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I N S E N A T E

March 11, 2016

Introduced by Sen. KLEIN -- read twice and ordered printed, and when
printed to be committed to the Committee on Consumer 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 article
2 32-A to read as follows:

3 ARTICLE 32-A
4 MULTILEVEL DISTRIBUTION
5 COMPANIES

6 SECTION 676. DEFINITIONS.

7 677. DISCLOSURE REQUIREMENTS.

8 677-A. CONTRACT REQUIREMENTS.

9 677-B. RECRUITMENT AND SALES MATERIALS.

10 677-C. SUPERVISION.

11 677-D. PENALTIES.

12 677-E. RULES AND REGULATIONS.

13 S 676. DEFINITIONS. AS USED IN THIS ARTICLE:

14 1. "DEPARTMENT" MEANS THE DEPARTMENT OF LAW.

15 2. "MULTILEVEL DISTRIBUTION COMPANY" MEANS ANY PERSON, FIRM, PARTNER-
16 SHIP, LIMITED LIABILITY COMPANY, CORPORATION OR OTHER BUSINESS ENTITY
17 WHICH SELLS, DISTRIBUTES OR SUPPLIES FOR VALUABLE CONSIDERATION GOODS OR
18 SERVICES THROUGH INDEPENDENT AGENTS, CONTRACTORS OR DISTRIBUTORS AT
19 DIFFERENT LEVELS:

20 (A) WHEREBY SUCH INDEPENDENT AGENTS, CONTRACTORS AND DISTRIBUTORS MAY
21 RECRUIT PROSPECTIVE INDEPENDENT AGENTS, CONTRACTORS AND DISTRIBUTORS;
22 AND

23 (B) WHEREIN COMMISSIONS, BONUSES, REFUNDS, DISCOUNTS, DIVIDENDS OR
24 OTHER CONSIDERATIONS ARE OR MAY BE PAID TO SUCH INDEPENDENT AGENTS,
25 CONTRACTORS AND DISTRIBUTORS FOR THE SALE OF SUCH GOODS AND SERVICES
26 AND/OR FOR THE RECRUITMENT, ACTIONS OR PERFORMANCE OF OTHER INDEPENDENT
27 AGENTS, CONTRACTORS AND DISTRIBUTORS.

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

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

3 S 677. DISCLOSURE REQUIREMENTS. 1. EVERY MULTILEVEL DISTRIBUTION
4 COMPANY SHALL, ON OR BEFORE MARCH FIRST OF EACH YEAR, FILE WITH THE
5 DEPARTMENT A FINANCIAL DISCLOSURE STATEMENT, WRITTEN IN PLAIN AND UNDER-
6 STANDABLE ENGLISH AND SPANISH, WHICH SHALL INCLUDE THE FOLLOWING INFOR-
7 MATION FOR THE PRECEDING CALENDAR YEARS:

8 (A) THE NAME OF THE MULTILEVEL DISTRIBUTION COMPANY, THE NAME UNDER
9 WHICH SUCH COMPANY IS DOING OR INTENDS TO DO BUSINESS, AND THE NAME OF
10 ANY PARENT OR AFFILIATED COMPANY THAT WILL ENGAGE IN BUSINESS TRANS-
11 ACTIONS WITH PARTICIPANTS;

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

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

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

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

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

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

37 SUCH STATEMENT SHALL SET FORTH THE COURT, DATE OF CONVICTION OR JUDG-
38 MENT, ANY PENALTY IMPOSED OR DAMAGES ASSESSED, OR THE DATE, NATURE AND
39 ISSUER OF SUCH ORDER;

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

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

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

44 (G) THE PERCENT OF SALES IN THE STATE GENERATED BY SALES TO PARTIC-
45 IPANTS OF SUCH COMPANY;

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

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

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

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

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

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

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

17 S 677-C. SUPERVISION. EACH MULTILEVEL DISTRIBUTION COMPANY SHALL
18 PROVIDE AND ENGAGE IN THE DIRECT SUPERVISION OF ITS PARTICIPANTS TO
19 ENSURE COMPLIANCE WITH THE PROVISIONS OF THE ARTICLE, AND TO PREVENT
20 FRAUDULENT, DECEPTIVE AND UNLAWFUL ACTS BY SUCH PARTICIPANTS.

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

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

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