

**As Passed by the Senate**

**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**

—

**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 14  
or leases, offers for sale or lease, or arranges for the sale or 15  
lease of a business opportunity plan for a commission, fee, or 16  
anything of value. 17

(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 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 mail, telegram, manual delivery, or other personal 107

delivery. Notice of cancellation given by a purchaser need not 108  
take a particular form and is sufficient if it indicates in 109  
writing the intent of the purchaser not to be bound. Written 110  
notice of cancellation shall be effective upon the date of 111  
postmark. Telegram delivery is effective when the telegram is 112  
ordered. Manual delivery or other personal delivery is effective 113  
when delivered to the seller or to the seller's address, whichever 114  
is first. 115

**Sec. 1334.06.** (A) Every agreement selling or leasing a 116  
business opportunity plan shall be in writing and a copy of the 117  
executed agreement and all other documents the seller requires the 118  
purchaser to sign shall be given to the purchaser at the time they 119  
are signed. The agreement shall contain at least the following: 120

(1) The terms and conditions of payment including the initial 121  
payment or the promissory note, additional payments, and down 122  
payment required; 123

(2) A full description of the acts or services the seller 124  
will undertake to perform for the purchaser; 125

(3) The seller's principal business address and the name and 126  
address of its agent authorized to receive service of process in 127  
this state; 128

(4) The business form of the seller, whether corporate, 129  
partnership, or otherwise; 130

(5) The delivery date of the goods the seller is to deliver 131  
to the purchaser to begin operation of the business opportunity 132  
plan and the location for delivery; 133

(6) A complete description of the buy-back or security 134  
arrangement, if any; 135

(7) Notice of the purchaser's right to cancel the agreement 136  
in at least ten-point boldface type, in the following form and in 137

close proximity to the space reserved in the agreement for the 138  
signature of the purchaser: 139

"You, the purchaser, may cancel this transaction at any time 140  
prior to midnight of the fifth business day after the date you 141  
sign this agreement. See the attached notice of cancellation for 142  
an explanation of this right." 143

(B) A completed form, in duplicate, captioned "notice of 144  
cancellation," shall be attached to the agreement signed by the 145  
purchaser and be easily detachable and shall contain in ten-point 146  
boldface type, the following statement: 147

"Notice of cancellation 148

..... (~~enter~~ Enter date of ~~Transaction~~ transaction) 149

You may cancel this transaction, without penalty or 150  
obligation, within five business days from the above date. If you 151  
cancel, any payments made by you under the agreement, and any 152  
negotiable instrument executed by you will be returned within ten 153  
business days following the seller's receipt of your cancellation 154  
notice, and any security interest arising out of the transaction 155  
will be cancelled. If you cancel, you must make available to the 156  
seller at your business address all goods delivered to you under 157  
this agreement; or you may if you wish, comply with the 158  
instructions of the seller regarding the return shipment of the 159  
goods at the seller's expense and risk. If you do make the goods 160  
available to the seller and the seller does not pick them up 161  
within twenty days of the date of your notice of cancellation, you 162  
may retain or dispose of them without further obligation. If you 163  
fail to make the goods available to the seller, or if you agree to 164  
return them to the seller and fail to do so, then you remain 165  
liable for the performance of all obligations under this 166  
agreement. To cancel this transaction, mail or deliver a signed 167  
and dated copy of this cancellation notice or any other written 168  
notice, or send a telegram, to (name of seller), at (address of 169

seller's place of business) not later than midnight of (enter 170  
date). 171

I hereby cancel this transaction. 172

..... 173

(Date) (Purchaser's signature)" 174

(C) Before furnishing copies of the notice of cancellation to 175  
the purchaser, the seller shall complete both copies by entering 176  
the name of the seller, the address of the seller's place of 177  
business, the date of the agreement, and the date of the last day 178  
on which the purchaser may cancel. 179

~~(D) Until the seller has complied with this section, the 180  
purchaser may cancel the agreement by notifying the seller by 181  
mailing, delivering, or telegraphing written notice to the seller 182  
of the purchaser's intention to cancel. The five day period within 183  
which the purchaser may cancel the agreement prescribed by this 184  
section begins to run from the time the seller complies with 185  
divisions (A), (B), and (C) of this section. 186~~

~~(E)~~ In connection with the sale or lease of a business 187  
opportunity plan, no seller shall: 188

(1) Fail to integrate into the written agreement all material 189  
statements, representations, or promises that were made orally 190  
prior to execution of the written agreement by the seller to the 191  
purchaser and were not integrated into any other written document 192  
previously provided to the purchaser by the seller; 193

(2) Include in any agreement, any confession of judgment or 194  
any waiver of any rights to which the purchaser is entitled under 195  
sections 1334.01 to 1334.15 of the Revised Code, including 196  
specifically the right to cancel the agreement in accordance with 197  
this section and section 1334.05 of the Revised Code; 198

(3) Fail to inform each purchaser orally, at the time an 199  
agreement is signed, of the right to cancel; 200

(4) Misrepresent in any manner the purchaser's right to cancel;	201 202
(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:	203 204 205
(a) Refund all payments made under the agreement;	206
(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;	207 208 209 210 211
(c) Notify the purchaser if the seller intends to repossess or abandon any goods delivered to the purchaser.	212 213
(6) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness during the time within which a purchaser may cancel;	214 215 216
(7) Commence delivery of any goods or provide any services during the time within which the purchaser may cancel.	217 218
<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 respect to a claim otherwise enforceable under sections 1334.01 to 1334.15 of the Revised Code.</u>	219 220 221 222 223 224
<b>Sec. 1334.09.</b> (A) For a violation of sections 1334.01 to 1334.15 of the Revised Code, a purchaser has a cause of action and may <del>in</del> <u>seek either or both of the following:</u>	225 226 227
<u>(1) In an individual action, <del>rescind the transaction and recover, if he:</del></u>	228 229



(a) Rescind the agreement by giving written notice to the seller within one year 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; 230  
231  
232  
233  
234

(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.~~ 235  
236  
237

(2) Recover damages or other appropriate relief in a class action under Civil Rule 23, as amended. 238  
239

(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: 240  
241  
242

(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; 243  
244  
245  
246

(2) The seller or broker committed an act or practice that violates sections 1334.01 to 1334.15 of the Revised Code. 247  
248

(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. 249  
250  
251  
252  
253  
254

**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 255  
256  
257  
258  
259

or lease of a business opportunity plan subject to such sections. 260

(B) A final judgment against a seller or broker under 261  
sections 1334.01 to 1334.15 of the Revised Code is admissible as 262  
prima-facie evidence of the facts upon which it is based in 263  
subsequent proceedings under sections 1334.01 to 1334.15 of the 264  
Revised Code against the same seller or broker or their successors 265  
or assigns. 266

(C) No action under sections 1334.01 to 1334.15 of the 267  
Revised Code may be brought to recover for a transaction more than 268  
five years after either the occurrence of the violation or the 269  
date on which the parties executed the agreement selling or 270  
leasing the business opportunity plan, whichever is earlier. 271

(D) In any case arising under section 1334.08 or 1334.09 of 272  
the Revised Code, if a seller or broker shows by a preponderance 273  
of the evidence that a violation, or failure to meet the 274  
requirements of the exemption provided for in section 1334.13 of 275  
the Revised Code, resulted from a bona fide error notwithstanding 276  
the maintenance of procedures reasonably adopted to avoid the 277  
error, no civil penalties shall be imposed against the seller or 278  
broker under division (D) of section 1334.08 of the Revised Code, 279  
no party shall be awarded attorney's fees under division (B) of 280  
section 1334.09 of the Revised Code, and monetary recovery shall 281  
not exceed the amount of actual damages resulting from the 282  
violation. In addition, a purchaser may, in an action brought 283  
within one year after the date on which the agreement selling or 284  
leasing the business opportunity plan was executed, recover all 285  
sums paid to the seller less the fair market value, at the time of 286  
delivery, of any goods supplied by the seller that are not 287  
returned to the seller. 288

**Sec. 1334.12.** Sections 1334.01 to 1334.15 of the Revised Code 289  
do not apply to: 290

(A) The relationship between an employer and an employee, or among general business partners;	291 292
(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;	293 294 295 296 297 298
(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;	299 300 301 302 303
(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;	304 305 306 307 308 309
(E) The transfer of a registered security, as defined by division (B) of section 1707.01 of the Revised Code;	310 311
(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;	312 313 314
(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;	315 316 317 318 319 320
(H) A license granted by a general merchandise retailer that	321

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; 352  
353

(b) A net worth, according to its most recent audited 354  
financial statement, of not less than one million dollars and the 355  
seller is at least eighty per cent owned by a corporation which 356  
has a net worth on a consolidated basis, according to its most 357  
recent audited financial statement, of not less than ~~five~~ fifteen 358  
million dollars; 359

(2) Had at least twenty-five purchasers conducting business 360  
at all times during the five-year period immediately preceding the 361  
sale or lease of the business opportunity plan, or has conducted 362  
the business which is the subject of the business opportunity plan 363  
continuously for not less than five years preceding the sale or 364  
lease of the business opportunity plan. 365

(M) The sale or lease of goods or services to a purchaser who 366  
has+ 367

~~(1) For~~ for at least six months previously, bought goods or 368  
services which were sold under the same trademark or trade name, 369  
or which were produced by the seller and received on resale of 370  
such goods or services an amount at least equal to the amount of 371  
the initial payment or promissory note; ~~or~~ 372

~~(2) Previously been engaged, for at least one year, in the 373  
business of selling or distributing the goods or services that are 374  
the subject of the business opportunity plan, and earned from that 375  
business a gross income of at least twenty five thousand dollars 376  
in any one year. 377~~

(N) The renewal or extension of an existing business 378  
opportunity plan, provided the original agreement was for at least 379  
one year. 380

**Sec. 1334.13.** Except for division (H) of section 1334.03 and 381

section 1334.04 of the Revised Code, sections 1334.01 to 1334.15 382  
of the Revised Code do not apply to: 383

(A) Any transaction that ~~fully~~ complies in all material 384  
respects with the trade regulation rule of the federal trade 385  
commission, "disclosure requirements and prohibitions concerning 386  
franchising ~~and business opportunity ventures~~," 16 C.F.R. 436.1 et 387  
seq., as may be amended from time to time, that is in effect on 388  
the date of the transaction; 389

(B) Any transaction ~~in which the prospective purchaser, at~~ 390  
~~least ten business days before the execution of an agreement~~ 391  
~~selling or leasing a business opportunity plan, receives a~~ 392  
~~document containing truthful, accurate, and complete disclosures~~ 393  
~~that fully complies with the requirements of the "uniform~~ 394  
~~franchise offering circular" adopted by the midwest securities~~ 395  
~~commissioners association on September 2, 1975, and the~~ 396  
~~"guidelines for preparation of the uniform franchise offering~~ 397  
~~circular and related documents" adopted by the association on July~~ 398  
~~20, 1977~~ that complies in all material respects with the trade 399  
regulation rule of the federal trade commission, "disclosure 400  
requirements and prohibitions concerning business opportunities," 401  
16 C.F.R. 437.1 et seq., as may be amended from time to time, that 402  
is in effect on the date of the transaction. 403

**Sec. 1334.15.** (A) The general assembly declares that the 404  
offer and sale of business opportunity plans is a matter affected 405  
with a public interest. The general assembly further declares that 406  
it is the intent of this chapter to protect prospective purchasers 407  
of business opportunity plans by requiring that sellers provide 408  
the purchasers with the information necessary to make an 409  
intelligent decision about the business opportunity plan being 410  
offered, and that this chapter represents a fundamental public 411  
policy for this state. 412

(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.