

**As Reported by the Senate Insurance, Commerce and Labor
Committee**

**129th General Assembly
Regular Session
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Sub. S. B. No. 196

Senator Wagoner

Cosponsors: Senators Gillmor, Seitz, Bacon

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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
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 <u>seek either or both of the following:</u>	225 226 227
<u>(1) In an individual action, rescind the transaction and recover, if he:</u>	228 229

(a) Rescind the agreement by giving written notice to the 230
seller within one year of the date of the agreement and recover 231
all sums paid to the seller, less the fair market value, at the 232
time of delivery, of any goods supplied by the seller that are not 233
returned to the seller; 234

(b) If the purchaser is found to have been damaged, recover 235
up to three times the amount of actual damages or ten thousand 236
dollars, whichever is greater, ~~or recover.~~ 237

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

(B) The court may award to the prevailing party a reasonable 240
attorney fee limited to the work reasonably performed, if either 241
of the following apply: 242

(1) The purchaser complaining of the act or practice that 243
violated sections 1334.01 to 1334.15 of the Revised Code has 244
brought or maintained an action that is groundless and the 245
purchaser brought or maintained the action in bad faith; 246

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

(C) Upon receipt by a purchaser of the consideration paid to 249
a seller, or a seller's affiliates, or both, pursuant to division 250
(A)(1)(a) of this section, the purchaser shall make available to 251
the seller, at a reasonable time and place, the goods received by 252
the purchaser. However, a purchaser is not entitled to unjust 253
enrichment by exercising the rights provided by this section. 254

Sec. 1334.10. (A) The courts of common pleas, and municipal 255
or county courts within their respective monetary jurisdiction, 256
have jurisdiction over any seller or broker with respect to any 257
act or practice covered by sections 1334.01 to 1334.15 of the 258
Revised Code, or with respect to any claim arising from the sale 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	291
among general business partners;	292
(B) Membership in a bona fide cooperative association of	293
producers of agricultural products authorized by section 1 of the	294
"Capper-Volstead Act," 42 Stat. 388 (1922), 7 U.S.C. 291; or an	295
organization, operated on a cooperative basis by and for	296
independent retailers, which wholesales goods or furnishes	297
services primarily to its member-retailers;	298
(C) An agreement for the use of a trademark, service mark,	299
trade name, seal, advertising, or other commercial symbol	300
designating a person who offers a bona fide service for the	301
evaluation, testing, or certification of goods, commodities, or	302
services;	303
(D) An agreement between a licensor and a single licensee to	304
license a trademark, trade name, service mark, advertising, or	305
other commercial symbol where such license is the only one of its	306
general nature and type to be granted by the licensor with respect	307
to that trademark, trade name, service mark, advertising or other	308
commercial symbol;	309
(E) The transfer of a registered security, as defined by	310
division (B) of section 1707.01 of the Revised Code;	311
(F) Any transaction in which either the seller or purchaser	312
is licensed pursuant to and the transaction is governed by Chapter	313
4735. of the Revised Code;	314
(G) A publisher, broadcaster, printer, or other person	315
engaged in the dissemination of information or the reproduction of	316
printed or pictorial matter insofar as the information or matter	317
has been disseminated or reproduced on behalf of others without	318
knowledge that it violates sections 1334.01 to 1334.15 of the	319
Revised Code;	320
(H) A license granted by a general merchandise retailer that	321

allows the licensee to sell goods or services to the general 322
public under the retailer's trademark, trade name, or service 323
mark, advertising, or other commercial symbol if the general 324
merchandise retailer has been doing business in this state 325
continuously for five years prior to the granting of the license 326
and the general merchandise retailer also sells the same goods or 327
services directly to the general public; 328

(I) The sale of a business which for at least six months 329
previous to the sale has: 330

(1) Been operated from a given specific location; 331

(2) Been open for business to the general public; 332

(3) Had all equipment and supplies necessary for operating 333
the business located at the specific location. 334

(J) The sale or lease of goods or services to a purchaser who 335
also offers, sells, or distributes other goods or services that 336
are not: 337

(1) Supplied by the seller or other person enumerated in 338
division (D)(1) of section 1334.01 of the Revised Code; or 339

(2) Utilized with the goods or services supplied by the 340
seller or other person enumerated in division (D)(1) of section 341
1334.01 of the Revised Code. 342

(K) An agreement permitting a person to offer, sell, or 343
distribute goods or services on or about premises occupied by a 344
retailer-grantor primarily for the retailer-grantor's own 345
merchandising activities, where the goods or services are not 346
purchased from the retailer-grantor or persons with whom the 347
lessee is required or advised to do business by the 348
retailer-grantor. 349

(L) A seller who has both of the following: 350

(1)(a) A net worth on a consolidated basis, according to its 351

most recent audited financial statement, of not less than ~~five~~ 352
fifteen million dollars; 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 413
Revised Code are in addition to remedies otherwise available for 414
the same conduct under federal, state, or local law. Any waiver by 415
a purchaser of sections 1334.01 to 1334.15 of the Revised Code or 416
any venue or choice of law provision that deprives a purchaser who 417
is an Ohio resident of the benefit of those sections is contrary 418
to public policy and is void and unenforceable. 419

Section 2. That existing sections 1334.01, 1334.05, 1334.06, 420
1334.09, 1334.10, 1334.12, 1334.13, and 1334.15 of the Revised 421
Code are hereby repealed. 422