) The commissioner may not release to the public the social security numbers of officers, directors, or trustees of a multilevel distribution company.
- (4) This section does not preclude the commissioner from obtaining additional information required of participants or multilevel distribution companies during the course of an investigation or proceeding initiated under this chapter.
- (5) Compliance with this chapter does not confer upon a multilevel distribution company any license or registration or signify that the state has sanctioned, approved, or endorsed a multilevel distribution company or its sales plan or operation.
- (6) A multilevel distribution company or any individual or entity affiliated with a multilevel distribution company may not represent that the multilevel distribution company, individual, or entity is licensed, registered, sanctioned, approved, or endorsed in this state by virtue of compliance with 30-10-325 and this section.
- (7) A multilevel distribution company or any individual or entity affiliated with a multilevel

distribution company that violates subsection (6) is subject to the fines, injunctions, and other remedies specified in 30-10-305.

History: En. Sec. 3, Ch. 74, L. 1999; amd. Sec. 2, Ch. 322, L. 2001.

*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.*