

SENATE BILL NO. 330

INTRODUCED BY D. MAHLUM, CHRISTIAENS, HALLIGAN, JUNEAU, MATTHEWS

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS RELATED TO MULTILEVEL DISTRIBUTION COMPANIES AND PYRAMID PROMOTIONAL SCHEMES; REMOVING THE REQUIREMENT THAT A MULTILEVEL DISTRIBUTION COMPANY FILE CONSENT TO SERVICE OF PROCESS ON AN ANNUAL BASIS; PROVIDING THAT THE SECURITIES COMMISSIONER MAY REQUEST ADDITIONAL INFORMATION FROM MULTILEVEL DISTRIBUTION COMPANIES; PROHIBITING A MULTILEVEL DISTRIBUTION COMPANY FROM REPRESENTING ITSELF AS LICENSED, REGISTERED, SANCTIONED, APPROVED, OR ENDORSED BY VIRTUE OF COMPLYING WITH STATE LAW; PROVIDING FOR A PENALTY; AND AMENDING SECTIONS 30-10-324 AND 30-10-326, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-324, MCA, is amended to read:

"30-10-324. Definitions. As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.



1 (3) (a) "Multilevel distribution company" means a person that:

2 (i) sells, distributes, or supplies goods or services through independent agents, contractors, or
3 distributors at different levels of distribution;

4 (ii) may recruit other participants in the company; and

5 (iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds,
6 dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the
7 recruitment of or the performance or actions of other participants.

8 (b) The term does not include an insurance producer, real estate broker, or salesperson or an
9 investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in
10 30-10-103, operating in compliance with this chapter.

11 (4) "Participant" means a person involved in a sales plan or operation.

12 (5) "Person" means an individual, corporation, partnership, limited liability company, or other
13 business entity.

14 (6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives
15 consideration for the opportunity to receive compensation derived primarily from obtaining the participation
16 of other persons in the sales plan or operation rather than from the sale of goods or services by the
17 participant or the other persons induced to participate in the sales plan or operation by the participant.

18 (b) A pyramid promotional scheme does not include a sales plan or operation that:

19 (i) ~~does not compensate a participant solely for obtaining the participation of other persons in the~~
20 ~~sales plan or operation;~~

21 ~~—(ii)~~ subject to the provisions of subsection (6)(b)(~~vi~~)(v), provides compensation to a participant
22 based primarily upon the sale of goods or services by the participant, including goods or services used or
23 consumed by the participant, and not primarily for obtaining the participation of other persons in the sales
24 plan or operation and that provides compensation to the participant based upon the sale of goods or
25 services by persons whose participation in the sales plan or operation has been obtained by the participant;

26 ~~(iii)~~(ii) does not require a participant to purchase goods or services in an amount that unreasonably
27 exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

28 ~~(iv)~~(iii) is authorized to use a federally registered trademark or servicemark that identifies the
29 company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

30 ~~(v)~~(iv) (A) provides each person joining the sales plan or operation with a written agreement

1 containing or a written statement describing the material terms of participating in the sales plan or
2 operation;

3 (B) allows a person at least 15 days to cancel the person's participation in the sales plan or
4 operation plan; and

5 (C) provides that if the person cancels participation within the time provided and returns any
6 required items, the person is entitled to a refund of any consideration given to participate in the sales plan
7 or operation; and

8 ~~(vi)~~(v) (A) provides for, upon the request of a participant deciding to terminate participation in the
9 sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any
10 currently marketable goods or services sold to the participant within 12 months of the request that have
11 not been resold or consumed by the participant; and

12 (B) if disclosed to the participant at the time of purchase, provides that goods or services are not
13 considered currently marketable if the goods have been consumed or the services rendered or if the goods
14 or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional
15 materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)~~(vi)~~(v) if they are
16 a required purchase for the participant or if the participant has received or may receive a financial benefit
17 from their purchase."

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19 **Section 2.** Section 30-10-326, MCA, is amended to read:

20 **"30-10-326. Notice of activity -- consent to service.** (1) A multilevel distribution company with
21 a participant that is a resident of this state shall file ~~annually~~ with the securities commissioner on a form
22 prescribed by the commissioner:

23 (a) an annual notice of the company's operation in this state; and

24 (b) an irrevocable consent designating the commissioner as its agent for service of process for any
25 alleged violation of 30-10-325.

26 (2) Compliance with this section may not by itself subject a company to the provisions of any
27 other statute of this state or to any taxes, licenses, or fees.

28 ~~(2)~~(3) (a) The commissioner may require a multilevel distribution company to disclose ~~only~~ the
29 following substantive information:

30 ~~(a)~~(i) the names, ~~home and~~ HOME OR business addresses, social security numbers or birth dates AND

1 BIRTH DATES, and titles of the multilevel distribution company's officers, directors, and trustees;
2 ~~(b)~~(ii) the corporate name; the headquarters street, mailing, and e-mail addresses, as well as
3 telephone and telefax numbers; and the state of domicile and state of incorporation of the multilevel
4 distribution company; and
5 ~~(c)~~(iii) a detailed description of the levels of distribution in the multilevel distribution company, the
6 manner of compensating participants, and the compensation structure of the marketing plan.

7 (b) The commissioner may not release to the public the social security numbers of officers,
8 directors, or trustees of a multilevel distribution company.

9 ~~(3)~~(4) This section does not preclude the commissioner from obtaining additional information
10 required of participants or multilevel distribution companies during the course of an investigation or
11 proceeding initiated under this chapter.

12 (5) Compliance with this chapter does not confer upon a multilevel distribution company any
13 license or registration or signify that the state has sanctioned, approved, or endorsed a multilevel
14 distribution company or its sales plan or operation.

15 (6) A multilevel distribution company or any individual or entity affiliated with a multilevel
16 distribution company may not represent that the multilevel distribution company, individual, or entity is
17 licensed, registered, sanctioned, approved, or endorsed in this state by virtue of compliance with
18 30-10-325 and this section.

19 (7) A multilevel distribution company or any individual or entity affiliated with a multilevel
20 distribution company that violates subsection (6) is subject to the fines, injunctions, and other remedies
21 specified in 30-10-305."

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