

Idaho 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 Idaho 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 Idaho State:

IDAHO

Idaho Unlawful Sales Referral Practices: The State of Idaho Legislative Code contains a prohibition against unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or business. One such "unlawful practice" listed in the Idaho Consumer

Protection Act is the practice of "referral selling." Idaho law defines this unlawful practice as follows:

48-603. UNFAIR METHODS AND PRACTICES

(15) Promising or offering to pay, ... any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease...

Idaho Pyramid Statute

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 31
FALSE PRETENSES, CHEATS AND MISREPRESENTATIONS

18-3101. PYRAMID PROMOTIONAL SCHEMES PROHIBITED -- PENALTIES -- SALE OF INTEREST VOIDABLE -- SCOPE OF REMEDY.

(1) It is illegal and prohibited for any person, or any agent or employee thereof, to establish, promote, offer, operate, advertise or grant participation in any pyramid promotional scheme.

(2) As used in this section:

(a) "Appropriate inventory repurchase program" means a program by which a plan or operation repurchases, upon request at the termination of a participant's business relationship with the plan or operation and based upon commercially reasonable terms, current and marketable inventory purchased and maintained by the participant for resale, use or consumption, provided such plan or operation clearly describes the program in its recruiting www.mlmlegal.com literature, sales manual, or contracts with participants, including the manner in which the repurchase is exercised and disclosure of any inventory that is not eligible for repurchase under the program.

(b) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months from the date of original purchase at not less than ninety percent (90%) of the original net cost to the participant, less appropriate set-offs and legal claims, if any. In the case of service products, the repurchase of such service products shall be on a pro rata basis, unless clearly disclosed otherwise to the participant, in order to qualify as "commercially reasonable terms."

(c) "Compensation" means a payment of any money, thing of value, or financial benefit.

(d) "Consideration" means a payment of any money, or the purchase of goods, services, or intangible property but shall not include:

1. The purchase of goods or services furnished at cost to be used in making sales and not for resale.
2. Time and effort spent in pursuit of sales or recruiting activities.

(e) "Current and marketable" includes inventory that, in the case of consumable or durable goods, is unopened, unused and within its commercially reasonable use of shelf-life period. In the case of services and intangible property, including internet sites, "current and marketable" means the unexpired portion of any contract or agreement. The term "current and marketable" does not include inventory that has been clearly described to the participant prior to purchase as a seasonal, discontinued, or special promotion product not subject to the plan or operation's inventory repurchase program.

(f) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids and sales kits that the plan or operation requires independent salespersons to purchase.

(g) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount that unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption, or to use or consume, in a reasonable time period.

(h) "Participant" means a natural person who joins a plan or operation.

(i) "Person" means a natural person, partnership, corporation, trust, estate, business trust, joint venture, unincorporated association, or any other legal or www.mlmlegal.com commercial entity.

(j) "Promote" means to contrive, prepare, establish, plan, operate, advertise or otherwise induce or attempt to induce another person to be a participant.

(k) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation rather than from the sales of goods, services or intangible property to participants or by participants to others.

(3) A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or upon payment of anything of value by a person whereby the person obtains any other property in addition to the right to receive consideration, does not change the identity of the scheme as a pyramid promotional scheme.

(4) Any person, or any agent or employee thereof who willfully and knowingly promotes, offers, advertises, or grants participation in a pyramid promotional scheme shall be guilty of a felony.

(5) All pyramid promotional schemes offered by the same person, or agents or employees thereof, or any person controlled by or affiliated with such person, for the same type of consideration, at substantially the same period of time and for the same general purpose, shall be deemed to be one (1) integrated pyramid promotional scheme, even though such pyramid promotional schemes may be given different names or other designations.

(6) Nothing in this section or in any rule promulgated pursuant to this section shall be construed to prohibit a plan or operation, or to define such plan or operation as a pyramid promotional scheme, based upon the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services or intangible property by participants for personal use, consumption or resale, provided the plan or operation implements an appropriate inventory repurchase program and does not promote inventory loading.

(7) Any violation of this section shall also be deemed an unfair and deceptive practice in violation of the Idaho consumer protection act. Any person aggrieved by a violation of this section can recover monetary damages pursuant to the Idaho consumer protection act.

(8) The rights and remedies that are granted under the provisions of this section to purchasers in pyramid promotional schemes are independent of and in addition to any other right or remedy available to them in law or equity, and nothing contained herein shall be construed to diminish or abrogate any such right or remedy.

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.