

As Introduced

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S. B. No. 196

Senator Wagoner

Cosponsors: Senators Gillmor, Seitz

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A B I L L

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

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

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

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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:

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(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~~

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(2) If the seller has failed to comply with divisions (A)(7),
(B), or (C) of section 1334.06 of the Revised Code, the purchaser

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may cancel the agreement any time within twelve months after the 20
day on which the purchaser signs the agreement. 21

(B) Cancellation under this section is evidenced by the 22
purchaser giving written notice of cancellation to the seller at 23
the address stated in the agreement. The purchaser may deliver the 24
notice by mail, telegram, manual delivery, or other personal 25
delivery. Notice of cancellation given by a purchaser need not 26
take a particular form and is sufficient if it indicates in 27
writing the intent of the purchaser not to be bound. Written 28
notice of cancellation shall be effective upon the date of 29
postmark. Telegram delivery is effective when the telegram is 30
ordered. Manual delivery or other personal delivery is effective 31
when delivered to the seller or to the seller's address, whichever 32
is first. 33

Sec. 1334.06. (A) Every agreement selling or leasing a 34
business opportunity plan shall be in writing and a copy of the 35
executed agreement and all other documents the seller requires the 36
purchaser to sign shall be given to the purchaser at the time they 37
are signed. The agreement shall contain at least the following: 38

(1) The terms and conditions of payment including the initial 39
payment or the promissory note, additional payments, and down 40
payment required; 41

(2) A full description of the acts or services the seller 42
will undertake to perform for the purchaser; 43

(3) The seller's principal business address and the name and 44
address of its agent authorized to receive service of process in 45
this state; 46

(4) The business form of the seller, whether corporate, 47
partnership, or otherwise; 48

(5) The delivery date of the goods the seller is to deliver 49

to the purchaser to begin operation of the business opportunity 50
plan and the location for delivery; 51

(6) A complete description of the buy-back or security 52
arrangement, if any; 53

(7) Notice of the purchaser's right to cancel the agreement 54
in at least ten-point boldface type, in the following form and in 55
close proximity to the space reserved in the agreement for the 56
signature of the purchaser: 57

"You, the purchaser, may cancel this transaction at any time 58
prior to midnight of the fifth business day after the date you 59
sign this agreement. See the attached notice of cancellation for 60
an explanation of this right." 61

(B) A completed form, in duplicate, captioned "notice of 62
cancellation," shall be attached to the agreement signed by the 63
purchaser and be easily detachable and shall contain in ten-point 64
boldface type, the following statement: 65

"Notice of cancellation 66

..... (~~enter~~ Enter date of ~~Transaction~~ transaction) 67

You may cancel this transaction, without penalty or 68
obligation, within five business days from the above date. If you 69
cancel, any payments made by you under the agreement, and any 70
negotiable instrument executed by you will be returned within ten 71
business days following the seller's receipt of your cancellation 72
notice, and any security interest arising out of the transaction 73
will be cancelled. If you cancel, you must make available to the 74
seller at your business address all goods delivered to you under 75
this agreement; or you may if you wish, comply with the 76
instructions of the seller regarding the return shipment of the 77
goods at the seller's expense and risk. If you do make the goods 78
available to the seller and the seller does not pick them up 79
within twenty days of the date of your notice of cancellation, you 80

may retain or dispose of them without further obligation. If you 81
fail to make the goods available to the seller, or if you agree to 82
return them to the seller and fail to do so, then you remain 83
liable for the performance of all obligations under this 84
agreement. To cancel this transaction, mail or deliver a signed 85
and dated copy of this cancellation notice or any other written 86
notice, or send a telegram, to (name of seller), at (address of 87
seller's place of business) not later than midnight of (enter 88
date). 89

I hereby cancel this transaction. 90
..... 91
(Date) (Purchaser's signature)" 92

(C) Before furnishing copies of the notice of cancellation to 93
the purchaser, the seller shall complete both copies by entering 94
the name of the seller, the address of the seller's place of 95
business, the date of the agreement, and the date of the last day 96
on which the purchaser may cancel. 97

~~(D) Until the seller has complied with this section, the 98
purchaser may cancel the agreement by notifying the seller by 99
mailing, delivering, or telegraphing written notice to the seller 100
of the purchaser's intention to cancel. The five day period within 101
which the purchaser may cancel the agreement prescribed by this 102
section begins to run from the time the seller complies with 103
divisions (A), (B), and (C) of this section. 104~~

~~(E)~~ In connection with the sale or lease of a business 105
opportunity plan, no seller shall: 106

(1) Fail to integrate into the written agreement all material 107
statements, representations, or promises that were made orally 108
prior to execution of the written agreement by the seller to the 109
purchaser and were not integrated into any other written document 110
previously provided to the purchaser by the seller; 111

(2) Include in any agreement, any confession of judgment or 112
any waiver of any rights to which the purchaser is entitled under 113
sections 1334.01 to 1334.15 of the Revised Code, including 114
specifically the right to cancel the agreement in accordance with 115
this section and section 1334.05 of the Revised Code; 116

(3) Fail to inform each purchaser orally, at the time an 117
agreement is signed, of the right to cancel; 118

(4) Misrepresent in any manner the purchaser's right to 119
cancel; 120

(5) Fail or refuse to honor any valid notice of cancellation 121
by a purchaser and within ten business days after receipt of the 122
notice to: 123

(a) Refund all payments made under the agreement; 124

(b) Cancel and return any note, negotiable instrument, or 125
other evidence of indebtedness executed by the purchaser in 126
connection with the agreement and take any action necessary to 127
reflect the termination of any security interest or lien created 128
under the agreement; 129

(c) Notify the purchaser if the seller intends to repossess 130
or abandon any goods delivered to the purchaser. 131

(6) Negotiate, transfer, sell, or assign any note or other 132
evidence of indebtedness during the time within which a purchaser 133
may cancel; 134

(7) Commence delivery of any goods or provide any services 135
during the time within which the purchaser may cancel. 136

Sec. 1334.10. (A) The courts of common pleas, and municipal 137
or county courts within their respective monetary jurisdiction, 138
have jurisdiction over any seller or broker with respect to any 139
act or practice covered by sections 1334.01 to 1334.15 of the 140
Revised Code, or with respect to any claim arising from the sale 141

or lease of a business opportunity plan subject to such sections. 142

(B) A final judgment against a seller or broker under 143
sections 1334.01 to 1334.15 of the Revised Code is admissible as 144
prima-facie evidence of the facts upon which it is based in 145
subsequent proceedings under sections 1334.01 to 1334.15 of the 146
Revised Code against the same seller or broker or their successors 147
or assigns. 148

(C) No action under sections 1334.01 to 1334.15 of the 149
Revised Code may be brought to recover for a transaction more than 150
five years after either the occurrence of the violation or the 151
date on which the parties executed the agreement selling or 152
leasing the business opportunity plan, whichever is earlier. 153

(D) In any case arising under section 1334.08 or 1334.09 of 154
the Revised Code, if a seller or broker shows by a preponderance 155
of the evidence that a violation, or failure to meet the 156
requirements of the exemption provided for in section 1334.13 of 157
the Revised Code, resulted from a bona fide error notwithstanding 158
the maintenance of procedures reasonably adopted to avoid the 159
error, no civil penalties shall be imposed against the seller or 160
broker under division (D) of section 1334.08 of the Revised Code, 161
no party shall be awarded attorney's fees under division (B) of 162
section 1334.09 of the Revised Code, and monetary recovery shall 163
not exceed the amount of actual damages resulting from the 164
violation. In addition, a purchaser may, in an action brought 165
within one year after the date on which the agreement selling or 166
leasing the business opportunity plan was executed, recover all 167
sums paid to the seller less the fair market value, at the time of 168
delivery, of any goods supplied by the seller that are not 169
returned to the seller. 170

Sec. 1334.12. Sections 1334.01 to 1334.15 of the Revised Code 171
do not apply to: 172

(A) The relationship between an employer and an employee, or	173
among general business partners;	174
(B) Membership in a bona fide cooperative association of	175
producers of agricultural products authorized by section 1 of the	176
"Capper-Volstead Act," 42 Stat. 388 (1922), 7 U.S.C. 291; or an	177
organization, operated on a cooperative basis by and for	178
independent retailers, which wholesales goods or furnishes	179
services primarily to its member-retailers;	180
(C) An agreement for the use of a trademark, service mark,	181
trade name, seal, advertising, or other commercial symbol	182
designating a person who offers a bona fide service for the	183
evaluation, testing, or certification of goods, commodities, or	184
services;	185
(D) An agreement between a licensor and a single licensee to	186
license a trademark, trade name, service mark, advertising, or	187
other commercial symbol where such license is the only one of its	188
general nature and type to be granted by the licensor with respect	189
to that trademark, trade name, service mark, advertising or other	190
commercial symbol;	191
(E) The transfer of a registered security, as defined by	192
division (B) of section 1707.01 of the Revised Code;	193
(F) Any transaction in which either the seller or purchaser	194
is licensed pursuant to and the transaction is governed by Chapter	195
4735. of the Revised Code;	196
(G) A publisher, broadcaster, printer, or other person	197
engaged in the dissemination of information or the reproduction of	198
printed or pictorial matter insofar as the information or matter	199
has been disseminated or reproduced on behalf of others without	200
knowledge that it violates sections 1334.01 to 1334.15 of the	201
Revised Code;	202
(H) A license granted by a general merchandise retailer that	203

allows the licensee to sell goods or services to the general	204
public under the retailer's trademark, trade name, or service	205
mark, advertising, or other commercial symbol if the general	206
merchandise retailer has been doing business in this state	207
continuously for five years prior to the granting of the license	208
and the general merchandise retailer also sells the same goods or	209
services directly to the general public;	210
(I) The sale of a business which for at least six months	211
previous to the sale has:	212
(1) Been operated from a given specific location;	213
(2) Been open for business to the general public;	214
(3) Had all equipment and supplies necessary for operating	215
the business located at the specific location.	216
(J) The sale or lease of goods or services to a purchaser who	217
also offers, sells, or distributes other goods or services that	218
are not:	219
(1) Supplied by the seller or other person enumerated in	220
division (D)(1) of section 1334.01 of the Revised Code; or	221
(2) Utilized with the goods or services supplied by the	222
seller or other person enumerated in division (D)(1) of section	223
1334.01 of the Revised Code.	224
(K) An agreement permitting a person to offer, sell, or	225
distribute goods or services on or about premises occupied by a	226
retailer-grantor primarily for the retailer-grantor's own	227
merchandising activities, where the goods or services are not	228
purchased from the retailer-grantor or persons with whom the	229
lessee is required or advised to do business by the	230
retailer-grantor.	231
(L) A seller who has both of the following:	232
(1)(a) A net worth on a consolidated basis, according to its	233

most recent audited financial statement, of not less than ~~five~~ fifteen million dollars; 234
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(b) A net worth, according to its most recent audited 236
financial statement, of not less than one million dollars and the 237
seller is at least eighty per cent owned by a corporation which 238
has a net worth on a consolidated basis, according to its most 239
recent audited financial statement, of not less than ~~five~~ fifteen 240
million dollars; 241

(2) Had at least twenty-five purchasers conducting business 242
at all times during the five-year period immediately preceding the 243
sale or lease of the business opportunity plan, or has conducted 244
the business which is the subject of the business opportunity plan 245
continuously for not less than five years preceding the sale or 246
lease of the business opportunity plan. 247

(M) The sale or lease of goods or services to a purchaser who 248
has+ 249

~~(1) For~~ for at least six months previously, bought goods or 250
services which were sold under the same trademark or trade name, 251
or which were produced by the seller and received on resale of 252
such goods or services an amount at least equal to the amount of 253
the initial payment or promissory note; ~~or~~ 254

~~(2) Previously been engaged, for at least one year, in the 255
business of selling or distributing the goods or services that are 256
the subject of the business opportunity plan, and earned from that 257
business a gross income of at least twenty-five thousand dollars 258
in any one year. 259~~

(N) The renewal or extension of an existing business 260
opportunity plan, provided the original agreement was for at least 261
one year. 262

Sec. 1334.13. Except for division (H) of section 1334.03 and 263

section 1334.04 of the Revised Code, sections 1334.01 to 1334.15 264
of the Revised Code do not apply to: 265

(A) Any transaction that fully complies in all material 266
respects with the trade regulation rule of the federal trade 267
commission, "disclosure requirements and prohibitions concerning 268
franchising ~~and business opportunity ventures~~," 16 C.F.R. 436.1 et 269
seq., as may be amended from time to time, that is in effect on 270
the date of the transaction; 271

(B) Any transaction ~~in which the prospective purchaser, at~~ 272
~~least ten business days before the execution of an agreement~~ 273
~~selling or leasing a business opportunity plan, receives a~~ 274
~~document containing truthful, accurate, and complete disclosures~~ 275
~~that fully complies with the requirements of the "uniform~~ 276
~~franchise offering circular" adopted by the midwest securities~~ 277
~~commissioners association on September 2, 1975, and the~~ 278
~~"guidelines for preparation of the uniform franchise offering~~ 279
~~circular and related documents" adopted by the association on July~~ 280
~~20, 1977~~ that fully complies in all material respects with the 281
trade regulation rule of the federal trade commission, "disclosure 282
requirements and prohibitions concerning business opportunities," 283
16 C.F.R. 437.1 et seq., as may be amended from time to time, that 284
is in effect on the date of the transaction. 285

Sec. 1334.15. (A) The general assembly declares that the 286
offer and sale of business opportunity plans is a matter affected 287
with a public interest. The general assembly further declares that 288
it is the intent of this chapter to protect prospective purchasers 289
of business opportunity plans by requiring that sellers provide 290
the purchasers with the information necessary to make an 291
intelligent decision about the business opportunity plan being 292
offered, and that this chapter represents a fundamental public 293
policy for this state. 294

(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 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 1334.05, 1334.06, 1334.10, 1334.12, 1334.13, and 1334.15 of the Revised Code are hereby repealed.