S T A T E O F N E W Y O R K

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I N S E N A T E

June 13, 2016

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 section 396-a-1 to read as follows:

S 396-A-1. MULTILEVEL DISTRIBUTION COMPANIES. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "INVENTORY" SHALL MEAN GOODS PROVIDED BY A MULTILEVEL DISTRIBUTION COMPANY TO A PARTICIPANT FOR SALE PURPOSES.

(B) "INVENTORY LOADING" SHALL OCCUR WHEN A MULTILEVEL DISTRIBUTION COMPANY OR ITS AGENTS OR ITS REPRESENTATIVES COERCES, DECEPTIVELY INCENTIVIZES, AND/OR MANIPULATES A PARTICIPANT TO PURCHASE A LARGE VOLUME OF INVENTORY FROM SUCH MULTILEVEL DISTRIBUTION COMPANY, AS A CONDITION PRECEDENT FOR SUCH PARTICIPANT TO ATTAIN THE RIGHT TO PARTICIPATE OR BE PROMOTED TO THE NEXT LEVEL IN SUCH MULTILEVEL DISTRIBUTION COMPANY.

(C) "MULTILEVEL DISTRIBUTION COMPANY" SHALL MEAN 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:

(I) WHEREBY SUCH INDEPENDENT AGENT, CONTRACTOR OR DISTRIBUTORS MAY RECRUIT PROSPECTIVE INDEPENDENT AGENTS, CONTRACTORS AND/OR DISTRIBUTORS; AND

(II) WHEREIN COMMISSION, BONUSES, REFUNDS, DISCOUNTS, DIVIDENDS OR OTHER CONSIDERATION ARE OR MAY BE PAID TO SUCH INDEPENDENT AGENTS, CONTRACTORS AND/OR DISTRIBUTORS FOR THE SALE OF SUCH GOODS AND SERVICES AND FOR THE RECRUITMENT ACTIONS OR PERFORMANCE OF OTHER INDEPENDENT AGENTS, CONTRACTORS AND/OR DISTRIBUTORS.

(D) "PARTICIPANT" MEANS AN INDEPENDENT AGENT, CONTRACTOR, OR DISTRIBUTOR OF A MULTILEVEL DISTRIBUTION COMPANY.

2. (A) NO MULTILEVEL DISTRIBUTION COMPANY SHALL:

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

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(I) HAVE A PATTERN AND/OR PRACTICE OF BASING A PARTICIPANT'S COMMISSION, BONUS, REFUND, DISCOUNT, DIVIDEND, FINANCIAL GAIN, AND/OR ANY OTHER CONSIDERATION SOLELY UPON THE CONTINUED, SUCCESSIVE RECRUITMENT, OR SOLICITATION OF OTHER PARTICIPANTS;

(II) ENGAGE OR OTHERWISE PROMOTE ANY INVENTORY LOADING BUSINESS PRACTICES OR ACTIVITIES;

(III) REQUIRE LARGE UPFRONT INVESTMENT FEES IN ORDER FOR A PARTICIPANT TO PARTAKE IN A MULTILEVEL DISTRIBUTION COMPANY; OR

(IV) REPRESENT THAT THE MULTILEVEL DISTRIBUTION COMPANY PROVIDES A SPECIFIC NET OR GROSS AMOUNT OF INCOME OR AN EARNING POTENTIAL OF ANY KIND, UNLESS THE MULTILEVEL DISTRIBUTION COMPANY HAS DOCUMENTED DATA TO SUBSTANTIATE THE CLAIMS OF SUCH INCOME OR EARNING POTENTIAL.

(B) A MULTILEVEL DISTRIBUTION COMPANY SHALL PUT ON ALL ADVERTISING OR SALES MATERIALS AND STATE AT ALL LIVE PRESENTATIONS THE FOLLOWING PHRASE:

"PRIOR FINANCIAL SUCCESS OF OTHER PARTICIPANTS DOES NOT GUARANTEE A SIMILAR RESULT."

(C) PRIOR TO ANY CONTRACT EXECUTION BETWEEN A MULTILEVEL DISTRIBUTION COMPANY AND A PARTICIPANT, A MULTILEVEL DISTRIBUTION COMPANY SHALL PROVIDE IN A SEPARATE EIGHT AND ONE-HALF INCH BY ELEVEN INCH PAPER, A DISCLOSURE DOCUMENT TO A PARTICIPANT CONTAINING THE FOLLOWING:

(I) THE LENGTH OF TIME THE MULTILEVEL DISTRIBUTION COMPANY HAS:

A. BEEN ENGAGED IN MULTILEVEL DISTRIBUTION BUSINESS; AND

B. BEEN ENGAGED IN MULTILEVEL DISTRIBUTION BUSINESS INVOLVING THE TYPE OF INVENTORY CURRENTLY OFFERED TO THE PARTICIPANT;

(II) A DETAILED DESCRIPTION OF THE LEVELS OF DISTRIBUTION WITHIN THE MULTILEVEL DISTRIBUTION COMPANY. THIS ENTAILS INFORMATION REGARDING THE RELEVANT ACTIVITIES, SALES, AND SKILLS THAT ARE NECESSARY IN ORDER FOR A PARTICIPANT TO MOVE FROM ONE LEVEL OF DISTRIBUTION TO ANOTHER; AND

(III) THE MANNER, EXTENT, AND/OR AMOUNT IN WHICH PARTICIPANTS WILL BE COMPENSATED.

SUCH DISCLOSURE DOCUMENT SHALL BE SIGNED AND DATED BY BOTH THE PARTICIPANT AND A REPRESENTATIVE OF THE MULTILEVEL DISTRIBUTION COMPANY, IN CHARGE OF THE EXECUTION OF THE CONTRACT.

(D) SUCH DISCLOSURE DOCUMENT AND ANY OTHER CONTRACT BETWEEN A MULTILEVEL DISTRIBUTION COMPANY AND PARTICIPANT SHALL BE IN CLEAR, CONCISE AND PLAIN LANGUAGE; AND OFFERED TO A PARTICIPANT IN BOTH ENGLISH AND, IF REQUESTED, IN A TRANSLATED FOREIGN LANGUAGE. IN THE EVENT THAT A CONTRACT BETWEEN THE MULTILEVEL DISTRIBUTION COMPANY AND A PARTICIPANT IS CONDUCTED ELECTRONICALLY, THEN SUCH REQUIRED DISCLOSURE SHALL APPEAR PRIOR TO THE ELECTRONIC SIGNING SCREEN OF SUCH CONTRACT OR AGREEMENT.

3. A MULTILEVEL DISTRIBUTION COMPANY SHALL KEEP OR MAINTAIN A RECORD, FOR A PERIOD OF THREE YEARS FROM EITHER THE DATE OF EXECUTION OR SIGNING OF SUCH DOCUMENTS OR MATERIALS LISTED HEREIN, OR FROM THE DATE SUCH DOCUMENTS OR MATERIALS WERE DISTRIBUTED OR OTHERWISE USED IN A BUSINESS TRANSACTION BETWEEN A MULTILEVEL DISTRIBUTION COMPANY AND A PARTICIPANT. SUCH DOCUMENTS AND/OR MATERIALS SHALL INCLUDE:

(A) PARTICIPANT'S CONTRACT;

(B) DISCLOSURE DOCUMENT;

(C) MARKETING AND ADVERTISEMENTS MATERIALS SUCH AS CATALOGS AND SALES MATERIALS, AND/OR SALES AND MARKETING PLAN; AND

(D) BUSINESS HANDBOOK, COMPENSATION PLAN DOCUMENTS, AND/OR MATERIALS PERTAINING TO BUSINESS CONDUCT REQUIREMENTS, BUSINESS RULES FOR PARTICIPANTS.

4. (A) ALL CONTRACTS AND DISCLOSURE DOCUMENTS BETWEEN A MULTILEVEL DISTRIBUTION COMPANY AND A PARTICIPANT SHALL BE IN WRITING AND A COPY SHALL BE GIVEN TO A PARTICIPANT AT THE TIME OF EXECUTION.

(B) IF, AS DETERMINED BY THE MULTILEVEL DISTRIBUTION COMPANY THE PARTICIPANT HAS MADE A GOOD FAITH EFFORT TO SELL SUCH GOODS OR SERVICES, AND SUCH GOODS OR SERVICES HAS NOT SOLD FOR A PERIOD OF TWELVE MONTHS AFTER THE FIRST RECEIPT OF SUCH GOODS OR SERVICES THE PARTICIPANT MAY CANCEL THE CONTRACT AND IF THE PARTICIPANT HAS PURCHASED GOODS AND/OR SERVICES FROM THE MULTILEVEL DISTRIBUTION COMPANY, THE MULTILEVEL DISTRIBUTION COMPANY SHALL REPURCHASE ALL GOODS AND/OR SERVICES IN AN UNUSED AND UNENCUMBERED COMMERCIALLY RESALABLE OR REUSABLE CONDITION, EXCLUDING PERISHABLE GOODS AND SERVICES, AT A PRICE THAT IS AT LEAST NINETY PERCENT OF THE ORIGINAL PRICE PAID BY THE PARTICIPANTS.

5. THE DIVISION OF CONSUMER PROTECTION IN CONSULTATION WITH THE OFFICE OF NEW AMERICANS SHALL DEVELOP, ESTABLISH, AND IMPLEMENT A PUBLIC AWARENESS CAMPAIGN REGARDING THE RISKS AND ADVANTAGES OF TAKING PART IN A MULTILEVEL DISTRIBUTION COMPANY AS A PARTICIPANT. THE PUBLIC AWARENESS CAMPAIGN SHALL BE MADE AVAILABLE TO THE PUBLIC BY ANY MEANS DEEMED APPROPRIATE BY THE DIVISION OF CONSUMER PROTECTION AND THE OFFICE OF NEW AMERICANS, INCLUDING BUT NOT LIMITED TO, BILLBOARDS, POSTERS, INTERNET, RADIO, AND PRINT ADVERTISING. THE DIVISION OF CONSUMER PROTECTION IN CONSULTATION WITH THE OFFICE OF NEW AMERICANS SHALL ALSO IDENTIFY AND PARTNER, WHERE FEASIBLE, WITH OTHER STATE, LOCAL AND FEDERAL AGENCIES AND COMMUNITY ORGANIZATIONS TO DISSEMINATE THE INFORMATION RELATING TO THE PUBLIC AWARENESS CAMPAIGN.

6. (A) WHERE THE ATTORNEY GENERAL HAS DETERMINED THAT ANY MULTILEVEL DISTRIBUTION COMPANY, ITS AGENTS OR REPRESENTATIVES HAS VIOLATED ONE OR MORE PROVISIONS OF THIS SECTION, THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION IN THE NAME OF THE PEOPLE OF NEW YORK STATE AGAINST SUCH COMPANY TO ENJOIN AND/OR RESTRAIN SUCH COMPANY FROM FURTHER VIOLATION. THE ATTORNEY GENERAL MAY AUDIT THE RECORDS OF A MULTILEVEL DISTRIBUTION COMPANY, AT ITS DISCRETION, OR UPON RECEIPT OF COMPLAINTS FROM ACTIVE OR FORMER PARTICIPANTS IN THE MULTILEVEL DISTRIBUTION COMPANY. WHERE A COURT OF COMPETENT JURISDICTION HAS FOUND THAT SUCH COMPANY HAS VIOLATED ANY PROVISION OF THIS SECTION, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION, WHICH SHALL ACCRUE TO THE STATE OF NEW YORK AND BE PLACED IN A SPECIAL FUND FOR THE USE OF FUNDING COMMUNITY OUTREACH PROGRAMS OPERATED BY THE OFFICE OF NEW AMERICANS AND/OR THE DIVISION OF CONSUMER PROTECTION.

(B) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO LIMIT, MODIFY, OR REPEAL ANY PROVISION OF ARTICLE TWENTY-THREE-A OF THIS CHAPTER.

(C) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PREEMPT, LIMIT, OR MODIFY ANY PROVISIONS OF THE FEDERAL TRADE COMMISSION ACT OR UNITED STATES SECURITIES EXCHANGE ACT, OR THE RULES AND REGULATIONS OF THE FEDERAL TRADE COMMISSION OR THE UNITED STATES SECURITIES EXCHANGE ACT.

(D) IT SHALL BE A REBUTTAL PRESUMPTION THAT A MULTILEVEL DISTRIBUTION COMPANY HAS NOT VIOLATED THE PROHIBITIONS SET FORTH IN THIS ARTICLE, IF DURING A LEGAL PROCEEDING SUCH MULTILEVEL DISTRIBUTION COMPANY CAN PRODUCE THE FOLLOWING INFORMATION:

(I) AN ANTI-INVENTORY LOADING BUSINESS POLICY;

(II) PROOF OF A BUSINESS POLICY THAT LIMITS LARGE UPFRONT INVESTMENT FEES IN ORDER FOR PARTICIPANTS TO PARTAKE IN A MULTILEVEL DISTRIBUTION COMPANY;

(III) PROOF OF A BUSINESS PRACTICE THAT ENCOURAGES ACTUAL SELLING OF PRODUCTS TO INDIVIDUALS OTHER THAN CONTRACTED PARTICIPANTS. SUCH PROOF SHALL INCLUDE THE FOLLOWING INFORMATION:

(A) THE TOTAL NUMBER OF PARTICIPANTS SUCH COMPANY HAS IN THE STATE;

(B) THE TOTAL NUMBER OF NEW PARTICIPANTS OF SUCH COMPANY DURING THE CALENDAR YEAR;

(C) THE TOTAL SALES OF SUCH COMPANY IN THE STATE;

(D) THE PERCENT OF SALES IN THE STATE THAT ARE GENERATED BY SALES TO PERSONS WHO ARE NOT PARTICIPANTS OF SUCH COMPANY; AND

(E) THE AVERAGE AND MEDIAN COMMISSION EARNED BY PARTICIPANTS OF SUCH COMPANY; OR

(IV) PROOF OF A PRODUCT REPURCHASING POLICY.

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