

BUSINESS OPPORTUNITY PURCHASER'S PROTECTION ACT
OHIO REVISED CODE, CHAPTER 1334

1334.01 Business opportunity plan definitions.

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

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

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

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

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

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

(2) The purchaser is required to make an initial payment greater than five hundred dollars, but less than fifty 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, followed by specific monthly payments, "initial payment" means the entire total sale price. "Initial payment" does not include any payment for sales demonstration equipment and materials, so long as all of the following apply:

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

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

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

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

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

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

(2) Purchase any finished goods that the purchaser makes, produces, fabricates, grows, or breeds utilizing the goods or services supplied by the seller or other person enumerated in division (D)(1) of this section. Effective Date: 09-10-1991

1334.02 Written disclosure document.

In connection with the sale or lease of a business opportunity plan, no seller or broker shall fail to provide to a prospective purchaser, at least ten business days prior to the execution of an agreement selling or leasing a business opportunity plan, a written disclosure document.

(A) The disclosure document shall carry a cover sheet showing only the name of the seller, the date the disclosure statement was prepared, and the following notice in at least sixteen-point boldface type:

"READ THIS CAREFULLY

The state of Ohio has not reviewed and does not approve, recommend, endorse, or sponsor this or any other business opportunity plan. If you have any questions about this plan, the information contained in this disclosure document should be reviewed with an attorney or financial advisor before you sign any agreement."

(B) Immediately after, on a sheet which shall immediately follow the cover sheet, the disclosure document shall be captioned in at least sixteen-point boldface type "disclosures required by Ohio law" and contain at least the following information:

(1) A statement disclosing:

- (a) The name, address, and principal place of business of the seller and the parent firm or holding company of the seller, if any.
- (b) The name under which the seller is doing or intends to do business.
- (c) The trademark, trade name, service mark, advertising, or other commercial symbol, if any, under which the prospective purchaser will be operating, or which identifies the goods or services to be offered, sold, or distributed by the purchaser.
- (d) All initial payments or a promissory note which must be made by the purchaser to any person in order to begin operation of the business opportunity plan, including, but not limited to, fees, deposits, down payments, prepaid rent, and equipment or inventory purchases.
- (e) The conditions under which all or part of any initial payment is refundable or a promissory note is returnable, and if the initial payment is not refundable, that fact shall be clearly disclosed.
- (f) The nature of the business opportunity plan offered by the seller, including, but not limited to, a full description of the services, training, and assistance to be provided by the seller.
- (g) All material terms and conditions of any financing arrangement offered by the seller or an affiliated person to the purchaser, and a statement indicating whether the seller will receive any payments from any person for arranging such financing.
- (h) The precise nature and all material terms of any buy-back or security arrangement if the seller represents that there is a buy-back arrangement or that the purchaser's initial payment or a promissory note is secured in any manner.
- (i) The length of time the seller has:
 - (i) Offered business opportunity plans;
 - (ii) Offered the specific business opportunity plan which is offered to the purchaser.
- (j) The number of business opportunity plans sold or leased by the seller, involving the goods or services offered to the purchaser, which:
 - (i) Were operating in this state at the end of the previous year;
 - (ii) Were operating in all other states at the end of the previous year.
- (k) Whether the purchaser is limited in the goods or services that may be offered for sale or distribution, the persons to whom such goods or services may be sold or distributed, and whether the purchaser is to be provided an exclusive or protected geographical territory in which the goods or services may be sold or distributed.
- (l) Whether and under what conditions the purchaser may transfer the business opportunity plan or any interest in it, and the amount of consideration, if any, which the purchaser must pay to the seller for the transfer.
- (m) The conditions under which the business opportunity plan may be terminated or renewed, and whether the business opportunity plan may be repurchased at the seller's option.
- (n) The number of business opportunity plans, involving the goods or services offered to the purchaser, which were terminated, refused renewal, or repurchased by the seller during the previous year.
- (o) The conditions under which the business opportunity plan may be terminated by the purchaser and the number of business opportunity plans voluntarily terminated by other purchasers during the previous year.
- (p) Either of the following disclosures, if the seller is required to secure a bond or establish a trust account pursuant to division (H) of section 1334.03 of the Revised Code:
 - (i) "The seller has secured a bond issued by (enter name and address of company), a company admitted to do business in this state. Before signing an agreement you should check with this company to determine the current status of the bond."
 - (ii) "The seller has established a trust account with (enter name and address of trustee). Before signing an agreement you should check with the trustee to determine the current status of the trust account."

(2) A listing of:

- (a) The name and address of each affiliated person with whom the purchaser is required or advised to do business.
- (b) The name and office held by each of the seller's officers, directors, trustees, and general or limited partners, if any, and the name and position of any additional individuals who have management responsibilities in connection with the activities of the seller.
- (c) Whether or not the seller or any other person required to be listed by divisions (B)(2)(a) and (b) of this section:
 - (i) Has been convicted or pleaded nolo contendere in a criminal action involving allegations of fraud, embezzlement, fraudulent conversion, misappropriation of property, violation of a franchise law or law prohibiting unfair or deceptive practices, during the previous seven years;
 - (ii) Has been held liable in a civil action, resulting in a final judgment, involving allegations of fraud, embezzlement, fraudulent conversion, misappropriation of property, violation of a franchise law or law prohibiting unfair or deceptive practices, during the previous seven years;
 - (iii) Is currently subject to an injunction or restrictive order, of any court or state or federal agency, relating to or affecting the sale or lease of business opportunity plans or the terms of any agreement between the seller and a purchaser;
 - (iv) Has filed a petition in bankruptcy, been adjudged a bankrupt, or has been an officer or director of a business entity that has filed a petition in bankruptcy or been adjudged a bankrupt in the last seven years;

(d) The identity and location of each court or agency, the date of conviction, judgment, or decision, the penalty imposed, the damages assessed, and the terms of any order against a person required to be identified by division (B)(2)(c) of this section.

(e) The name and address of each business opportunity plan, sold or leased by the seller, which is located in this state.

(3) The following attachments:

(a) A copy of the seller's financial statement, not more than twelve months old, together with a statement of any material changes in the financial condition of the seller since the date of the statement. The financial statement shall either be audited or be accompanied by a sworn statement signed by one of the seller's officers, directors, trustees, or general or limited partners, attesting to the truthfulness and accuracy of the financial statement to the best of the signatory's knowledge and belief.

(b) An unexecuted copy of the entire agreement selling or leasing the business opportunity plan.

Effective Date: 09-10-1991

1334.03 Prohibitions.

In connection with the sale or lease of a business opportunity plan, no seller or broker shall:

(A) Make any oral, written, or visual representation to a prospective purchaser concerning potential sales, income, or gross or net profit, unless:

(1) The seller possesses data to substantiate the representation and provides the data in writing to the prospective purchaser at least ten business days prior to the execution of an agreement selling or leasing the business opportunity plan;

(2) The written data provided by the seller discloses at least:

(a) The length of time the seller has been selling or leasing the specific business opportunity plan offered;

(b) The number of purchasers known to the seller to have made at least the same sales, income, or profit, from that business opportunity plan, and the percentage that number bears to the total number of purchasers of that business opportunity plan;

(c) The following notice in at least ten-point boldface type:

“CAUTION

Some business opportunity plans have earned this amount. There is no assurance you will do as well. If you rely upon our figures, you must accept the risk of not doing as well.”

(B) Make any false or misleading statement or engage in any deceptive or unconscionable act or practice;

(C) Make any representation that is inconsistent with the disclosures required by section 1334.02 of the Revised Code and division (A) of this section;

(D) Fail to maintain a complete set of books, records, and accounts with respect to each business opportunity plan sold or leased for a period of five years from the date an agreement selling or leasing the business opportunity plan is executed;

(E) Accept, as a down payment, before the goods that are necessary to begin the business opportunity plan are delivered to the purchaser, a sum in excess of twenty per cent of the initial payment, unless the sum in excess of twenty per cent is placed in an escrow account in this state until the purchaser notifies the escrow agent, in writing, that the goods have been delivered;

(F) Accept, from a purchaser, money or a promissory note for goods promised the purchaser and then permit more than two weeks beyond the promised date for delivery of the goods to elapse without:

(1) Making shipment or delivery of the goods;

(2) Making a full refund of all sums paid by the purchaser or returning the promissory note;

(3) Advising the purchaser of the duration of an extended delay and offering to provide, within two weeks, a full refund of all sums paid by the purchaser or return the promissory note;

(4) Furnishing similar goods of equal or greater value as a good faith substitute.

(G) Use the phrase “secured investment” or any other representation that implies that a prospective purchaser's initial payment or promissory note is protected from loss if the only security is the value of the goods or services supplied to the purchaser by the seller or affiliated person;

(H) Represent that a purchaser's initial payment or promissory note is secured in any manner or that the seller provides a buy-back arrangement unless the seller has, in the manner provided for by section 1334.04 of the Revised Code, obtained a surety bond or established a trust account. Effective Date: 09-10-1991

1334.04 Seller to establish surety bond or establish trust account.

(A) If, pursuant to division (H) of section 1334.03 of the Revised Code, a seller is required to obtain a surety bond or establish a trust account, the bond or trust account required shall be in favor of the state for the benefit of any purchaser who is damaged by a violation of, or by the seller's breach of an agreement subject to, sections 1334.01 to 1334.15 of the Revised Code. The surety bond shall be issued by a surety company authorized to do business in this state. A trust account shall be established and maintained in this state.

(B) Any person claiming against the bond or trust account may maintain an action against the seller and the surety or trustee, except that the surety or trustee shall be liable only for actual damages. The aggregate liability of the surety or trustee to all purchasers shall not exceed the amount of the bond or trust account.

(C) A seller shall establish the bond or trust account in an amount of not less than fifty thousand dollars at the commencement of business for the first six months. By the tenth day of the seller's seventh month in business, the bond or trust account shall be adjusted so that it is in an amount equal to the total amount of the initial payments and promissory notes required by all agreements the seller

has entered into in this state during the previous six months, in connection with which the seller has represented that there is a buy-back arrangement or that the purchaser's initial payment or promissory note is secured in any manner. Thereafter, the amount shall be similarly adjusted semiannually, no later than the tenth day of the first month of the seller's fiscal year and no later than the tenth day of the seventh month of the seller's fiscal year. A seller may reduce the amount of the bond or trust account by the amount of the initial payment or promissory note required by any agreement under which the term of a buy-back or security arrangement has expired. In no event shall the amount of the bond or trust account be less than ten thousand dollars.

Effective Date: 09-10-1991

1334.05 Right to cancel.

In addition to any right otherwise to revoke an offer, a purchaser has the right to cancel an agreement selling or leasing to him a business opportunity plan until midnight of the fifth business day after the day on which the purchaser signs the agreement. Cancellation is evidenced by the purchaser giving written notice of cancellation to the seller at the address stated in the agreement. The purchaser may deliver the notice by mail, telegram, manual delivery, or other personal delivery. Notice of cancellation given by a purchaser need not take a particular form and is sufficient if it indicates in writing the intent of the purchaser not to be bound. Written notice of cancellation shall be effective upon the date of postmark. Telegram delivery is effective when the telegram is ordered. Manual delivery or other personal delivery is effective when delivered to the seller or to the seller's address, whichever is first.

Effective Date: 10-25-1979

1334.06 Written agreements - contents.

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

- (1) The terms and conditions of payment including the initial payment or the promissory note, additional payments, and down payment required;
- (2) A full description of the acts or services the seller will undertake to perform for the purchaser;
- (3) The seller's principal business address and the name and address of its agent authorized to receive service of process in this state;
- (4) The business form of the seller, whether corporate, partnership, or otherwise;
- (5) The delivery date of the goods the seller is to deliver to the purchaser to begin operation of the business opportunity plan and the location for delivery;
- (6) A complete description of the buy-back or security arrangement, if any;
- (7) Notice of the purchaser's right to cancel the agreement in at least ten-point boldface type, in the following form and in close proximity to the space reserved in the agreement for the signature of the purchaser:
"You, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date you sign this agreement. See the attached notice of cancellation for an explanation of this right."

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

"NOTICE OF CANCELLATION

..... (enter date of transaction)

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

I hereby cancel this transaction.

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

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

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

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

- (1) Fail to integrate into the written agreement all material statements, representations, or promises that were made orally prior to execution of the written agreement by the seller to the purchaser and were not integrated into any other written document previously provided to the purchaser by the seller;
 - (2) Include in any agreement, any confession of judgment or any waiver of any rights to which the purchaser is entitled under sections 1334.01 to 1334.15 of the Revised Code, including specifically the right to cancel the agreement in accordance with this section;
 - (3) Fail to inform each purchaser orally, at the time an agreement is signed, of the right to cancel;
 - (4) Misrepresent in any manner the purchaser's right to cancel;
 - (5) Fail or refuse to honor any valid notice of cancellation by a purchaser and within ten business days after receipt of the notice to:
 - (a) Refund all payments made under the agreement;
 - (b) Cancel and return any note, negotiable instrument, or other evidence of indebtedness executed by the purchaser in connection with the agreement and take any action necessary to reflect the termination of any security interest or lien created under the agreement;
 - (c) Notify the purchaser if the seller intends to repossess or abandon any goods delivered to the purchaser.
 - (6) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness during the time within which a purchaser may cancel;
 - (7) Commence delivery of any goods or provide any services during the time within which the purchaser may cancel.
- Effective Date: 09-10-1991

1334.07 Attorney general investigations.

[(A)] If by his own inquiries, or as a result of complaints, the attorney general has reasonable cause to believe that a seller or broker has engaged, is engaging, or is threatening to engage in an act or practice that violates sections 1334.01 to 1334.15 of the Revised Code, he may investigate. For this purpose the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter. If matter that the attorney general requires to be produced is located outside the state, he may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states. The person subpoenaed may make the matter available to the attorney general at a convenient location within the state or pay the reasonable and necessary expenses for the attorney general or his representative to examine the matter at the place where it is located. However, expenses shall not be charged to a party not subsequently found to have engaged in an act or practice that violates sections 1334.01 to 1334.15 of the Revised Code.

(B) Within twenty days after a subpoena has been served, a motion to extend the return day, or to modify or quash the subpoena, stating good cause, may be filed in the court of common pleas of Franklin county or the court of common pleas of the county in this state in which the person served resides or has his principal place of business.

(C) A person subpoenaed under this section shall comply with the terms of the subpoena, unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the return day of the subpoena, or issued any other order with respect to the subpoena prior to its return day.

If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to the court of common pleas of the county in which the person subpoenaed resides or has his principal place of business for an order compelling compliance.

(D) The attorney general may request that an individual who refuses to testify or to produce relevant matter on the ground that the testimony or matter may incriminate him be ordered by the court to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under sections 1334.01 to 1334.15 of the Revised Code, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which he is entitled by law, shall not be subjected to a criminal proceeding on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter.

Effective Date: 10-25-1979

1334.08 Attorney general actions.

(A) If the attorney general, by his own inquiries or as a result of complaints has reasonable cause to believe that a person has engaged, is engaging, or threatening to engage in an act or practice that violates sections 1334.01 to 1334.15 of the Revised Code, he may bring any of the following actions:

- (1) An action to obtain a declaratory judgment that the act or practice violates sections 1334.01 to 1334.15 of the Revised Code;
- (2) An action to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice. If the attorney general shows by a preponderance of the evidence that a seller or broker has violated, is violating, or is threatening to violate sections 1334.01 to 1334.15 of the Revised Code, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice. On motion of the attorney general, or on its own motion, the court may impose a civil penalty of not more than ten thousand dollars for each violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under this section. The civil penalties shall be paid as provided in division (F) of this section.
- (3) A class action under Civil Rule 23, as amended, on behalf of purchasers damaged by a violation of sections 1334.01 to 1334.15 of the Revised Code.

(B) On motion of the attorney general and without bond, in an attorney general's action under this section, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets, to reimburse purchasers found to have been damaged, to carry out a transaction in accordance with a purchaser's reasonable expectations, to strike or limit the application of unconscionable clauses of agreements so as to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the seller or broker found to be in violation.

(C) Any money or property received by the attorney general in an action under this section that cannot with due diligence within five years be restored by a referee to purchasers shall be unclaimed funds reported under Chapter 169. of the Revised Code.

(D) In addition to the other remedies provided in this section, the attorney general may request and the court may impose a civil penalty of not more than five thousand dollars against a seller or broker for each violation found by the court. The court shall not impose civil penalties under this division that exceed, in the aggregate, one hundred thousand dollars.

(E) If a court determines that provision has been made for reimbursement or other appropriate corrective action, insofar as practicable, with respect to all purchasers damaged by a violation, or in any other appropriate case, the attorney general, with court approval, may terminate enforcement proceedings brought by him upon acceptance of an assurance from a seller or broker of voluntary compliance with sections 1334.01 to 1334.15 of the Revised Code, with respect to the alleged violation. The assurance shall be filed with the court and entered as a consent judgment. Disregard of the terms of a consent judgment entered upon an assurance shall be treated as a violation of an injunction issued under this section.

(F) Civil penalties ordered pursuant to divisions (A) and (D) of this section shall be paid as follows: one-fourth of the amount to the treasurer of the county in which the action is brought and three-fourths to the treasurer of state to the credit of the general revenue fund. Effective Date: 10-25-1979

1334.09 Action for rescission and damages.

(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 an individual action, rescind the transaction and recover, if he is found to have been damaged, three times the amount of actual damages or ten thousand dollars, whichever is greater, or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.

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

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

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

Effective Date: 10-25-1979

1334.10 Jurisdiction.

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

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

(C) No action under sections 1334.01 to 1334.15 of the Revised Code may be brought to recover for a transaction more than five years after the occurrence of the violation.

(D) In any case arising under section 1334.08 or 1334.09 of the Revised Code, if a seller or broker shows by a preponderance of the evidence that a violation, or failure to meet the requirements of the exemption provided for in section 1334.13 of the Revised Code, resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed against the seller or broker under division (D) of section 1334.08 of the Revised Code, no party shall be awarded attorney's fees under division (B) of section 1334.09 of the Revised Code, and monetary recovery shall not exceed the amount of actual damages resulting from the violation. In addition, a purchaser may, in an action brought within one year after the date on which the agreement selling or leasing the business opportunity plan was executed, recover all sums paid to the seller less the fair market value, at the time of delivery, of any goods supplied by the seller that are not returned to the seller. Effective Date: 10-25-1979

1334.11 Defenses.

Notwithstanding section 1303.35 of the Revised Code, a purchaser who executes an agreement selling or leasing to him a business opportunity plan or a note in connection with such an agreement may assert as a defense to a claim by a holder in due course, as defined in section 1303.32 of the Revised Code, any defense that the purchaser may assert against the seller of the business opportunity plan. Effective Date: 08-19-1994

1334.12 Application of chapter.

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

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

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

- (C) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;
- (D) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising, or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising or other commercial symbol;
- (E) The transfer of a registered security, as defined by division (B) of section 1707.01 of the Revised Code;
- (F) Any transaction in which either the seller or purchaser is licensed pursuant to and the transaction is governed by Chapter 4735. of the Revised Code;
- (G) A publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter insofar as the information or matter has been disseminated or reproduced on behalf of others without knowledge that it violates sections 1334.01 to 1334.15 of the Revised Code;
- (H) A license granted by a general merchandise retailer that allows the licensee to sell goods or services to the general public under the retailer's trademark, trade name, or service mark, advertising, or other commercial symbol if the general merchandise retailer has been doing business in this state continuously for five years prior to the granting of the license and the general merchandise retailer also sells the same goods or services directly to the general public;
- (I) The sale of a business which for at least six months previous to the sale has:
- (1) Been operated from a given specific location;
 - (2) Been open for business to the general public;
 - (3) Had all equipment and supplies necessary for operating the business located at the specific location.
- (J) The sale or lease of goods or services to a purchaser who also offers, sells, or distributes other goods or services that are not:
- (1) Supplied by the seller or other person enumerated in division (D)(1) of section 1334.01 of the Revised Code; or
 - (2) Utilized with the goods or services supplied by the seller or other person enumerated in division (D)(1) of section 1334.01 of the Revised Code.
- (K) An agreement permitting a person to offer, sell, or distribute goods or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor's own merchandising activities, where the goods or services are not purchased from the retailer-grantor or persons with whom the lessee is required or advised to do business by the retailer-grantor.
- (L) A seller who has both of the following:
- (1)
 - (a) A net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars;
 - (b) A net worth, according to its most recent audited financial statement, of not less than one million dollars and the seller is at least eighty per cent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars;
 - (2) Had at least twenty-five purchasers conducting business at all times during the five-year period immediately preceding the sale or lease of the business opportunity plan, or has conducted the business which is the subject of the business opportunity plan continuously for not less than five years preceding the sale or lease of the business opportunity plan.
- (M) The sale or lease of goods or services to a purchaser who has:
- (1) For at least six months previously, bought goods or services which were sold under the same trademark or trade name, or which were produced by the seller and received on resale of such goods or services an amount at least equal to the amount of the initial payment or promissory note; or
 - (2) Previously been engaged, for at least one year, in the business of selling or distributing the goods or services that are the subject of the business opportunity plan, and earned from that business a gross income of at least twenty-five thousand dollars in any one year.
- (N) The renewal or extension of an existing business opportunity plan, provided the original agreement was for at least one year.

Effective Date: 09-10-1991

1334.13 Certain franchising transactions exempted.

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

- (A) Any transaction that fully complies with the trade regulation rule of the federal trade commission, "disclosure requirements and prohibitions concerning franchising and business opportunity ventures," 16 C.F.R. 436.1 et seq.;
- (B) Any transaction in which the prospective purchaser, at least ten business days before the execution of an agreement selling or leasing a business opportunity plan, receives a document containing truthful, accurate, and complete disclosures that fully complies with the requirements of the "uniform franchise offering circular" adopted by the midwest securities commissioners association on September 2, 1975, and the "guidelines for preparation of the uniform franchise offering circular and related documents" adopted by the association on July 20, 1977. Effective Date: 10-25-1979

1334.14 Burden of proof.

In any case arising under section 1334.08 or 1334.09 of the Revised Code, the burden of proving an exemption or exception from section 1334.12 or 1334.13 of the Revised Code is upon the person who claims the exemption or exception.

Effective Date: 10-25-1979

1334.15 Remedies - waiver.

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 is contrary to public policy and is void and unenforceable. Effective Date: 10-25-1979

1334.99 Penalty.

Whoever violates sections 1334.02 to 1334.06 of the Revised Code is guilty of a misdemeanor of the first degree.
Effective Date: 07-01-1996