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

10244

I N A S S E M B L Y

May 18, 2016

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.

S 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 AND/OR FOR THE RECRUITMENT, ACTIONS OR PERFORMANCE OF OTHER INDEPENDENT AGENTS, CONTRACTORS AND DISTRIBUTORS.

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

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

S 677. DISCLOSURE REQUIREMENTS. 1. EVERY MULTILEVEL DISTRIBUTION COMPANY SHALL, ON OR BEFORE MARCH FIRST OF EACH YEAR, FILE WITH THE DEPARTMENT A FINANCIAL DISCLOSURE STATEMENT, WRITTEN IN PLAIN AND UNDERSTANDABLE ENGLISH, WHICH SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE PRECEDING CALENDAR YEARS:

(A) THE NAME OF THE MULTILEVEL DISTRIBUTION COMPANY, THE NAME UNDER WHICH SUCH COMPANY IS DOING OR INTENDS TO DO BUSINESS, AND THE NAME OF ANY PARENT OR AFFILIATED COMPANY THAT WILL ENGAGE IN BUSINESS TRANSACTIONS WITH PARTICIPANTS;

(B) THE MULTILEVEL DISTRIBUTION COMPANY'S PRINCIPAL BUSINESS ADDRESS AND THE NAME AND ADDRESS OF ITS PARTICIPANTS IN THIS STATE AUTHORIZED TO RECEIVE PROCESS;

(C) A STATEMENT AS TO WHETHER THE MULTILEVEL DISTRIBUTION COMPANY AND ITS PRINCIPALS, OFFICERS, PARTNERS, DIRECTORS, OR ANY OTHER PERSON IDENTIFIED IN THE APPLICATION FOR REGISTRATION:

(1) HAS BEEN CONVICTED OF A FELONY, OR PLEADED NOLO CONTENDERE TO A FELONY CHARGE, OR HELD LIABLE OR ENJOINED IN A CIVIL ACTION BY A FINAL JUDGMENT IF SUCH CIVIL ACTION INVOLVED FRAUD, EMBEZZLEMENT, FRAUDULENT CONVERSION OR MISAPPROPRIATION OF PROPERTY.

(2) IS SUBJECT TO ANY CURRENTLY EFFECTIVE ORDER OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES ADMINISTRATOR OF ANY STATE DENYING THE REGISTRATION OF OR BARRING, REVOKING OR SUSPENDING THE REGISTRATION OF SUCH PERSON AS A SECURITIES BROKER OR DEALER, OR INVESTMENT ADVISOR, OR SECURITIES AGENT OR REGISTERED REPRESENTATIVE, OR IS SUBJECT TO ANY CURRENTLY EFFECTIVE ORDER OF ANY NATIONAL SECURITIES ASSOCIATION OR NATIONAL SECURITIES EXCHANGE, AS DEFINED IN THE SECURITIES AND EXCHANGE ACT OF 1934, SUSPENDING OR EXPELLING SUCH PERSON FROM MEMBERSHIP IN SUCH ASSOCIATION OR EXCHANGE.

(3) IS SUBJECT TO A CURRENTLY EFFECTIVE ORDER OR RULING OF THE FEDERAL TRADE COMMISSION.

(4) IS SUBJECT TO ANY CURRENTLY EFFECTIVE INJUNCTIVE OR RESTRICTIVE ORDER RELATING TO BUSINESS ACTIVITY AS A RESULT OF AN ACTION BROUGHT BY A PUBLIC AGENCY OR DEPARTMENT, INCLUDING, WITHOUT LIMITATION, ACTIONS AFFECTING A LICENSE AS A REAL ESTATE BROKER OR SALESMAN.

SUCH STATEMENT SHALL SET FORTH THE COURT, DATE OF CONVICTION OR JUDGMENT, ANY PENALTY IMPOSED OR DAMAGES ASSESSED, OR THE DATE, NATURE AND ISSUER OF SUCH ORDER;

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

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

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

(G) THE PERCENT OF SALES IN THE STATE GENERATED BY SALES TO PARTICIPANTS OF SUCH COMPANY;

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

(I) THE AVERAGE AND MEDIAN COMMISSIONS EARNED BY PARTICIPANTS OF SUCH COMPANY.

2. A COVER PAGE DISCLAIMER SHALL BE ATTACHED TO EACH DISCLOSURE STATEMENT FILED PURSUANT TO THIS SECTION. SUCH DISCLAIMER SHALL STATE THAT THE STATE OF NEW YORK DOES NOT RECOMMEND THE MULTILEVEL DISTRIBUTION COMPANY, NOR DOES THE STATE CONFIRM THAT IT HAS VERIFIED THE INFORMATION IN THE DISCLOSURE STATEMENT.

S 677-A. CONTRACT REQUIREMENTS. 1. NO MULTILEVEL DISTRIBUTION COMPANY SHALL ENTER INTO ANY CONTRACT OR AGREEMENT WITH A PROSPECTIVE PARTIC-

IPANT, UNLESS AND UNTIL SUCH PROSPECTIVE PARTICIPANT SHALL HAVE BEEN PROVIDED WITH A STATEMENT, IN THE PROSPECTIVE PARTICIPANT'S PRIMARY LANGUAGE, AND IN CLEAR AND EASILY UNDERSTANDABLE LANGUAGE, OF THE BENEFITS, RISKS AND ACTUAL EFFECTS OF EACH PRODUCT, SERVICE OR BUSINESS OPPORTUNITY THAT MAY BE PROVIDED PURSUANT TO THE FINANCIAL DISCLOSURE STATEMENT APPROVED BY THE DEPARTMENT PURSUANT TO SECTION SIX HUNDRED SEVENTY-SEVEN OF THIS ARTICLE.

2. A COPY OF SUCH CONTRACT OR AGREEMENT AND DISCLOSURE STATEMENT SHALL BE PROVIDED TO A PROSPECTIVE PARTICIPANT NOT LESS THAN FIVE DAYS PRIOR TO THE SIGNING OF THE CONTRACT OR AGREEMENT.

S 677-B. RECRUITMENT AND SALES MATERIALS. NO PAMPHLET, CIRCULAR, FORM LETTER, ADVERTISEMENT, PRESENTATION, OR OTHER RECRUITMENT OR SALES LITERATURE OR COMMUNICATION ADDRESSED TO OR INTENDED FOR PROSPECTIVE PARTICIPANTS SHALL BE ISSUED OR DISTRIBUTED BY ANY MULTILEVEL DISTRIBUTION COMPANY UNTIL THE DISCLOSURE STATEMENT HAS BEEN SUBMITTED TO THE DEPARTMENT.

S 677-C. SUPERVISION. EACH MULTILEVEL DISTRIBUTION COMPANY SHALL PROVIDE SUPPORT TO ITS PARTICIPANTS TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THE ARTICLE, AND TO PREVENT FRAUDULENT, DECEPTIVE AND UNLAWFUL ACTS BY SUCH PARTICIPANTS.

S 677-D. PENALTIES. ANY MULTILEVEL DISTRIBUTION COMPANY WHICH KNOWINGLY VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, SHALL BE SUBJECT TO A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION FOR A FIRST OFFENSE; AND A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS FOR EACH SUCH VIOLATION FOR A SECOND OFFENSE WITHIN A PERIOD OF ONE YEAR; AND A FINE OF NOT LESS THAN FIVE THOUSAND DOLLARS NOR MORE THAN TEN THOUSAND DOLLARS FOR EACH SUCH VIOLATION FOR A THIRD OR SUBSEQUENT OFFENSE WITHIN A PERIOD OF ONE YEAR.

S 677-E. RULE AND REGULATIONS. THE ATTORNEY GENERAL IS AUTHORIZED AND DIRECTED TO PROMULGATE ANY SUCH RULES AND REGULATIONS AS SHALL BE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

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.