

As Passed by the House

**129th General Assembly
Regular Session
2011-2012**

Sub. S. B. No. 196

Senator Wagoner

**Cosponsors: Senators Gillmor, Seitz, Bacon, Beagle, Coley, Daniels, Eklund,
Hite, Hughes, Lehner, Obhof, Oelslager, Patton
Representatives Letson, Adams, R., Blair, Buchy, Carney, Combs, Dovilla,
Duffey, Fende, Gardner, Garland, Goyal, Hackett, Hall, Johnson, Kozlowski,
Martin, McClain, Milkovich, Newbold, O'Brien, Scherer, Schuring, Slesnick,
Wachtmann, Young, Yuko**

—

A B I L L

To amend sections 1334.01, 1334.05, 1334.06, 1334.09, 1
1334.10, 1334.12, 1334.13, and 1334.15 of the 2
Revised Code to make changes to Ohio's Business 3
Opportunity Plan Law. 4

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

Section 1. That sections 1334.01, 1334.05, 1334.06, 1334.09, 5
1334.10, 1334.12, 1334.13, and 1334.15 of the Revised Code be 6
amended to read as follows: 7

Sec. 1334.01. As used in sections 1334.01 to 1334.15 of the 8
Revised Code: 9

(A) "Seller" means a person who sells or leases a business 10
opportunity plan. 11

(B) "Purchaser" means a person to whom a business opportunity 12
plan is sold or leased. 13

(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: 44

(1) Controls, is controlled by, or is under common control 45
with, a seller; 46

(2) Owns, controls, or holds, with the power to vote, ten per 47
cent or more of the outstanding voting securities of a seller; 48

(3) Has, in common with the seller, one or more partners, 49
officers, directors, trustees, branch managers, or other persons 50
who perform management or policy functions. 51

(G) "Initial payment" means the total amount a purchaser is 52
obligated to pay ~~or the amount of the promissory note that was~~ 53
~~signed by the purchaser with the seller~~ prior to or during the 54
first six months after commencing operation of the business 55
opportunity plan. If an agreement sets forth a specific total sale 56
price for purchase of a business opportunity plan, which is to be 57
paid ~~partially as a down payment in one or more installments,~~ 58
~~followed by specific monthly payments,~~ "initial payment" means the 59
entire total sale price. "Initial payment" also includes the full 60
amount of any promissory note given by a purchaser, or an 61
affiliated person, to the seller, or an affiliated person, prior 62
to or during the first six months after commencing operation of 63
the business opportunity plan. "Initial payment" does not include 64
purchases at bona fide wholesale prices of reasonable quantities 65
of goods or services for resale or lease. "Initial payment" also 66
does not include any payment for sales demonstration equipment and 67
materials, so long as all of the following apply: 68

(1) The seller or an affiliated person furnishes the sales 69
demonstration equipment and materials to the purchaser at cost, 70
and does not realize any profit, commission, fee, rebate, or other 71
benefit from furnishing the equipment and materials. 72

(2) The total price of the sales demonstration equipment and 73
materials is less than five hundred dollars. 74

(3) The sales demonstration equipment and materials are for 75
use in making sales, and are not for resale. 76

(H) "Business day" means any calendar day that is not Sunday 77
or a legal holiday. "Legal holiday" has the same meaning as in 78
section 1.14 of the Revised Code. 79

(I) "Buy-back arrangement" means that the seller, an 80
affiliated person, or other person will do either of the 81
following: 82

(1) Refund the initial payment or return the promissory note 83
upon termination or nonrenewal of the business opportunity plan; 84

(2) Purchase any finished goods that the purchaser makes, 85
produces, fabricates, grows, or breeds utilizing the goods or 86
services supplied by the seller or other person enumerated in 87
division (D)(1) of this section. 88

Sec. 1334.05. (A) In addition to any other right otherwise to 89
revoke an offer or remedy available to a purchaser under sections 90
1334.01 to 1334.15 of the Revised Code, a purchaser has the right 91
to cancel an agreement selling or leasing to him the purchaser a 92
business opportunity plan until, in accordance with the following 93
conditions: 94

(1) If the seller complies with divisions (A)(7), (B), and 95
(C) of section 1334.06 of the Revised Code, the purchaser may 96
cancel the agreement at any time before midnight of the fifth 97
business day after the day on which the purchaser signs the 98
agreement. Cancellation 99

(2) If the seller has failed to comply with division (A)(7), 100
(B), or (C) of section 1334.06 of the Revised Code, the purchaser 101
may cancel the agreement any time within twelve months after the 102
day on which the purchaser signs the agreement. 103

(B) Cancellation under this section is evidenced by the 104

purchaser giving written notice of cancellation to the seller at 105
the address stated in the agreement. The purchaser may deliver the 106
notice by regular mail, electronic mail, facsimile transmission, 107
telegram, manual delivery, or other personal delivery. Notice of 108
cancellation given by a purchaser need not take a particular form 109
and is sufficient if it indicates in writing the intent of the 110
purchaser not to be bound. ~~Written notice~~ Notice of cancellation 111
~~shall be sent by regular mail is~~ effective upon the date of 112
postmark. Notice sent by electronic mail or facsimile is effective 113
when successfully transmitted. Telegram delivery is effective when 114
the telegram is ordered. Manual delivery or other personal 115
delivery is effective when delivered to the seller or to the 116
seller's address, whichever is first. 117

Sec. 1334.06. (A) Every agreement selling or leasing a 118
business opportunity plan shall be in writing and a copy of the 119
executed agreement and all other documents the seller requires the 120
purchaser to sign shall be given to the purchaser at the time they 121
are signed. The agreement shall contain at least the following: 122

(1) The terms and conditions of payment including the initial 123
payment or the promissory note, additional payments, and down 124
payment required; 125

(2) A full description of the acts or services the seller 126
will undertake to perform for the purchaser; 127

(3) The seller's principal business address and the name and 128
address of its agent authorized to receive service of process in 129
this state; 130

(4) The business form of the seller, whether corporate, 131
partnership, or otherwise; 132

(5) The delivery date of the goods the seller is to deliver 133
to the purchaser to begin operation of the business opportunity 134

plan and the location for delivery; 135

(6) A complete description of the buy-back or security 136
arrangement, if any; 137

(7) Notice of the purchaser's right to cancel the agreement 138
in at least ten-point boldface type, in the following form and in 139
close proximity to the space reserved in the agreement for the 140
signature of the purchaser: 141

"You, the purchaser, may cancel this transaction at any time 142
prior to midnight of the fifth business day after the date you 143
sign this agreement. See the attached notice of cancellation for 144
an explanation of this right." 145

(B) A completed form, in duplicate, captioned "notice of 146
cancellation," shall be attached to the agreement signed by the 147
purchaser and be easily detachable and shall contain in ten-point 148
boldface type, the following statement: 149

"Notice of cancellation 150
..... (~~enter~~ Enter date of ~~Transaction~~ transaction) 151

You may cancel this transaction, without penalty or 152
obligation, within five business days from the above date. If you 153
cancel, any payments made by you under the agreement, and any 154
negotiable instrument executed by you will be returned within ten 155
business days following the seller's receipt of your cancellation 156
notice, and any security interest arising out of the transaction 157
will be cancelled. If you cancel, you must make available to the 158
seller at your business address all goods delivered to you under 159
this agreement; or you may if you wish, comply with the 160
instructions of the seller regarding the return shipment of the 161
goods at the seller's expense and risk. If you do make the goods 162
available to the seller and the seller does not pick them up 163
within twenty days of the date of your notice of cancellation, you 164
may retain or dispose of them without further obligation. If you 165

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;	197
(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 <u>and section 1334.05 of the Revised Code</u> ;	198 199 200 201 202
(3) Fail to inform each purchaser orally, at the time an agreement is signed, of the right to cancel;	203 204
(4) Misrepresent in any manner the purchaser's right to cancel;	205 206
(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:	207 208 209
(a) Refund all payments made under the agreement;	210
(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;	211 212 213 214 215
(c) Notify the purchaser if the seller intends to repossess or abandon any goods delivered to the purchaser.	216 217
(6) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness during the time within which a purchaser may cancel;	218 219 220
(7) Commence delivery of any goods or provide any services during the time within which the purchaser may cancel.	221 222
<u>(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</u>	223 224 225 226

respect to a claim otherwise enforceable under sections 1334.01 to 227
1334.15 of the Revised Code. 228

Sec. 1334.09. (A) For a violation of sections 1334.01 to 229
1334.15 of the Revised Code, a purchaser has a cause of action and 230
may ~~in~~ seek either or both of the following: 231

(1) In an individual action, rescind the transaction and 232
recover, if he: 233

(a) Rescind the agreement by giving written notice to the 234
seller within three years of the date of the agreement and recover 235
all sums paid to the seller, less the fair market value, at the 236
time of delivery, of any goods supplied by the seller that are not 237
returned to the seller; 238

(b) If the purchaser is found to have been damaged, recover 239
up to three times the amount of actual damages or ten thousand 240
dollars, whichever is greater, or recover. 241

(2) Recover damages or other appropriate relief in a class 242
action under Civil Rule 23, as amended. 243

(B) The court may award to the prevailing party a reasonable 244
attorney fee limited to the work reasonably performed, if either 245
of the following apply: 246

(1) The purchaser complaining of the act or practice that 247
violated sections 1334.01 to 1334.15 of the Revised Code has 248
brought or maintained an action that is groundless and the 249
purchaser brought or maintained the action in bad faith; 250

(2) The seller or broker committed an act or practice that 251
violates sections 1334.01 to 1334.15 of the Revised Code. 252

(C) Upon receipt by a purchaser of the consideration paid to 253
a seller, or a seller's affiliates, or both, pursuant to division 254
(A)(1)(a) of this section, the purchaser shall make available to 255
the seller, at a reasonable time and place, the goods received by 256

the purchaser. However, a purchaser is not entitled to unjust 257
enrichment by exercising the rights provided by this section. 258

Sec. 1334.10. (A) The courts of common pleas, and municipal 259
or county courts within their respective monetary jurisdiction, 260
have jurisdiction over any seller or broker with respect to any 261
act or practice covered by sections 1334.01 to 1334.15 of the 262
Revised Code, or with respect to any claim arising from the sale 263
or lease of a business opportunity plan subject to such sections. 264

(B) A final judgment against a seller or broker under 265
sections 1334.01 to 1334.15 of the Revised Code is admissible as 266
prima-facie evidence of the facts upon which it is based in 267
subsequent proceedings under sections 1334.01 to 1334.15 of the 268
Revised Code against the same seller or broker or their successors 269
or assigns. 270

(C) No action under sections 1334.01 to 1334.15 of the 271
Revised Code may be brought to recover for a transaction more than 272
five years after either the occurrence of the violation or the 273
date on which the parties executed the agreement selling or 274
leasing the business opportunity plan, whichever is earlier. 275

(D) In any case arising under section 1334.08 or 1334.09 of 276
the Revised Code, if a seller or broker shows by a preponderance 277
of the evidence that a violation, or failure to meet the 278
requirements of the exemption provided for in section 1334.13 of 279
the Revised Code, resulted from a bona fide error notwithstanding 280
the maintenance of procedures reasonably adopted to avoid the 281
error, no civil penalties shall be imposed against the seller or 282
broker under division (D) of section 1334.08 of the Revised Code, 283
no party shall be awarded attorney's fees under division (B) of 284
section 1334.09 of the Revised Code, and monetary recovery shall 285
not exceed the amount of actual damages resulting from the 286
violation. In addition, a purchaser may, in an action brought 287

within one year after the date on which the agreement selling or 288
leasing the business opportunity plan was executed, recover all 289
sums paid to the seller less the fair market value, at the time of 290
delivery, of any goods supplied by the seller that are not 291
returned to the seller. 292

Sec. 1334.12. Sections 1334.01 to 1334.15 of the Revised Code 293
do not apply to: 294

(A) The relationship between an employer and an employee, or 295
among general business partners; 296

(B) Membership in a bona fide cooperative association of 297
producers of agricultural products authorized by section 1 of the 298
"Capper-Volstead Act," 42 Stat. 388 (1922), 7 U.S.C. 291; or an 299
organization, operated on a cooperative basis by and for 300
independent retailers, which wholesales goods or furnishes 301
services primarily to its member-retailers; 302

(C) An agreement for the use of a trademark, service mark, 303
trade name, seal, advertising, or other commercial symbol 304
designating a person who offers a bona fide service for the 305
evaluation, testing, or certification of goods, commodities, or 306
services; 307

(D) An agreement between a licensor and a single licensee to 308
license a trademark, trade name, service mark, advertising, or 309
other commercial symbol where such license is the only one of its 310
general nature and type to be granted by the licensor with respect 311
to that trademark, trade name, service mark, advertising or other 312
commercial symbol; 313

(E) The transfer of a registered security, as defined by 314
division (B) of section 1707.01 of the Revised Code; 315

(F) Any transaction in which either the seller or purchaser 316
is licensed pursuant to and the transaction is governed by Chapter 317

4735. of the Revised Code;	318
(G) A publisher, broadcaster, printer, or other person	319
engaged in the dissemination of information or the reproduction of	320
printed or pictorial matter insofar as the information or matter	321
has been disseminated or reproduced on behalf of others without	322
knowledge that it violates sections 1334.01 to 1334.15 of the	323
Revised Code;	324
(H) A license granted by a general merchandise retailer that	325
allows the licensee to sell goods or services to the general	326
public under the retailer's trademark, trade name, or service	327
mark, advertising, or other commercial symbol if the general	328
merchandise retailer has been doing business in this state	329
continuously for five years prior to the granting of the license	330
and the general merchandise retailer also sells the same goods or	331
services directly to the general public;	332
(I) The sale of a business which for at least six months	333
previous to the sale has:	334
(1) Been operated from a given specific location;	335
(2) Been open for business to the general public;	336
(3) Had all equipment and supplies necessary for operating	337
the business located at the specific location.	338
(J) The sale or lease of goods or services to a purchaser who	339
also offers, sells, or distributes other goods or services that	340
are not:	341
(1) Supplied by the seller or other person enumerated in	342
division (D)(1) of section 1334.01 of the Revised Code; or	343
(2) Utilized with the goods or services supplied by the	344
seller or other person enumerated in division (D)(1) of section	345
1334.01 of the Revised Code.	346
(K) An agreement permitting a person to offer, sell, or	347

distribute goods or services on or about premises occupied by a 348
retailer-grantor primarily for the retailer-grantor's own 349
merchandising activities, where the goods or services are not 350
purchased from the retailer-grantor or persons with whom the 351
lessee is required or advised to do business by the 352
retailer-grantor. 353

(L) A seller who has both of the following: 354

(1)(a) A net worth on a consolidated basis, according to its 355
most recent audited financial statement, of not less than ~~five~~ 356
fifteen million dollars; 357

(b) A net worth, according to its most recent audited 358
financial statement, of not less than one million dollars and the 359
seller is at least eighty per cent owned by a corporation which 360
has a net worth on a consolidated basis, according to its most 361
recent audited financial statement, of not less than ~~five~~ fifteen 362
million dollars; 363

(2) Had at least twenty-five purchasers conducting business 364
at all times during the five-year period immediately preceding the 365
sale or lease of the business opportunity plan, or has conducted 366
the business which is the subject of the business opportunity plan 367
continuously for not less than five years preceding the sale or 368
lease of the business opportunity plan. 369

(M) The sale or lease of goods or services to a purchaser who 370
has+ 371

~~(1) For~~ for at least six months previously, bought goods or 372
services which were sold under the same trademark or trade name, 373
or which were produced by the seller and received on resale of 374
such goods or services an amount at least equal to the amount of 375
the initial payment or promissory note; ~~or~~ 376

~~(2) Previously been engaged, for at least one year, in the 377
business of selling or distributing the goods or services that are 378~~

~~the subject of the business opportunity plan, and earned from that~~ 379
~~business a gross income of at least twenty five thousand dollars~~ 380
~~in any one year.~~ 381

(N) The renewal or extension of an existing business 382
opportunity plan, provided the original agreement was for at least 383
one year. 384

Sec. 1334.13. Except for division (H) of section 1334.03 and 385
section 1334.04 of the Revised Code, sections 1334.01 to 1334.15 386
of the Revised Code do not apply to: 387

(A) Any transaction that ~~fully~~ complies in all material 388
respects with the trade regulation rule of the federal trade 389
commission, "disclosure requirements and prohibitions concerning 390
franchising ~~and business opportunity ventures,~~" 16 C.F.R. 436.1 et 391
seq., as may be amended from time to time, that is in effect on 392
the date of the transaction; 393

(B) Any transaction ~~in which the prospective purchaser, at~~ 394
~~least ten business days before the execution of an agreement~~ 395
~~selling or leasing a business opportunity plan, receives a~~ 396
~~document containing truthful, accurate, and complete disclosures~~ 397
~~that fully complies with the requirements of the "uniform~~ 398
~~franchise offering circular" adopted by the midwest securities~~ 399
~~commissioners association on September 2, 1975, and the~~ 400
~~"guidelines for preparation of the uniform franchise offering~~ 401
~~circular and related documents" adopted by the association on July~~ 402
~~20, 1977~~ that complies in all material respects with the trade 403
regulation rule of the federal trade commission, "disclosure 404
requirements and prohibitions concerning business opportunities," 405
16 C.F.R. 437.1 et seq., as may be amended from time to time, that 406
is in effect on the date of the transaction. 407

Sec. 1334.15. (A) The general assembly declares that the 408

offer and sale of business opportunity plans is a matter affected 409
with a public interest. The general assembly further declares that 410
it is the intent of this chapter to protect prospective purchasers 411
of business opportunity plans by requiring that sellers provide 412
the purchasers with the information necessary to make an 413
intelligent decision about the business opportunity plan being 414
offered, and that this chapter represents a fundamental public 415
policy for this state. 416

(B) The remedies of sections 1334.01 to 1334.15 of the 417
Revised Code are in addition to remedies otherwise available for 418
the same conduct under federal, state, or local law. Any waiver by 419
a purchaser of sections 1334.01 to 1334.15 of the Revised Code or 420
any venue or choice of law provision that deprives a purchaser who 421
is an Ohio resident of the benefit of those sections is contrary 422
to public policy and is void and unenforceable. 423

Section 2. That existing sections 1334.01, 1334.05, 1334.06, 424
1334.09, 1334.10, 1334.12, 1334.13, and 1334.15 of the Revised 425
Code are hereby repealed. 426