

AN ACT

To amend sections 1334.01, 1334.05, 1334.06, 1334.09, 1334.10, 1334.12, 1334.13, and 1334.15 of the Revised Code to make changes to Ohio's Business Opportunity Plan Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1334.01, 1334.05, 1334.06, 1334.09, 1334.10, 1334.12, 1334.13, and 1334.15 of the Revised Code be amended to read as follows:

Sec. 1334.01. As used in sections 1334.01 to 1334.15 of the Revised Code:

(A) "Seller" means a person who sells or leases a business opportunity plan.

(B) "Purchaser" means a person to whom a business opportunity plan is sold or leased.

(C) "Broker" means a person, other than a seller, who sells or leases, offers for sale or lease, or arranges for the sale or lease of a business opportunity plan for a commission, fee, or anything of value.

(D) "Business opportunity plan" means an agreement in which a purchaser obtains the right to offer, sell, or distribute goods or services under all of the following conditions:

(1) The goods or services are supplied by the seller, a third person with whom the purchaser is required or advised to do business by the seller, or an affiliated person.

(2) The purchaser is required to make an initial payment greater than five hundred dollars, but less than ~~fifty~~ one hundred thousand dollars, to the seller or an affiliated person to begin or maintain the business opportunity plan.

(3) The seller makes any of the following representations:

(a) That the purchaser will be provided with retail outlets or accounts, or assistance in establishing retail outlets or accounts, for the sale or distribution of the goods or services;

(b) That the purchaser will be provided locations, or assistance in

finding locations, for vending machines, electronic games, rack displays, or any other equipment or display for use in the sale or distribution of the goods or services;

(c) That the purchaser can earn a profit in excess of the initial payment;

(d) That there is a market for the goods or services;

(e) That there is a buy-back arrangement.

(E) "Person" means an individual, corporation, business trust, estate, trust, limited or general partnership, association, or other business entity.

(F) "Affiliated person" means a person who is described by any of the following:

(1) Controls, is controlled by, or is under common control with, a seller;

(2) Owns, controls, or holds, with the power to vote, ten per cent or more of the outstanding voting securities of a seller;

(3) Has, in common with the seller, one or more partners, officers, directors, trustees, branch managers, or other persons who perform management or policy functions.

(G) "Initial payment" means the total amount a purchaser is obligated to pay ~~or the amount of the promissory note that was signed by the purchaser with the seller~~ prior to or during the first six months after commencing operation of the business opportunity plan. If an agreement sets forth a specific total sale price for purchase of a business opportunity plan, which is to be paid ~~partially as a down payment in one or more installments, followed by specific monthly payments,~~ "initial payment" means the entire total sale price. "Initial payment" also includes the full amount of any promissory note given by a purchaser, or an affiliated person, to the seller, or an affiliated person, prior to or during the first six months after commencing operation of the business opportunity plan. "Initial payment" does not include purchases at bona fide wholesale prices of reasonable quantities of goods or services for resale or lease. "Initial payment" also does not include any payment for sales demonstration equipment and materials, so long as all of the following apply:

(1) The seller or an affiliated person furnishes the sales demonstration equipment and materials to the purchaser at cost, and does not realize any profit, commission, fee, rebate, or other benefit from furnishing the equipment and materials.

(2) The total price of the sales demonstration equipment and materials is less than five hundred dollars.

(3) The sales demonstration equipment and materials are for use in making sales, and are not for resale.

(H) "Business day" means any calendar day that is not Sunday or a legal

holiday. "Legal holiday" has the same meaning as in section 1.14 of the Revised Code.

(I) "Buy-back arrangement" means that the seller, an affiliated person, or other person will do either of the following:

(1) Refund the initial payment or return the promissory note upon termination or nonrenewal of the business opportunity plan;

(2) Purchase any finished goods that the purchaser makes, produces, fabricates, grows, or breeds utilizing the goods or services supplied by the seller or other person enumerated in division (D)(1) of this section.

Sec. 1334.05. ~~(A)~~ In addition to any other right ~~otherwise to revoke an offer or remedy available to a purchaser under sections 1334.01 to 1334.15 of the Revised Code~~, a purchaser has the right to cancel an agreement selling or leasing to ~~him~~ the purchaser a business opportunity plan ~~until~~, in accordance with the following conditions:

(1) If the seller complies with divisions (A)(7), (B), and (C) of section 1334.06 of the Revised Code, the purchaser may cancel the agreement at any time before midnight of the fifth business day after the day on which the purchaser signs the agreement. Cancellation

(2) If the seller has failed to comply with division (A)(7), (B), or (C) of section 1334.06 of the Revised Code, the purchaser may cancel the agreement any time within twelve months after the day on which the purchaser signs the agreement.

(B) Cancellation under this section is evidenced by the purchaser giving written notice of cancellation to the seller at the address stated in the agreement. The purchaser may deliver the notice by regular mail, electronic mail, facsimile transmission, telegram, manual delivery, or other personal delivery. Notice of cancellation given by a purchaser need not take a particular form and is sufficient if it indicates in writing the intent of the purchaser not to be bound. ~~Written notice~~ Notice of cancellation ~~shall be sent by regular mail is~~ effective upon the date of postmark. Notice sent by electronic mail or facsimile is effective when successfully transmitted. Telegram delivery is effective when the telegram is ordered. Manual delivery or other personal delivery is effective when delivered to the seller or to the seller's address, whichever is first.

Sec. 1334.06. (A) Every agreement selling or leasing a business opportunity plan shall be in writing and a copy of the executed agreement and all other documents the seller requires the purchaser to sign shall be given to the purchaser at the time they are signed. The agreement shall contain at least the following:

(1) The terms and conditions of payment including the initial payment

or the promissory note, additional payments, and down payment required;

(2) A full description of the acts or services the seller will undertake to perform for the purchaser;

(3) The seller's principal business address and the name and address of its agent authorized to receive service of process in this state;

(4) The business form of the seller, whether corporate, partnership, or otherwise;

(5) The delivery date of the goods the seller is to deliver to the purchaser to begin operation of the business opportunity plan and the location for delivery;

(6) A complete description of the buy-back or security arrangement, if any;

(7) Notice of the purchaser's right to cancel the agreement in at least ten-point boldface type, in the following form and in close proximity to the space reserved in the agreement for the signature of the purchaser:

"You, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date you sign this agreement. See the attached notice of cancellation for an explanation of this right."

(B) A completed form, in duplicate, captioned "notice of cancellation," shall be attached to the agreement signed by the purchaser and be easily detachable and shall contain in ten-point boldface type, the following statement:

"Notice of cancellation

..... (~~enter~~ Enter date of ~~Transaction~~ transaction)

You may cancel this transaction, without penalty or obligation, within five business days from the above date. If you cancel, any payments made by you under the agreement, and any negotiable instrument executed by you will be returned within ten business days following the seller's receipt of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your business address all goods delivered to you under this agreement; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of them without further obligation. If you fail to make the goods available to the seller, or if you agree to return them to the seller and fail to do so, then you remain liable for the performance of all obligations under this agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written

notice, or send a telegram, to (name of seller), at (address of seller's place of business), ~~or send a fax to (name of seller) at (seller's facsimile number) or an e-mail to (name of seller) at (seller's electronic mail address),~~ not later than midnight of (enter date).

I hereby cancel this transaction.

.....
(Date) (Purchaser's signature)"

(C) Before furnishing copies of the notice of cancellation to the purchaser, the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the agreement, and the date of the last day on which the purchaser may cancel.

~~(D) Until the seller has complied with this section, the purchaser may cancel the agreement by notifying the seller by mailing, delivering, or telegraphing written notice to the seller of the purchaser's intention to cancel. The five-day period within which the purchaser may cancel the agreement prescribed by this section begins to run from the time the seller complies with divisions (A), (B), and (C) of this section.~~

~~(E)~~ In connection with the sale or lease of a business opportunity plan, no seller shall:

(1) Fail to integrate into the written agreement all material statements, representations, or promises that were made orally prior to execution of the written agreement by the seller to the purchaser and were not integrated into any other written document previously provided to the purchaser by the seller;

(2) Include in any agreement, any confession of judgment or any waiver of any rights to which the purchaser is entitled under sections 1334.01 to 1334.15 of the Revised Code, including specifically the right to cancel the agreement in accordance with this section and section 1334.05 of the Revised Code;

(3) Fail to inform each purchaser orally, at the time an agreement is signed, of the right to cancel;

(4) Misrepresent in any manner the purchaser's right to cancel;

(5) Fail or refuse to honor any valid notice of cancellation by a purchaser and within ten business days after receipt of the notice to:

(a) Refund all payments made under the agreement;

(b) Cancel and return any note, negotiable instrument, or other evidence of indebtedness executed by the purchaser in connection with the agreement and take any action necessary to reflect the termination of any security interest or lien created under the agreement;

(c) Notify the purchaser if the seller intends to repossess or abandon any

goods delivered to the purchaser.

(6) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness during the time within which a purchaser may cancel;

(7) Commence delivery of any goods or provide any services during the time within which the purchaser may cancel.

(E) In connection with the sale or lease of a business opportunity plan, any provision in an agreement restricting jurisdiction or venue to a forum outside of this state, or requiring the application of laws of another state, is void with respect to a claim otherwise enforceable under sections 1334.01 to 1334.15 of the Revised Code.

Sec. 1334.09. (A) For a violation of sections 1334.01 to 1334.15 of the Revised Code, a purchaser has a cause of action and may ~~in~~ seek either or both of the following:

(1) In an individual action, rescind the transaction and recover, if he:

(a) Rescind the agreement by giving written notice to the seller within three years of the date of the agreement and recover all sums paid to the seller, less the fair market value, at the time of delivery, of any goods supplied by the seller that are not returned to the seller;

(b) If the purchaser is found to have been damaged, recover up to three times the amount of actual damages or ten thousand dollars, whichever is greater, or recover.

(2) Recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.

(B) The court may award to the prevailing party a reasonable attorney fee limited to the work reasonably performed, if either of the following apply:

(1) The purchaser complaining of the act or practice that violated sections 1334.01 to 1334.15 of the Revised Code has brought or maintained an action that is groundless and the purchaser brought or maintained the action in bad faith;

(2) The seller or broker committed an act or practice that violates sections 1334.01 to 1334.15 of the Revised Code.

(C) Upon receipt by a purchaser of the consideration paid to a seller, or a seller's affiliates, or both, pursuant to division (A)(1)(a) of this section, the purchaser shall make available to the seller, at a reasonable time and place, the goods received by the purchaser. However, a purchaser is not entitled to unjust enrichment by exercising the rights provided by this section.

Sec. 1334.10. (A) The courts of common pleas, and municipal or county courts within their respective monetary jurisdiction, have jurisdiction over any seller or broker with respect to any act or practice covered by sections

1334.01 to 1334.15 of the Revised Code, or with respect to any claim arising from the sale or lease of a business opportunity plan subject to such sections.

(B) A final judgment against a seller or broker under sections 1334.01 to 1334.15 of the Revised Code is admissible as prima-facie evidence of the facts upon which it is based in subsequent proceedings under sections 1334.01 to 1334.15 of the Revised Code against the same seller or broker or their successors or assigns.

(C) No action under sections 1334.01 to 1334.15 of the Revised Code may be brought to recover for a transaction more than five years after either the occurrence of the violation or the date on which the parties executed the agreement selling or leasing the business opportunity plan, whichever is earlier.

(D) In any case arising under section 1334.08 or 1334.09 of the Revised Code, if a seller or broker shows by a preponderance of the evidence that a violation, or failure to meet the requirements of the exemption provided for in section 1334.13 of the Revised Code, resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed against the seller or broker under division (D) of section 1334.08 of the Revised Code, no party shall be awarded attorney's fees under division (B) of section 1334.09 of the Revised Code, and monetary recovery shall not exceed the amount of actual damages resulting from the violation. In addition, a purchaser may, in an action brought within one year after the date on which the agreement selling or leasing the business opportunity plan was executed, recover all sums paid to the seller less the fair market value, at the time of delivery, of any goods supplied by the seller that are not returned to the seller.

Sec. 1334.12. Sections 1334.01 to 1334.15 of the Revised Code do not apply to:

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

(B) Membership in a bona fide cooperative association of producers of agricultural products authorized by section 1 of the "Capper-Volstead Act," 42 Stat. 388 (1922), 7 U.S.C. 291; or an organization, operated on a cooperative basis by and for independent retailers, which wholesales goods or furnishes services primarily to its member-retailers;

(C) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

(D) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising, or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising or other commercial symbol;

(E) The transfer of a registered security, as defined by division (B) of section 1707.01 of the Revised Code;

(F) Any transaction in which either the seller or purchaser is licensed pursuant to and the transaction is governed by Chapter 4735. of the Revised Code;

(G) A publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter insofar as the information or matter has been disseminated or reproduced on behalf of others without knowledge that it violates sections 1334.01 to 1334.15 of the Revised Code;

(H) A license granted by a general merchandise retailer that allows the licensee to sell goods or services to the general public under the retailer's trademark, trade name, or service mark, advertising, or other commercial symbol if the general merchandise retailer has been doing business in this state continuously for five years prior to the granting of the license and the general merchandise retailer also sells the same goods or services directly to the general public;

(I) The sale of a business which for at least six months previous to the sale has:

(1) Been operated from a given specific location;

(2) Been open for business to the general public;

(3) Had all equipment and supplies necessary for operating the business located at the specific location.

(J) The sale or lease of goods or services to a purchaser who also offers, sells, or distributes other goods or services that are not:

(1) Supplied by the seller or other person enumerated in division (D)(1) of section 1334.01 of the Revised Code; or

(2) Utilized with the goods or services supplied by the seller or other person enumerated in division (D)(1) of section 1334.01 of the Revised Code.

(K) An agreement permitting a person to offer, sell, or distribute goods or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor's own merchandising activities, where the goods or services are not purchased from the retailer-grantor or persons with whom the lessee is required or advised to do business by the retailer-grantor.

(L) A seller who has both of the following:

(1)(a) A net worth on a consolidated basis, according to its most recent audited financial statement, of not less than ~~five~~ fifteen million dollars;

(b) A net worth, according to its most recent audited financial statement, of not less than one million dollars and the seller is at least eighty per cent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than ~~five~~ fifteen million dollars;

(2) Had at least twenty-five purchasers conducting business at all times during the five-year period immediately preceding the sale or lease of the business opportunity plan, or has conducted the business which is the subject of the business opportunity plan continuously for not less than five years preceding the sale or lease of the business opportunity plan.

(M) The sale or lease of goods or services to a purchaser who has:

~~(1) For~~ for at least six months previously, bought goods or services which were sold under the same trademark or trade name, or which were produced by the seller and received on resale of such goods or services an amount at least equal to the amount of the initial payment or promissory note; ~~or~~

~~(2) Previously been engaged, for at least one year, in the business of selling or distributing the goods or services that are the subject of the business opportunity plan, and earned from that business a gross income of at least twenty-five thousand dollars in any one year.~~

(N) The renewal or extension of an existing business opportunity plan, provided the original agreement was for at least one year.

Sec. 1334.13. Except for division (H) of section 1334.03 and section 1334.04 of the Revised Code, sections 1334.01 to 1334.15 of the Revised Code do not apply to:

(A) Any transaction that ~~fully~~ fully complies in all material respects with the trade regulation rule of the federal trade commission, "disclosure requirements and prohibitions concerning franchising ~~and business opportunity ventures,~~" 16 C.F.R. 436.1 et seq., as may be amended from time to time, that is in effect on the date of the transaction;

(B) Any transaction ~~in which the prospective purchaser, at least ten business days before the execution of an agreement selling or leasing a business opportunity plan, receives a document containing truthful, accurate, and complete disclosures that fully complies with the requirements of the "uniform franchise offering circular" adopted by the midwest securities commissioners association on September 2, 1975, and the "guidelines for preparation of the uniform franchise offering circular and related~~

~~documents" adopted by the association on July 20, 1977 that complies in all material respects with the trade regulation rule of the federal trade commission, "disclosure requirements and prohibitions concerning business opportunities," 16 C.F.R. 437.1 et seq., as may be amended from time to time, that is in effect on the date of the transaction.~~

Sec. 1334.15. (A) The general assembly declares that the offer and sale of business opportunity plans is a matter affected with a public interest. The general assembly further declares that it is the intent of this chapter to protect prospective purchasers of business opportunity plans by requiring that sellers provide the purchasers with the information necessary to make an intelligent decision about the business opportunity plan being offered, and that this chapter represents a fundamental public policy for this state.

(B) The remedies of sections 1334.01 to 1334.15 of the Revised Code are in addition to remedies otherwise available for the same conduct under federal, state, or local law. Any waiver by a purchaser of sections 1334.01 to 1334.15 of the Revised Code or any venue or choice of law provision that deprives a purchaser who is an Ohio resident of the benefit of those sections is contrary to public policy and is void and unenforceable.

SECTION 2. That existing sections 1334.01, 1334.05, 1334.06, 1334.09, 1334.10, 1334.12, 1334.13, and 1334.15 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 196

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____