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I N A S S E M B L Y

June 14, 2016

Introduced by COMMITTEE ON RULES -- (at request of 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new section  
2 396-a-1 to read as follows:

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

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

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

13 (C) "MULTILEVEL DISTRIBUTION COMPANY" SHALL MEAN ANY PERSON, FIRM,  
14 PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR OTHER BUSINESS  
15 ENTITY WHICH SELLS, DISTRIBUTES, OR SUPPLIES FOR VALUABLE CONSIDERATION  
16 GOODS OR SERVICES THROUGH INDEPENDENT AGENTS, CONTRACTORS OR DISTRIBU-  
17 TORS AT DIFFERENT LEVELS:

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

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

26 (D) "PARTICIPANT" MEANS AN INDEPENDENT AGENT, CONTRACTOR, OR DISTRIBU-  
27 TOR OF A MULTILEVEL DISTRIBUTION COMPANY.

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

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1 2. (A) NO MULTILEVEL DISTRIBUTION COMPANY SHALL:

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

6 (II) ENGAGE OR OTHERWISE PROMOTE ANY INVENTORY LOADING BUSINESS PRAC-  
7 TICES OR ACTIVITIES;

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

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

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

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

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

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

24 A. BEEN ENGAGED IN MULTILEVEL DISTRIBUTION BUSINESS; AND

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

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

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

33 SUCH DISCLOSURE DOCUMENT SHALL BE SIGNED AND DATED BY BOTH THE PARTIC-  
34 IPANT AND A REPRESENTATIVE OF THE MULTILEVEL DISTRIBUTION COMPANY, IN  
35 CHARGE OF THE EXECUTION OF THE CONTRACT.

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

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

49 (A) PARTICIPANT'S CONTRACT;

50 (B) DISCLOSURE DOCUMENT;

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

53 (D) BUSINESS HANDBOOK, COMPENSATION PLAN DOCUMENTS, AND/OR MATERIALS  
54 PERTAINING TO BUSINESS CONDUCT REQUIREMENTS, BUSINESS RULES FOR PARTIC-  
55 IPANTS.

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

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

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

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

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

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

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

52 (I) AN ANTI-INVENTORY LOADING BUSINESS POLICY;

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

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

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

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

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

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

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

12 (IV) PROOF OF A PRODUCT REPURCHASING POLICY.

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