



# Ohio Legislative Service Commission

## Bill Analysis

Meredith L. Rockwell

### **S.B. 196**

129th General Assembly  
(As Introduced)

**Sens.** Wagoner, Gillmor, Seitz

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## **BILL SUMMARY**

- Makes changes to the cancellation provisions of the Ohio Business Opportunity Plan Law and allows cancellation for up to 12 months if certain continuing law provisions are not fulfilled.
- Changes certain exemptions from the Ohio Business Opportunity Plan Law.
- Limits the timeframe within which an action for recovery may be brought under the Ohio Business Opportunity Plan Law.
- Renders any choice of law provision that deprives a purchaser who is an Ohio resident of the benefit of the Ohio Business Opportunity Plan Law void and unenforceable.
- Declares that the Ohio Business Opportunity Plan Law represents a fundamental public policy for Ohio.

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## **CONTENT AND OPERATION**

### **Cancellation**

A business opportunity plan is an agreement in which a purchaser obtains the right to offer, sell, or distribute goods or services under certain conditions.<sup>1</sup> The bill adds a provision to the Ohio Business Opportunity Plan Law<sup>2</sup> that allows a purchaser of a business opportunity plan to cancel an agreement selling or leasing to the purchaser a

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<sup>1</sup> R.C. 1334.01(D).

<sup>2</sup> R.C. Chapter 1334.

business opportunity plan. Under continuing law, a purchaser has the right to cancel an agreement until midnight of the fifth business day after the day on which the purchaser signs the agreement. The bill only allows this cancellation if the seller complies with certain continuing law provisions. The bill also allows a purchaser to cancel an agreement any time within 12 months after the day on which the purchaser signs the agreement if the seller has failed to comply with the continuing law provisions. The applicable continuing law provisions with which a seller must comply to limit the cancellation period to five days include all of the following:

(1) The agreement must contain a 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.**

(2) A completed form, in duplicate, captioned "Notice of Cancellation," must be attached to the agreement signed by the purchaser and be easily detachable and must 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)

(3) Before furnishing copies of the notice of cancellation to the purchaser, the seller must 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.

If the seller fails to comply with those continuing law provisions, the 12-month cancellation created by the bill will apply. The bill repeals the current law provision that allows the purchaser, until the seller has complied with the continuing law provisions discussed immediately above, to 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 current law provision describing when the five-day period within which the purchaser may cancel the agreement begins to run is also repealed.<sup>3</sup>

## **Exemptions**

Under continuing law, specified persons or transactions are exempt from the Ohio Business Opportunity Plan Law. Continuing law exempts a seller who has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than \$5 million or a net worth, according to its most recent audited financial statement, of not less than \$1 million and the seller is at least 80% owned by a corporation that has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than \$5 million. The bill increases the requirement in that exemption, in both instances, from \$5 million to \$15 million.<sup>4</sup>

The bill removes the exemption for the sale or lease of goods or services to a purchaser who has previously been engaged, for at least one year, in the business of selling or distributing the goods or services that are the subject to the business opportunity plan, and earned from that business a gross income of at least \$25,000 in one year.<sup>5</sup>

Current law exempts the following two types of transactions from the majority of the Ohio Business Opportunity Plan Law:

(1) 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.*;

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<sup>3</sup> R.C. 1334.05 and 1334.06.

<sup>4</sup> R.C. 1334.12(L).

<sup>5</sup> R.C. 1334.12(M).

(2) 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.

The bill instead exempts any transaction that fully complies in all material respects with the same trade regulation as described in (1) above, but adds that the compliance must be with that trade regulation as amended from time to time, that is in effect on the date of the transaction. Additionally, the bill repeals the exemption described in (2) above, and instead exempts any transaction that fully complies in all material respects with the trade regulation rule of the Federal Trade Commission, "Disclosure Requirements and Prohibitions Concerning Business Opportunities," 16 C.F.R. 437.1 *et seq.*, as may be amended from time to time, that is in effect on the date of the transaction.<sup>6</sup>

### **Actions for recovery**

Under continuing law, no action under the Ohio Business Opportunity Plan Law may be brought to recover for a transaction more than five years after the occurrence of the violation. The bill further limits when such an action may be brought. Under the bill, the action may also be brought no more than five years after the date on which the parties executed the agreement selling or leasing the business opportunity plan and requires the time limitation to run from whichever occurred earlier, the occurrence of the violation or the date on which the parties executed the agreement.<sup>7</sup>

### **Choice of law and public interest**

The bill states that the General Assembly declares that the offer and sale of business opportunity plans is a matter affected with a public interest. The General Assembly further declares that it is the intent of this chapter to protect prospective purchasers of business opportunity plans by requiring that sellers provide the purchasers with the information necessary to make an intelligent decision about the business opportunity plan being offered, and that the Ohio Business Opportunity Plan Law represents a fundamental public policy for Ohio.

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<sup>6</sup> R.C. 1334.13.

<sup>7</sup> R.C. 1344.10(C).

The bill states that any choice of law provision that deprives a purchaser who is an Ohio resident of the benefit of the Ohio Business Opportunity Plan Law is contrary to public policy and is void and unenforceable.<sup>8</sup>

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## HISTORY

ACTION	DATE
Introduced	07-07-11

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<sup>8</sup> R.C. 1334.15.

