

Georgia 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 Georgia 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 Georgia State:

GEORGIA

10-1-410.

As used in this part, the term:

(1) "Agreement" means any agreement relating to a business opportunity or multilevel distribution company, including, but not limited to, the contract.

(6) "Multilevel distribution company" 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. The term shall not include licensed insurance agents, insurance agencies, licensed real estate brokers, licensed real estate agents, licensed real estate agencies, licensed securities dealers, licensed limited securities dealers, licensed securities salesmen, or licensed limited securities salesmen. Any multilevel distribution company which operates in any of the forms precluded by paragraphs (1) through (4) of subsection (a) of Code Section 10-1-411 shall be considered an unlawful pyramid club under Code Section 16-12-38.

(7) "Participant" means anyone who participates at any level in a multilevel distribution company.

(8) "Person" means any individual, corporation, partnership, joint venture, association, trust, unincorporated organization, or other entity and shall include any other person that has a substantive interest in or effectively controls such person as well as the individual officers, directors, general partners, trustees, or other individuals in control of the activities of such person.

(9) "Purchaser" means any person who is solicited to become obligated, or does become obligated, under any agreement.

(10) "Seller" means any multilevel distribution company or it means any person who offers to sell to individuals any business opportunity, either directly or through any agent.

10-1-411.

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

(1) Operate or, directly or indirectly, participate in the operation www.mlmlegal.com 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 such financial gains;

(2) 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 of other participants therein;

(3) 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 such product or services to the ultimate consumer;

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

(B) Where 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) Where the participant is without that degree of control over the operation of such 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; or

(5) 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 except as may be permitted under this part; provided, however, that 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 www.mlmlegal.com secure or retain additional distributors or sales personnel or that most participants will succeed.

10-1-412.

(a) Any business opportunity seller or company which represents, in conjunction with any agreement which requires a total initial payment of an amount exceeding \$500.00, that the seller or company will refund all or part of the price paid for the business opportunity or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller or company if the purchaser is dissatisfied with the business opportunity and any multilevel distribution company must either have obtained a bond issued by a surety company authorized to do business in this state or have established a trust account with a licensed and insured bank or savings institution located in this state. For purposes of this subsection, deposits shall not be considered part of the price paid for the business opportunity. The amount of the bond or trust account shall be an amount not less than \$75,000.00. The bond or trust account shall be in favor of the state for the benefit of any person who is damaged by any violation of this part or by the seller's or company's breach of the contract or agreement or of any obligation arising therefrom. Such person may bring an action against the bond or trust account to recover damages suffered; provided, however, that the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account. A multilevel

distribution company which requires an initial payment of less than \$500.00 from each participant shall be exempt from the requirements of this Code section.

10-1-413.

(a) Every multilevel distribution company intending to have participants in this state, with an agreement made in this state, or with its principal place of business in this state shall have readily available to any potential participants, prior to obtaining any participants in this state or elsewhere, a copy of the contract and of any material incorporated by reference into the contract to be used with participants. In every instance in which a multilevel distribution company solicits any initial payment in excess of \$500.00, the multilevel distribution company shall also have readily available to the particular potential participant or participants, prior to signing the contract, a disclosure statement containing the following:

(1) The name and principal business address of the company; whether the company is doing business as a proprietorship, partnership, or corporation; the names under which the company has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with participants;

(2) The names, addresses, and titles of the company's officers, directors, and trustees;

(3) The length of time the company has:

(A) Been engaged in multilevel distribution; and

(B) Been engaged in multilevel distributions involving the types of www.mlmlegal.com products, equipment, supplies, or services currently offered to the purchaser; and

(4) A detailed description of the levels of distribution in the multilevel program, the manner in which participants will be compensated, and the extent or amount of any compensation.

(b) Every seller shall update the disclosures required by subsection (b) of Code Section 10-1-411 and by subsection (a) of Code Section 10-1-413 as often as any material change in the required information occurs, but not less than annually.

(c) Whenever a multilevel distribution company must provide the disclosure statement required by subsection (a) of this Code section, the multilevel distribution company, prior to obtaining any participant, shall provide that participant with an 8 1/2 inch by 11 inch document in at least ten-point type, which reads as follows:

NOTICE REQUIRED BY STATE LAW REGARDING DISCLOSURES

State law requires that a multilevel distribution company shall make available certain disclosures regarding the company prior to obtaining participants. This is your official notice that you have a right to request to see these disclosures prior to entering into any agreement with a multilevel distribution company. This will be the only notice you receive regarding your rights to see these disclosures. If you waive these rights, you are giving up an important consumer protection that the State of Georgia has found you should be provided. If you wish to exercise these rights, please indicate below that you want to see the disclosures before agreeing to be a participant, then do not agree to become a participant until the disclosures have been made available to you.

SIGN ONLY ONE OF THE FOLLOWING STATEMENTS:

I wish to see the disclosures required by law before I agree to become a participant.

_____ Date: _____

I do not wish to see the disclosures required by law; I understand that I will not be seeing important information which might affect my decision to participate in this multilevel distribution company.

_____ Date: _____

(d) Every multilevel distribution company shall maintain on file all of the statements as described in subsection (c) of this Code section for a period of two years from the date such statements are signed.

(e) Every seller shall include the following regarding each officer, director, principal, and owner in the disclosures required by subsection (b) of Code Section 10-1-411 and by subsection (a) of Code Section 10-1-413:

(1) Whether he or she has at any time during the previous seven www.mlmlegal.com fiscal years been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud, including violation of any franchise law, unfair or deceptive acts or practices law, business opportunity law, multilevel distributing law, or pyramid law; embezzlement; fraudulent conversion; misappropriation of property; or restraint of trade;

(2) Whether he or she has at any time during the previous seven fiscal years been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving fraud, including violation of any franchise law, unfair or deceptive acts

or practices law, business opportunity law, multilevel distributing law, or pyramid law; embezzlement; fraudulent conversion; misappropriation of property; or restraint of trade;

(3) Whether he or she is currently subject to any state www.mlmlegal.com or federal agency or court injunctive or restrictive order or is a party to a proceeding currently pending in which such an order is sought relating to fraud, including violation of any franchise law, unfair or deceptive acts or practices law, business opportunity law, multilevel distributing law, or pyramid law; embezzlement; fraudulent conversion; misappropriation of property; or restraint of trade; and

(4) Whether he or she has at any time during the previous seven fiscal years filed in bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency or has been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized during or within one year after the period that such person held such position in such other person.

(f) The disclosures required under subsection (e) of this Code section shall include any of the following which are applicable:

(1) The identity and location of the court or agency;

(2) The date of conviction, judgment, or decision;

(3) The penalty imposed;

(4) The damages assessed;

(5) The terms of settlement or the terms of the order and the date, nature, and issuer of each such order or ruling; and

(6) The name and principal business address of any other person which filed, was adjudged, or was reorganized in bankruptcy.

10-1-414.

Sellers shall not:

(1) Represent that a business opportunity or multilevel program provides income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential, which data shall be furnished to the administrator or his representatives upon request;

(2) Use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the business opportunity or multilevel distribution company; or

(3) Make or authorize the making of any reference to its compliance with this part in any advertisement or other contract with purchasers or participants or in any manner represent, explicitly or implicitly, that the State of Georgia or any department, agency, officer, or employee has reviewed, approved, sanctioned, or endorsed a business opportunity or multilevel program.

10-1-415.

(a) Every business opportunity or multilevel distribution contract shall be in writing, and a copy shall be given to the purchaser or participant at the time he or she signs the contract.

(b) Every contract or any material incorporated therein by reference shall include the following:

(1) The terms and conditions of payment, including but not limited to compensation paid to a participant by the company and any payments to be made by the participant to the company within the first six months of the agreement;

(2) A full and detailed description of the acts or services that the seller undertakes to perform for the purchaser or participant, including a specific description of the product or service being marketed;

(3) The seller's principal business address. For purposes of this www.mlmlegal.com paragraph, a post office box shall not be considered a principal place of business; and

(4) The approximate delivery date of any products, equipment, supplies, or services that the seller is to deliver to the purchaser or participant

(c) In addition to the information required in subsection (b) of this Code section, every multilevel distribution contract, or an addendum thereto, shall contain the following:

(1) If training of any type is promised by the seller or company, a complete description of the training and the length of the training;

(2) If a bond is required under Code Section 10-1-412, the following statement, with all blanks properly filled:

"As required by Georgia law, the company has secured a bond or established a trust account for your protection. This bond or trust account can be identified as # _____ in the name of _____, provided by the following bonding company or trust company:
_____, which is located at the following address:
_____ in the City of _____,
State of _____."

(3) A participant in a multilevel marketing plan has a right to cancel at any time, regardless of reason. If a participant will be under an obligation to make any payment after the agreement has

been entered into, a statement in ten-point boldface type as follows must appear in the contract or an addendum thereto:

"A participant in this multilevel marketing plan has a right to cancel at any time, regardless of reason. Cancellation must be submitted in writing to the company at its principal business address."; and

(4) A description of any cancellation rights.

(d) Cancellation rights pursuant to paragraph (4) of subsection (c) of this Code section must, at a minimum, provide the following:

(1) If the participant has purchased products or paid for administrative services while the contract of participation was in effect, the seller shall repurchase all unencumbered products, sales aids, literature, and promotional items which are in a reasonably resalable or reusable condition and which were acquired by the participant from the seller; such repurchase shall be at a price not less than 90 percent of the original net cost to the participant of the goods being returned. For purposes of this paragraph, "original net cost" means the amount actually paid by the participant for the goods, less any consideration received by the participant for purchase of the goods which is attributable to the specific goods now being returned. Goods shall be deemed "resalable or reusable" if the goods are in an unused, commercially resalable condition at the time the goods are returned to the seller. Goods which are no longer marketed by a company shall be deemed "resalable or reusable" if the goods are in an unused, commercially resalable condition and are returned to the seller within one year from the date the company www.mlmlegal.com discontinued marketing the goods; provided, however, that goods which are no longer marketed by a multilevel distribution company shall not be deemed "resalable or reusable" if the goods are sold to participants as nonreturnable, discontinued, or seasonal items and the nonreturnable, discontinued, or seasonal nature of the goods was clearly disclosed to the participant seeking to return the goods prior to the purchase of the goods by the participant. Notwithstanding anything to the contrary contained in this paragraph, a multilevel distribution company may not assert that any more than 15 percent of its total yearly sales per calendar year to participants in dollars are from nonreturnable, discontinued, or seasonal items;

(2) The repayment of all administrative fees or consideration paid for other services shall be at not less than 90 percent of the costs to the participant of such fees or services and shall reflect all other administrative services that have not, at the time of termination, been provided to the participant; and

(3) The participant may be held responsible for all shipping expenses incurred in returning sales aids or products to the company but only if such responsibility of a canceling participant is disclosed in the written description of the cancellation rights.

10-1-416.

(a) Each seller numbering among its participants or purchasers any resident of this state, which has agreements made in this state, or which has its principal place of business in this state, shall

irrevocably appoint the Secretary of State of this state as its agent for service of process for any alleged violation of this part. Compliance with this Code section shall not in and of itself subject any seller to the provisions or consequences of any other statute of this state.

(b) Any seller which numbers among its participants or purchasers any resident of this state, which has agreements made in this state, or which has its principal place of business in this state, and which fails to comply with subsection (a) of this Code section shall be deemed to have thereby irrevocably appointed the Secretary of State as its agent for service of process for any alleged violation of this part.

(c) Service shall be made by delivering to and leaving with the Secretary of State duplicate copies of such process, notice, or demand, together with an affidavit giving the last known post office address of such seller; and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail or certified mail addressed to such seller at the address given in such affidavit.

10-1-417.

(a) If a business opportunity seller or multilevel distribution company uses any untrue or misleading statements; or fails to comply with Code Section 10-1-411; or fails to deliver the equipment, supplies, or products necessary to begin substantial operation within 45 days of the delivery date stated in the contract; or if the business opportunity seller or multilevel distribution company does not comply with the requirements of Code Sections 10-1-410 through 10-1-416, then, within one year of the date of the contract, upon written notice to the seller, the purchaser or participant may void the contract and shall be entitled to receive from the seller all sums paid to the seller. Upon receipt of such sums, the purchaser or participant shall make available to the seller at the purchaser's or participant's address or at the www.mlmllegal.com places at which they are located at the time notice is given, all products, equipment, or supplies received by the purchaser or participant. However, the purchaser or participant shall not be entitled to unjust enrichment by exercising the remedies provided for in this subsection.

(b) The violation of any provision of this part shall constitute an unfair or deceptive act or practice in the conduct of a consumer act or practice or consumer transactions under Part 2 of this article, the "Fair Business Practices Act of 1975," and shall authorize an affected participant or purchaser to seek the remedies provided for in Code Section 10-1-399 and in subsection (a) of Code Section 10-1-417.

(c) Nothing contained in this part shall be construed to limit, modify, or repeal any provisions of Chapter 5 of this title, the "Georgia Securities Act of 1973," including, but not limited to, the definition of the term "security" as contained in paragraph (26) of subsection (a) of Code Section 10-5-2.

(d) Any person who fails to comply with this part shall be guilty of a misdemeanor of a high and aggravated nature. In addition thereto, if the violator is a corporation, each of its officers and directors may be subjected to a like penalty; and, if the violator is a sole proprietorship, the owner thereof may be subjected to a like penalty; and, if the violator is a partnership, each of the

partners may be subjected to a like penalty, provided that no person shall be subjected to a like penalty if the person did not have actual knowledge of the acts violating this part.

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.