

STATE OF NEW YORK

1826

2017-2018 Regular Sessions

IN ASSEMBLY

January 13, 2017

Introduced by M. of A. MOYA -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to regulating multilevel distribution companies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 32-A to read as follows:

ARTICLE 32-A
MULTILEVEL DISTRIBUTION
COMPANIES

Section 676. Definitions.

677. Disclosure requirements.

677-a. Contract requirements.

677-b. Recruitment and sales materials.

677-c. Supervision.

677-d. Penalties.

677-e. Rules and regulations.

§ 676. Definitions. As used in this article:

1. "Department" means the department of law.

2. "Multilevel distribution company" means any person, firm, partnership, limited liability company, corporation or other business entity which sells, distributes or supplies for valuable consideration goods or services through independent agents, contractors or distributors at different levels:

(a) whereby such independent agents, contractors and distributors may recruit prospective independent agents, contractors and distributors; and

(b) wherein commissions, bonuses, refunds, discounts, dividends or other considerations are or may be paid to such independent agents, contractors and distributors for the sale of such goods and services

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 and/or for the recruitment, actions or performance of other independent
2 agents, contractors and distributors.

3 3. "Participant" means an independent agent, contractor or distributor
4 of a multilevel distribution company.

5 § 677. Disclosure requirements. 1. Every multilevel distribution
6 company shall, on or before March first of each year, file with the
7 department a financial disclosure statement, written in plain and under-
8 standable English, which shall include the following information for the
9 preceding calendar years:

10 (a) the name of the multilevel distribution company, the name under
11 which such company is doing or intends to do business, and the name of
12 any parent or affiliated company that will engage in business trans-
13 actions with participants;

14 (b) the multilevel distribution company's principal business address
15 and the name and address of its participants in this state authorized to
16 receive process;

17 (c) a statement as to whether the multilevel distribution company and
18 its principals, officers, partners, directors, or any other person iden-
19 tified in the application for registration:

20 (1) Has been convicted of a felony, or pleaded nolo contendere to a
21 felony charge, or held liable or enjoined in a civil action by a final
22 judgment if such civil action involved fraud, embezzlement, fraudulent
23 conversion or misappropriation of property.

24 (2) Is subject to any currently effective order of the United States
25 securities and exchange commission or the securities administrator of
26 any state denying the registration of or barring, revoking or suspending
27 the registration of such person as a securities broker or dealer, or
28 investment advisor, or securities agent or registered representative, or
29 is subject to any currently effective order of any national securities
30 association or national securities exchange, as defined in the Securi-
31 ties and Exchange Act of 1934, suspending or expelling such person from
32 membership in such association or exchange.

33 (3) Is subject to a currently effective order or ruling of the federal
34 trade commission.

35 (4) Is subject to any currently effective injunctive or restrictive
36 order relating to business activity as a result of an action brought by
37 a public agency or department, including, without limitation, actions
38 affecting a license as a real estate broker or salesman.

39 Such statement shall set forth the court, date of conviction or judg-
40 ment, any penalty imposed or damages assessed, or the date, nature and
41 issuer of such order;

42 (d) the total number of participants such company has in the state;

43 (e) the total number of new participants of such company during the
44 calendar year;

45 (f) the total sales of such company in the state;

46 (g) the percent of sales in the state generated by sales to partic-
47 ipants of such company;

48 (h) the percent of sales in the state that are generated by sales to
49 persons who are not participants of such company; and

50 (i) the average and median commissions earned by participants of such
51 company.

52 2. A cover page disclaimer shall be attached to each disclosure state-
53 ment filed pursuant to this section. Such disclaimer shall state that
54 the state of New York does not recommend the multilevel distribution
55 company, nor does the state confirm that it has verified the information
56 in the disclosure statement.

1 § 677-a. Contract requirements. 1. No multilevel distribution company
2 shall enter into any contract or agreement with a prospective partic-
3 ipant, unless and until such prospective participant shall have been
4 provided with a statement, in the prospective participant's primary
5 language, and in clear and easily understandable language, of the bene-
6 fits, risks and actual effects of each product, service or business
7 opportunity that may be provided pursuant to the financial disclosure
8 statement approved by the department pursuant to section six hundred
9 seventy-seven of this article.

10 2. A copy of such contract or agreement and disclosure statement shall
11 be provided to a prospective participant not less than five days prior
12 to the signing of the contract or agreement.

13 § 677-b. Recruitment and sales materials. No pamphlet, circular, form
14 letter, advertisement, presentation, or other recruitment or sales
15 literature or communication addressed to or intended for prospective
16 participants shall be issued or distributed by any multilevel distrib-
17 ution company until the disclosure statement has been submitted to the
18 department.

19 § 677-c. Supervision. Each multilevel distribution company shall
20 provide support to its participants to ensure compliance with the
21 provisions of the article, and to prevent fraudulent, deceptive and
22 unlawful acts by such participants.

23 § 677-d. Penalties. Any multilevel distribution company which knowing-
24 ly violates any provision of this article or any rule or regulation
25 promulgated pursuant thereto, shall be subject to a fine of not less
26 than five hundred dollars nor more than one thousand dollars for each
27 such violation for a first offense; and a fine of not less than one
28 thousand dollars nor more than five thousand dollars for each such
29 violation for a second offense within a period of one year; and a fine
30 of not less than five thousand dollars nor more than ten thousand
31 dollars for each such violation for a third or subsequent offense within
32 a period of one year.

33 § 677-e. Rule and regulations. The attorney general is authorized and
34 directed to promulgate any such rules and regulations as shall be neces-
35 sary to implement the provisions of this article.

36 § 2. This act shall take effect on the first of January next succeed-
37 ing the date on which it shall have become a law; provided, however
38 that, effective immediately, the addition, amendment and/or repeal of
39 any rule or regulation necessary for the implementation of this act on
40 its effective date are authorized and directed to be made and completed
41 on or before such effective date.