

HOUSE BILL 2843

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 39
and Title 47, relative to multilevel investments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-104(b), is replaced by deleting subdivision (20) in its entirety and by substituting instead the following language:

(20) Any violation of the Tennessee Multilevel and Pyramid Distributorship Act.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding Sections 3 through 18 of this bill as a new part thereto.

SECTION 3. This part shall be known and may be cited as the "Tennessee Multilevel and Pyramid Distributorship Act."

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Customer" means a consumer of products or services of a company that does not occupy a position in the company's line of sponsorship and does not possess the opportunity to earn commissions or other consideration with the company through any later action or conduct;

(2) "Distributor" means any independent contracted person, agent, employee or participant that occupies a position in a multilevel distribution company's line of sponsorship;

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, other tangible document or recording, reproductions of information stored magnetically, file layout, code conversion tables, computer programs to convert file to readable printout, wherever situate;

(4) "Endless chain" means any scheme or plan for the disposal or distribution of property or services whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one (1) or more additional persons into participation in the same scheme or plan or for the chance to receive compensation when the person introduced by the participant introduces a new participant. Any multilevel distribution company that requires its distributors to purchase a requisite amount of product each month as a condition precedent for financial gains, without any requirement for customer sales, shall be presumed to be operating an endless chain;

(5) "Line of sponsorship" means an organizational hierarchy of distributors wherein distributors are organized in unique positions within the organization determined by their sponsor. The line of sponsorship includes, but is not limited to, the structure and enrollment activity of all distributor organizations;

(6) "Multilevel distribution company" means any person, firm, corporation or other business entity that sells, distributes or supplies goods or services through independent agents who occupy different levels in a compensation plan that allows such agents to recruit additional participants, and whereby commissions, cross-commissions, bonuses, refunds, discounts, dividends or other forms of consideration are paid as a result of the sale of such goods or services by the additional participants;

(7) "Multilevel distributor agreement" means any express or implied agreement in which a person agrees to terms with the multilevel distribution company in exchange for the right to occupy a position in the company's line of sponsorship;

(8) "Pyramid scheme" means a business enterprise characterized by the payment of money by participants in return for which they receive the right to sell products and recruit participants and the right to receive rewards that are primarily driven

by investments and product purchases from the participants instead of the sale of products to customers;

(9) "Resalable condition" means products that will pass without objection in the trade, or are still fit for the ordinary purposes for which the products are used; and

(10) "Sales aids" means tools provided by the multilevel distribution company designed to assist distributors with the functions of selling and recruiting. Sales aids include, but are not limited to, books, magazines, audio tapes, DVDs, CDs, personalized websites, and other electronic or Internet based promotional, motivational, educational, or training material.

SECTION 5. It is an offense for any person to knowingly contrive, prepare, set up, propose or operate an endless chain or pyramid scheme.

SECTION 6. Every multilevel distribution company shall provide in its multilevel distributor agreement that the agreement may be cancelled for any reason, at any time by a participant upon the participant providing written notice to the company of the participant's election to cancel. If the participant purchased products while the multilevel distributor agreement was in effect, all unencumbered products in a resalable condition then in the possession of the participant shall be repurchased by the multilevel distribution company if the participant requests that any such products be repurchased. The repurchase shall be at a price of not less than ninety percent (90%) of the original net cost to the participant. Every multilevel distribution company shall provide in its multilevel distributor agreement a requirement for all distributors to make a requisite amount of customer sales as a condition precedent to earning commissions from their recruits' product volume. Every multilevel distribution company shall enforce the requisite sales rule and provide proper documentation evidencing such enforcement upon the request of the division of consumer affairs of the department of commerce and insurance.

SECTION 7.

(a) No multilevel distribution company, nor any agent of a multilevel distribution company, shall require any participant in its marketing program to purchase products or services, or pay any consideration, in order to participate in the marketing program, unless the multilevel distribution company requires its distributors to make customer sales in an amount that is proportionate to the requisite amount required by this part.

(b) Any multilevel distribution company shall include terms in its multilevel distributor agreement whereby the company agrees to do the following, if the participant elects to cancel the agreement:

(1) To repurchase all or part of any products which are unencumbered and in a resalable condition at a price of not less than ninety percent (90%) of the original net cost to the participant, taking into account any sales made by or through such participant prior to notification to the company of election to cancel;

(2) To repay not less than ninety percent (90%) of the original net cost of any services purchased by the participants; or

(3) To refund not less than ninety percent (90%) of any other consideration paid by the participant in order to participate in the marketing program.

SECTION 8.

(a) No multilevel distribution company or participant in its marketing program shall operate or, directly or indirectly, participate in the operation of any multilevel marketing program wherein the financial gains to the participants are primarily dependent upon either:

(1) The consumption of downline distributors and where sales to customers are not required as a condition precedent to realization of the financial gains; or

(2) The continued, successive recruitment of other participants in the same plan or scheme.

(b) No multilevel distribution company or participant in its marketing program shall offer to pay, pay or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration to any participant in a multilevel marketing program:

(1) Solely for the solicitation or recruitment of other participants therein;

(2) In connection with the sale of any product or service unless the participant performs a bona fide supervisory, distributive, selling or soliciting function in the sale or delivery of the product or services to the ultimate consumer;

(3) If payment thereof is or would be dependent on the element of chance dominating over the skill or judgment of the participant;

(4) If no amount of judgment or skill exercised by the participant has any appreciable effect upon any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration which the participant may receive; or

(5) If the participant is without that degree of control over the operation of the plan as to enable him substantially to affect the amount of finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration which he may receive or be entitled to receive.

(c) No multilevel distribution company or participant in its marketing program shall offer to pay, pay or authorize the payment of commissions on the purchase and sales of sales aids. All commissions must be paid on the sales of goods and services with legitimate demand from customers.

SECTION 9. When prospective income is represented, either implicitly or explicitly, multilevel distribution companies are required to provide prospective distributors with an income disclosure statement that discloses the average income achieved by distributors, the percentage of the total distributors that achieve each rank in the multilevel distribution company, and the percentage of distributors that fail to renew the business after the first year. Multilevel distribution companies shall not represent or imply that it is relatively easy to secure or retain additional distributors or sales personnel or that all or substantially all participants will succeed.

SECTION 10. Any multilevel distribution company that allows residents of this state to participate in its marketing program shall so notify the attorney general and reporter in writing and shall designate the secretary of state as its agent for service of process for any alleged violation of this part. The written notice that is provided to the attorney general and reporter shall further set forth the intention of the multilevel distribution company to abide by this part. Any multilevel distribution company that fails to comply with this section is deemed to have thereby appointed the secretary of state its agent for service of process for any alleged violation of this part.

SECTION 11.

(a) If the attorney general and reporter has reason to believe that any person has engaged in an activity that violates this part, the attorney general shall cause an investigation to be made to determine if, in fact, a violation has occurred and, to the extent necessary to conduct such investigation, the attorney general is authorized to administer oaths or affirmations, and, upon the attorney general's own motion or upon

the request of any party, the attorney general is authorized to subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(b) If the person's records are located outside this state, the person shall have the option to either make them available to the attorney general at a convenient location within this state or pay the reasonable and necessary expenses for the attorney general or the attorney general's representative to examine the records at the place where the records are maintained. The attorney general may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on the attorney general's behalf.

(c) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the attorney may petition the circuit court for an order compelling compliance.

SECTION 12. Service of any type of process authorized by this act shall be personal within this state, but if such personal service cannot be obtained, substituted service may be made by service on the secretary of state, by personal service without the state, by registered or certified mail to the last known place of business, residence or abode of such persons for whom it is intended, as to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil action has been filed or by such service as a circuit court may direct in lieu of personal service within this state.

SECTION 13.

(a) Any person who is aggrieved by a violation of this part may bring an action for damages in the circuit court of the county in which the alleged violator resides or has such person's place of business or in the circuit court of Davidson County.

(b) No action shall be maintained to enforce any liability created under this part unless brought before the expiration of three (3) years after the act or transaction constituting the violation or the expiration of one (1) year after the discovery by the plaintiff of the fact constituting the violation.

SECTION 14.

(a) The attorney general and reporter may, whenever it appears to the attorney general that any person has engaged or is about to engage in any act or practice constituting a violation of this part or any rule or regulation promulgated under this part, bring an action in the name of the people of the state in a circuit court to enjoin such acts or practices, or to enforce compliance with this part or any rule or order under this part. Upon a proper showing, a permanent or preliminary injunction or restraining order shall be granted. The court shall not require the attorney general to post a bond. The issuance of relief pursuant to this section does not limit the civil or criminal liability of the person whose conduct is enjoined or otherwise restrained by the court.

(b) Any knowing violation of the terms of an injunction issued under this part shall be punishable by a civil penalty of not more than five thousand dollars (\$5,000), recoverable by the state for each violation, in addition to any other appropriate sanction.

(c) The court shall retain jurisdiction in any case where an injunction is entered, or a consent agreement is reached, or an assurance of voluntary compliance is agreed upon.

SECTION 15. In the enforcement of this part, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice alleged to be violative of

this part from any person who has engaged in, is engaging in or is about to engage in such act or practice.

SECTION 16.

(a) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any monies or property, real or personal, which the court finds to have been acquired by means of any act or practice committed in violation of this part. Such additional relief may include the appointment of a receiver whenever it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal or dispose of his property to the damage of persons to whom restoration would be made under this part.

(b) Any receiver who is appointed pursuant to this part shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, monies and effects, land and tenements, books, records, documents, papers, bills, notes and property of every description derived in violation of this part by any multilevel distribution company or any distributor in any multilevel distribution marketing plan sponsored by such company, including property which has been commingled with company or distributor property, if it cannot be identified in kind because of such commingling, and to sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

SECTION 17. Any person who knowingly violates this part, or any rule or regulation promulgated under this part, commits a Class E felony. Notwithstanding any other law to the contrary, any person who is convicted of a violation of this part shall be fined not less than ten thousand dollars (\$10,000), or imprisoned for not less than one (1) year, or both fined and imprisoned.

SECTION 18. Nothing in this part shall limit or prohibit any cause of action arising under the laws of this state or under the common law, which may be brought by any private person.

SECTION 19. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, that part shall remain in effect in all valid applications that are severable from the invalid applications.

SECTION 20. This act shall take effect July 1, 2010, the public welfare requiring it.