

O.C.G.A. Title 10, Ch. 1, Art. 15, Pt. 3

Current through the 2023 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 10 Commerce and Trade (Chs. 1 — 15) > CHAPTER 1 Selling and Other Trade Practices (Arts. 1 — 36) > Article 15 Deceptive or Unfair Practices (Pts. 1 — 9) > PART 3 Multilevel Distribution Companies; Sale of Business Opportunities (§§ 10-1-410 — 10-1-417)

PART 3 Multilevel Distribution Companies; Sale of Business Opportunities

Official Code of Georgia Annotated

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10-1-410. Definitions.

As used in this part, the term:

(1) “Agreement” means any agreement relating to a business opportunity or multilevel distribution company, including, but not limited to, the contract.

(2)

(A) “Business opportunity” means the sale or lease of, or offer to sell or lease, any products, equipment, supplies, or services for the purpose of enabling the purchaser to start a business and in which the seller or company represents:

(i) That the seller or company will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, or currency operated amusement machines or devices. For purposes of this subparagraph, “assist the purchaser in finding locations” includes but is not limited to supplying the purchaser with names of locator companies, contracting with the purchaser to provide assistance or supply names, or collecting a fee on behalf of or for a locator company;

(ii) That the seller or company will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the supplies, services, or chattels sold to the purchaser; or

(iii) That the company, in conjunction with any agreement which requires a total initial payment of an amount exceeding \$500.00, will provide a sales program or marketing program; provided, however, that this subparagraph shall not apply to the sale of a sales program or a marketing program made in conjunction with the licensing of a registered trademark or service mark.

(B) The term “business opportunity” does not include:

(i) The sale of an ongoing business when the owner of that business sells and intends to sell only that one business opportunity;

(ii) Any relationship created solely by or involving:

(I) The relationship between an employer and an employee or among general business partners; or

(II) Membership in a bona fide cooperative association or transactions between bona fide cooperative associations and their members. As used in this subdivision, the term “cooperative association” means either (1) an association of producers of agricultural products organized pursuant to Article 3 of Chapter 10 of Title 2 or statutes similar thereto enacted by other states, or (2) an organization operated on a cooperative basis by and for independent retailers which wholesales goods or furnishes services primarily to its member-retailers;

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(iii) Any agribusiness corporation;

(iv) Any insurance agency;

(v) Any offer or sale of a business opportunity where the seller has a net worth on a consolidated basis of not less than \$15 million as determined on the basis of the seller's most recent audited financial statement; and where the seller satisfies all of the following conditions or is a wholly owned subsidiary of a company that satisfies all of the following conditions:

(I) Seller is a publicly traded company;

(II) Seller has a class of securities registered pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934 and has timely filed all reports required under Sections 13 and 14 of the Securities Exchange Act of 1934 for a period of 36 months;

(III) Seller has not failed to pay any dividend or defaulted on any loan payment in the last five fiscal years;

(IV) Seller has an annual trading volume of stock of 3,000,000 shares or more; and

(V) Seller has an aggregate market value of the voting stock held by nonaffiliates of \$100 million or more; or

(vi) A landlord, property manager, or owner who licenses or leases pushcarts or kiosks within or adjacent to a retail center containing divided retail floor space and common areas which will be used by any such licensee or lessee to sell goods or services not supplied by the landlord, property manager, or owner or any entity affiliated or associated with the landlord, property manager, or owner. For the purposes of this division, the term "pushcart" means a mobile retail unit from which goods or services are sold in the common area of a retail center, and the term "kiosk" means a temporary retail unit from which goods or services are sold in the common area of a retail center.

(3) "Business opportunity seller or company" means any corporation, whether domestic or foreign, or any business, whether a partnership, limited partnership, sole proprietorship, joint venture, association, trust, unincorporated organization, or other entity, which shall solicit, advertise, offer, or contract for any business opportunity or cause to be solicited, advertised, offered, or contracted for any business opportunity in this state, or which has a principal place of business in this state, even if solicitations are of nonresidents of Georgia.

(4) "Company" means any multilevel distribution company or business opportunity company or seller.

(5) "Initial payment" means the total amount which a purchaser or participant is obligated or agrees to pay under the terms of an agreement before or at the time of delivery of the goods or services to the purchaser or participant and which a purchaser or participant is obligated to pay within six months of the date that the purchaser or participant commences operation of the business. If the agreement states a total price and provides that the total price is to be paid partially as an initial cash payment and the remainder in specific monthly payments, the term means the total price. The term does not include any amount required by the seller to be deposited as security for the performance by a purchaser or participant of the operation of the business or that secures an extension of credit. If purchasers or participants may enter a multilevel distribution company or business opportunity at different levels, "initial payment" means the total sum the purchaser or participant is obligated to pay to enter at the level chosen by the purchaser or participant.

(6) "Multilevel distribution company" means any person, firm, corporation, or other business entity which sells, distributes, or supplies for a valuable consideration goods or services through independent agents, contractors, or distributors at different levels wherein such participants may recruit other participants and wherein commissions, cross-commissions, bonuses, refunds, discounts, dividends, or other considerations in the program are or may be paid as a result of the sale of such goods or services or the recruitment, actions, or performances of additional participants. The term shall not include

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licensed insurance agents, insurance agencies, licensed real estate brokers, licensed real estate agents, licensed real estate agencies, licensed securities dealers, licensed limited securities dealers, licensed securities salesmen, or licensed limited securities salesmen. Any multilevel distribution company which operates in any of the forms precluded by paragraphs (1) through (4) of subsection (a) of Code Section 10-1-411 shall be considered an unlawful pyramid club under Code Section 16-12-38.

(7) "Participant" means anyone who participates at any level in a multilevel distribution company.

(8) "Person" means any individual, corporation, partnership, joint venture, association, trust, unincorporated organization, or other entity and shall include any other person that has a substantive interest in or effectively controls such person as well as the individual officers, directors, general partners, trustees, or other individuals in control of the activities of such person.

(9) "Purchaser" means any person who is solicited to become obligated, or does become obligated, under any agreement.

(10) "Seller" means any multilevel distribution company or it means any person who offers to sell to individuals any business opportunity, either directly or through any agent.

History

Ga. L. 1980, p. 1233, § 1; Ga. L. 1984, p. 522, § 1; Ga. L. 1985, p. 149, § 10; Ga. L. 1986, p. 10, § 10; Ga. L. 1988, p. 1868, § 1; Ga. L. 1989, p. 218, § 1; Ga. L. 1992, p. 2370, § 1; Ga. L. 1995, p. 757, § 1.

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10-1-411. Prohibited activities by multilevel distribution company or participant in marketing program; disclosure statement.

(a) No multilevel distribution company or participant in its marketing program shall:

- (1) 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 the continued, successive recruitment of other participants and where sales to nonparticipants are not required as a condition precedent to realization of such financial gains;
- (2) 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 solely for the solicitation or recruitment of other participants therein;
- (3) 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 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 such product or services to the ultimate consumer;
- (4) 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:
 - (A) Where payment thereof is or would be dependent on the element of chance dominating over the skill or judgment of such participant;
 - (B) Where 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
 - (C) Where the participant is without that degree of control over the operation of such 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; or
- (5) Represent, directly or by implication, that participants in a multilevel marketing program will earn or receive any stated gross or net amount or represent in any manner the past earnings of participants except as may be permitted under this part; provided, however, that a written or verbal description of the manner in which the marketing plan operates shall not, standing alone, constitute a representation of earnings, past or future. Multilevel distribution companies shall not represent, directly or by implication, that it is relatively easy to secure or retain additional distributors or sales personnel or that most participants will succeed.

(b) At least 48 hours prior to the time the purchaser signs a business opportunity contract or at least 48 hours prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide

10-1-411. Prohibited activities by multilevel distribution company or participant in marketing program; disclosure statement.

the prospective purchaser a written document, the cover sheet of which is entitled in at least ten-point boldface capital letters: "DISCLOSURES REQUIRED BY GEORGIA LAW." Under this title shall appear the statement in at least ten-point type that:

"The State of Georgia has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement."

Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall contain the following information:

- (1) The name of the company; whether the company is doing business as a proprietorship, partnership, or corporation; the names under which the company has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or which takes responsibility for statements made by the seller;
- (2) The names, addresses, and titles of the company's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with responsibility for the company's business activities relating to the sale of business opportunities;
- (3) The length of time the company has:
 - (A) Sold business opportunities; and
 - (B) Sold business opportunities involving the products, equipment, supplies, or services currently offered to the purchaser;
- (4) A full and detailed description of the actual services that the seller or company undertakes to perform for the purchaser;
- (5) A copy of a current (not older than 13 months) financial statement of the company, updated to reflect any material changes in the company's financial condition;
- (6) If training of any type is promised by the seller or company, a complete description of the training and the length of the training;
- (7) If the seller or company promises services to be performed in connection with the placement of equipment, product, or supplies at various locations, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of those locations where the purchaser's equipment, product, or supplies will be placed;
- (8) If the company is required to secure a bond or establish a trust deposit pursuant to Code Section 10-1-412, either of the following statements:
 - (A) "As required by Georgia law, the company has secured a bond issued by _____ ,
a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should check with the surety company to determine the bond's current status."; or
 - (B) "As required by Georgia law, the company has established a trust account with _____ . Before signing
(name and address of bank or savings institution)
a contract to purchase this business opportunity, you should check with the bank or savings institution to determine the current status of the trust account.";
- (9) The following statement:

10-1-411. Prohibited activities by multilevel distribution company or participant in marketing program; disclosure statement.

“If the company fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the company in writing and demand that the contract be canceled.”;

(10) If the seller or company makes any statement concerning sales or earnings or range of sales or earnings that may be made through this business opportunity, the following disclosures:

(A) The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who, to the company’s knowledge, have actually received earnings in the amount or range specified within three years prior to the date of the disclosure statement; and

(B) The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement;

(11) The following statement:

“The company selling a business opportunity or the seller shall collect no more than 15 percent of the purchase price. The balance of the purchase price shall be paid into an escrow account, established with a bank or an attorney, which is agreed upon by both parties. The balance in escrow shall be paid to the company 60 days after the date the purchaser commences operation of the business or upon complete compliance with the terms of the contract, whichever happens first.”; and

(12) The seller’s principal business address and the name and address of its agent in this state authorized to receive service of process.

(c) In lieu of the disclosures required by paragraphs (1) through (7), (9), and (10) of subsection (b) of this Code section, a seller may utilize the documents prescribed by the Federal Trade Commission, pursuant to Title 16, Chapter 1, Subchapter D, Trade Regulation Rules, Part 436 — Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, provided that the seller shall provide the prospective purchaser with a separate written cover sheet which is entitled in at least ten-point boldface capital letters: “DISCLOSURES REQUIRED BY GEORGIA LAW.” Under this title shall appear the statement in at least ten-point type that:

“The State of Georgia has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.”

Nothing except the title and required statement shall appear on the cover sheet.

History

Ga. L. 1980, p. 1233, § 2; Ga. L. 1982, p. 3, § 10; Ga. L. 1984, p. 522, § 2; Ga. L. 1988, p. 1868, § 1.

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O.C.G.A. § 10-1-412

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10-1-412. When bond or trust account required; escrow account required.

(a) Any business opportunity seller or company which represents, in conjunction with any agreement which requires a total initial payment of an amount exceeding \$500.00, that the seller or company will refund all or part of the price paid for the business opportunity or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller or company if the purchaser is dissatisfied with the business opportunity and any multilevel distribution company must either have obtained a surety bond issued by a surety company authorized to do business in this state or have established a trust account with a licensed and insured bank or savings institution located in this state. For purposes of this subsection, deposits shall not be considered part of the price paid for the business opportunity. The amount of the bond or trust account shall be an amount not less than \$75,000.00. The bond or trust account shall be in favor of the state for the benefit of any person who is damaged by any violation of this part or by the seller's or company's breach of the contract or agreement or of any obligation arising therefrom. Such person may bring an action against the bond or trust account to recover damages suffered; provided, however, that the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account. A multilevel distribution company which requires an initial payment of less than \$500.00 from each participant shall be exempt from the requirements of this Code section.

(b) In any sale of a business opportunity, the seller shall collect no more than 15 percent of the total purchase price, with the balance to be placed in an independent escrow account agreed upon by both parties. The balance in the escrow account shall be paid to the seller 60 days after the date the purchaser commences operation of the business or upon complete compliance with the terms of the contract, whichever happens first.

History

Ga. L. 1980, p. 1233, § 3; Ga. L. 1984, p. 522, § 3; Ga. L. 1988, p. 1868, § 1; Ga. L. 1992, p. 2370, § 2.

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10-1-413. Required disclosures; updating; form of notice.

(a) Every multilevel distribution company intending to have participants in this state, with an agreement made in this state, or with its principal place of business in this state shall have readily available to any potential participants, prior to obtaining any participants in this state or elsewhere, a copy of the contract and of any material incorporated by reference into the contract to be used with participants. In every instance in which a multilevel distribution company solicits any initial payment in excess of \$500.00, the multilevel distribution company shall also have readily available to the particular potential participant or participants, prior to signing the contract, a disclosure statement containing the following:

- (1) The name and principal business address of the company; whether the company is doing business as a proprietorship, partnership, or corporation; the names under which the company has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with participants;
- (2) The names, addresses, and titles of the company's officers, directors, and trustees;
- (3) The length of time the company has:
 - (A) Been engaged in multilevel distribution; and
 - (B) Been engaged in multilevel distributions involving the types of products, equipment, supplies, or services currently offered to the purchaser; and
- (4) A detailed description of the levels of distribution in the multilevel program, the manner in which participants will be compensated, and the extent or amount of any compensation.

(b) Every seller shall update the disclosures required by subsection (b) of Code Section 10-1-411 and by subsection (a) of Code Section 10-1-413 as often as any material change in the required information occurs, but not less than annually.

(c) Whenever a multilevel distribution company must provide the disclosure statement required by subsection (a) of this Code section, the multilevel distribution company, prior to obtaining any participant, shall provide that participant with an 8 ½ inch by 11 inch document in at least ten-point type, which reads as follows:

“NOTICE REQUIRED BY STATE

LAW REGARDING DISCLOSURES

State law requires that a multilevel distribution company shall make available certain disclosures regarding the company prior to obtaining participants. This is your official notice that you have a right to request to see these disclosures prior to entering into any agreement with a multilevel distribution company. This will be the only notice you receive regarding your rights to see these disclosures. If you waive these rights, you are giving up an important consumer protection that the State of Georgia has found you should be provided. If you wish to exercise these rights, please indicate below that you want to see the disclosures

10-1-413. Required disclosures; updating; form of notice.

before agreeing to be a participant, then do not agree to become a participant until the disclosures have been made available to you.

SIGN ONLY ONE OF THE FOLLOWING STATEMENTS:

I wish to see the disclosures required by law before I agree to become a participant.

Date: _____

I do not wish to see the disclosures required by law; I understand that I will not be seeing important information which might affect my decision to participate in this multilevel distribution company.

Date: _____ "

(d) Every multilevel distribution company shall maintain on file all of the statements as described in subsection (c) of this Code section for a period of two years from the date such statements are signed.

(e) Every seller shall include the following regarding each officer, director, principal, and owner in the disclosures required by subsection (b) of Code Section 10-1-411 and by subsection (a) of Code Section 10-1-413:

(1) Whether he or she has at any time during the previous seven fiscal years been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud, including violation of any franchise law, unfair or deceptive acts or practices law, business opportunity law, multilevel distributing law, or pyramid law; embezzlement; fraudulent conversion; misappropriation of property; or restraint of trade;

(2) Whether he or she has at any time during the previous seven fiscal years been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving fraud, including violation of any franchise law, unfair or deceptive acts or practices law, business opportunity law, multilevel distributing law, or pyramid law; embezzlement; fraudulent conversion; misappropriation of property; or restraint of trade;

(3) Whether he or she is currently subject to any state or federal agency or court injunctive or restrictive order or is a party to a proceeding currently pending in which such an order is sought relating to fraud, including violation of any franchise law, unfair or deceptive acts or practices law, business opportunity law, multilevel distributing law, or pyramid law; embezzlement; fraudulent conversion; misappropriation of property; or restraint of trade; and

(4) Whether he or she has at any time during the previous seven fiscal years filed in bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency or has been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized during or within one year after the period that such person held such position in such other person.

(f) The disclosures required under subsection (e) of this Code section shall include any of the following which are applicable:

(1) The identity and location of the court or agency;

(2) The date of conviction, judgment, or decision;

(3) The penalty imposed;

(4) The damages assessed;

(5) The terms of settlement or the terms of the order and the date, nature, and issuer of each such order or ruling; and

(6) The name and principal business address of any other person which filed, was adjudged, or was reorganized in bankruptcy.

10-1-413. Required disclosures; updating; form of notice.

History

Ga. L. 1980, p. 1233, § 4; Ga. L. 1984, p. 522, § 4; Ga. L. 1988, p. 1868, § 1; Ga. L. 1992, p. 2370, § 3.

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10-1-414. Prohibited acts by sellers.

Sellers shall not:

- (1) Represent that a business opportunity or multilevel program provides income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential, which data shall be furnished to the Attorney General or his or her representatives upon request;
- (2) Use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the business opportunity or multilevel distribution company; or
- (3) Make or authorize the making of any reference to its compliance with this part in any advertisement or other contract with purchasers or participants or in any manner represent, explicitly or implicitly, that the State of Georgia or any department, agency, officer, or employee has reviewed, approved, sanctioned, or endorsed a business opportunity or multilevel program.

History

Ga. L. 1980, p. 1233, § 5; Ga. L. 1988, p. 1868, § 1; Ga. L. 1992, p. 2370, § 4; Ga. L. 2015, p. 1088, § 3/SB 148.

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10-1-415. Contracts to be in writing; delivery of copy; required provisions; cancellation rights.

- (a) Every business opportunity or multilevel distribution contract shall be in writing, and a copy shall be given to the purchaser or participant at the time he or she signs the contract.
- (b) Every contract or any material incorporated therein by reference shall include the following:
 - (1) The terms and conditions of payment, including but not limited to compensation paid to a participant by the company and any payments to be made by the participant to the company within the first six months of the agreement;
 - (2) A full and detailed description of the acts or services that the seller undertakes to perform for the purchaser or participant, including a specific description of the product or service being marketed;
 - (3) The seller's principal business address. For purposes of this paragraph, a post office box shall not be considered a principal place of business; and
 - (4) The approximate delivery date of any products, equipment, supplies, or services that the seller is to deliver to the purchaser or participant.
- (c) In addition to the information required in subsection (b) of this Code section, every multilevel distribution contract, or an addendum thereto, shall contain the following:
 - (1) If training of any type is promised by the seller or company, a complete description of the training and the length of the training;
 - (2) If a bond is required under Code Section 10-1-412, the following statement, with all blanks properly filled:

“As required by Georgia law, the company has secured a bond or established a trust account for your protection. This bond or trust account can be identified as # _____ in the name of _____, provided by the following bonding company or trust company: _____, which is located at the following address: _____ in the City of _____, State of _____.”;
 - (3) A participant in a multilevel marketing plan has a right to cancel at any time, regardless of reason. If a participant will be under an obligation to make any payment after the agreement has been entered into, a statement in ten-point boldface type as follows must appear in the contract or an addendum thereto:

“A participant in this multilevel marketing plan has a right to cancel at any time, regardless of reason. Cancellation must be submitted in writing to the company at its principal business address.”; and
 - (4) A description of any cancellation rights.

10-1-415. Contracts to be in writing; delivery of copy; required provisions; cancellation rights.

(d) Cancellation rights pursuant to paragraph (4) of subsection (c) of this Code section must, at a minimum, provide the following:

(1) If the participant has purchased products or paid for administrative services while the contract of participation was in effect, the seller shall repurchase all unencumbered products, sales aids, literature, and promotional items which are in a reasonably resalable or reusable condition and which were acquired by the participant from the seller; such repurchase shall be at a price not less than 90 percent of the original net cost to the participant of the goods being returned. For purposes of this paragraph, "original net cost" means the amount actually paid by the participant for the goods, less any consideration received by the participant for purchase of the goods which is attributable to the specific goods now being returned. Goods shall be deemed "resalable or reusable" if the goods are in an unused, commercially resalable condition at the time the goods are returned to the seller. Goods which are no longer marketed by a company shall be deemed "resalable or reusable" if the goods are in an unused, commercially resalable condition and are returned to the seller within one year from the date the company discontinued marketing the goods; provided, however, that goods which are no longer marketed by a multilevel distribution company shall not be deemed "resalable or reusable" if the goods are sold to participants as nonreturnable, discontinued, or seasonal items and the nonreturnable, discontinued, or seasonal nature of the goods was clearly disclosed to the participant seeking to return the goods prior to the purchase of the goods by the participant. Notwithstanding anything to the contrary contained in this paragraph, a multilevel distribution company may not assert that any more than 15 percent of its total yearly sales per calendar year to participants in dollars are from nonreturnable, discontinued, or seasonal items;

(2) The repayment of all administrative fees or consideration paid for other services shall be at not less than 90 percent of the costs to the participant of such fees or services and shall reflect all other administrative services that have not, at the time of termination, been provided to the participant; and

(3) The participant may be held responsible for all shipping expenses incurred in returning sales aids or products to the company but only if such responsibility of a canceling participant is disclosed in the written description of the cancellation rights.

History

Ga. L. 1980, p. 1233, § 6; Ga. L. 1988, p. 1868, § 1; Ga. L. 1992, p. 2370, § 5.

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O.C.G.A. § 10-1-416

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Official Code of Georgia Annotated > TITLE 10 Commerce and Trade (Chs. 1 — 15) > CHAPTER 1 Selling and Other Trade Practices (Arts. 1 — 36) > Article 15 Deceptive or Unfair Practices (Pts. 1 — 9) > PART 3 Multilevel Distribution Companies; Sale of Business Opportunities (§§ 10-1-410 — 10-1-417)

10-1-416. Appointment of Secretary of State as agent for service of process.

(a) Each seller numbering among its participants or purchasers any resident of this state, which has agreements made in this state, or which has its principal place of business in this state, shall irrevocably appoint the Secretary of State of this state as its agent for service of process for any alleged violation of this part and shall pay a \$10.00 filing fee. Compliance with this Code section shall not in and of itself subject any seller to the provisions or consequences of any other statute of this state.

(b) Any seller which numbers among its participants or purchasers any resident of this state, which has agreements made in this state, or which has its principal place of business in this state, and which fails to comply with subsection (a) of this Code section shall be deemed to have thereby irrevocably appointed the Secretary of State as its agent for service of process for any alleged violation of this part.

(c) Service shall be made by delivering to and leaving with the Secretary of State duplicate copies of such process, notice, or demand, together with an affidavit giving the last known post office address of such seller; and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail or certified mail or statutory overnight delivery addressed to such seller at the address given in such affidavit.

History

Code 1981, § 10-1-416, enacted by Ga. L. 1988, p. 1868, § 1; Ga. L. 1992, p. 2370, § 6; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 989, § 1.

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10-1-417. Purchaser and participant remedies; violations as unfair or deceptive acts; penalty.

- (a) If a business opportunity seller or multilevel distribution company uses any untrue or misleading statements; or fails to comply with Code Section 10-1-411; or fails to deliver the equipment, supplies, or products necessary to begin substantial operation within 45 days of the delivery date stated in the contract; or if the business opportunity seller or multilevel distribution company does not comply with the requirements of Code Sections 10-1-410 through 10-1-416, then, within one year of the date of the contract, upon written notice to the seller, the purchaser or participant may void the contract and shall be entitled to receive from the seller all sums paid to the seller. Upon receipt of such sums, the purchaser or participant shall make available to the seller at the purchaser's or participant's address or at the places at which they are located at the time notice is given, all products, equipment, or supplies received by the purchaser or participant. However, the purchaser or participant shall not be entitled to unjust enrichment by exercising the remedies provided for in this subsection.
- (b) The violation of any provision of this part shall constitute an unfair or deceptive act or practice in the conduct of a consumer act or practice or consumer transactions under Part 2 of this article, the "Fair Business Practices Act of 1975," and shall authorize an affected participant or purchaser to seek the remedies provided for in Code Section 10-1-399 and in subsection (a) of Code Section 10-1-417.
- (c) Nothing contained in this part shall be construed to limit, modify, or repeal any provisions of Chapter 5 of this title, the "Georgia Uniform Securities Act of 2008," including, but not limited to, the definition of the term "security" as contained in paragraph (31) of Code Section 10-5-2.
- (d) Any person who fails to comply with this part shall be guilty of a misdemeanor of a high and aggravated nature. In addition thereto, if the violator is a corporation, each of its officers and directors may be subjected to a like penalty; and, if the violator is a sole proprietorship, the owner thereof may be subjected to a like penalty; and, if the violator is a partnership, each of the partners may be subjected to a like penalty, provided that no person shall be subjected to a like penalty if the person did not have actual knowledge of the acts violating this part.

History

Ga. L. 1980, p. 1233, § 7; Ga. L. 1985, p. 947, § 1; Code 1981, § 10-1-416; Code 1981, § 10-1-417, as redesignated by Ga. L. 1988, p. 1868, § 1; Ga. L. 1991, p. 94, § 10; Ga. L. 1992, p. 2370, § 7; Ga. L. 2008, p. 381, § 5/SB 358.

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