

# AN ACT

To amend section 1111.01 and to enact sections 1112.01, 1112.02, 1112.03, 1112.04, 1112.05, 1112.06, 1112.07, 1112.08, 1112.09, 1112.10, 1112.11, 1112.12, 1112.13, 1112.14, 1112.15, 1112.16, 1112.17, 1112.18, 1112.19, 1112.20, 1112.21, 1112.22, 1112.23, 1112.24, 1112.25, 1112.26, 1112.27, 1112.28, and 1112.99 of the Revised Code to create the Ohio Family Trust Company Act.

*Be it enacted by the General Assembly of the State of Ohio:*

**SECTION 1.** That section 1111.01 be amended and sections 1112.01, 1112.02, 1112.03, 1112.04, 1112.05, 1112.06, 1112.07, 1112.08, 1112.09, 1112.10, 1112.11, 1112.12, 1112.13, 1112.14, 1112.15, 1112.16, 1112.17, 1112.18, 1112.19, 1112.20, 1112.21, 1112.22, 1112.23, 1112.24, 1112.25, 1112.26, 1112.27, 1112.28, and 1112.99 of the Revised Code be enacted to read as follows:

**Sec. 1111.01.** As used in this chapter:

(A) "Charitable trust" means a charitable remainder annuity trust as defined in section 664(d) of the Internal Revenue Code, a charitable remainder unitrust as defined in section 664(d) of the Internal Revenue Code, a charitable lead or other split interest trust subject to the governing instrument requirements of section 508(e) of the Internal Revenue Code, a pooled income fund as defined in section 642(c) of the Internal Revenue Code, a trust that is a private foundation as defined in section 509 of the Internal Revenue Code, or a trust of which each beneficiary is a charity.

For purposes of this division and division (B) of this section, "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(B) "Charity" means a state university as defined in section 3345.011 of the Revised Code, a community college as defined in section 3354.01 of the Revised Code, a technical college as defined in section 3357.01 of the Revised Code, a state community college as defined in section 3358.01 of the Revised Code, a private college or university that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, a trust or organization exempt from taxation under section 501(c)(3) or section 501(c)(13) of the Internal Revenue Code, or a corporation, trust, or organization described in section 170(c)(2) of the Internal Revenue Code. The term "charities" means more than one trust or organization that is a charity.

(C) "Collective investment fund" means a fund established by a trust company or an affiliate of a trust company for the collective investment of assets held in a fiduciary capacity, either alone or with one or more cofiduciaries, by the establishing trust company and its affiliates.

(D) "Fiduciary investment company" means a corporation that is both of the following:

(1) An investment company;

(2) Incorporated, owned, and operated in accordance with rules adopted by the superintendent of financial institutions for the investment of funds held by trust companies in a

fiduciary capacity and for true fiduciary purposes, either alone or with one or more cofiduciaries.

(E) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(F) "Instrument" includes any will, declaration of trust, agreement of trust, agency, or custodianship, or court order creating a fiduciary relationship.

~~(F)~~-(G) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(H) "Investment company" means any investment company as defined in section 3 and registered under section 8 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8.

~~(G)~~-(I) "Trust business" means accepting and executing trusts of property, serving as a trustee, executor, administrator, guardian, receiver, or conservator, and providing fiduciary services as a business. "Trust business" does not include any of the following:

(1) Any natural person acting as a trustee, executor, administrator, guardian, receiver, or conservator pursuant to appointment by a court of competent jurisdiction;

(2) Any natural person serving as a trustee who does not hold self out to the public as willing to act as a trustee for hire. For purposes of division ~~(G)~~-(I) of this section, the solicitation or advertisement of legal or accounting services by a person licensed in this state as an attorney or a person holding an Ohio permit to practice public accounting issued under division (A) of section 4701.10 of the Revised Code shall not be considered to be the act of holding self out to the public as willing to act as a trustee for hire.

(3) A charity, an officer or employee of a charity, or a person affiliated with a charity, serving as trustee of a charitable trust of which the charity, or another charity with a similar purpose, is a beneficiary;

(4) Any natural person, home, or residential facility serving as trustee or taking other actions relative to a qualified income trust described in section 1917(d)(4)(B) of the "Social Security Act," 42 U.S.C. 1396p(d)(4)(B), as amended;

(5) Other fiduciary activities the superintendent determines are not undertaken as a business.

**Sec. 1112.01. As used in this chapter:**

(A) "Affiliate" means any individual or entity controlling, controlled by, or under common control with a family trust company.

(B) "Business entity" means a partnership, corporation, limited liability company, or other entity.

(C) "Control" means the power to direct or cause the direction of the management and policies of a business entity, whether through ownership of voting securities, by contract, or otherwise.

(D)(1) With respect to a licensed family trust company or a family trust company applying for a license under this chapter, "designated relative" means the common ancestor of the family, whether living or deceased, who is designated in the application for a license.

(2) With respect to any other family trust company, "designated relative" means the common ancestor of the family, whether living or deceased, who is designated in a written document by the family trust company, which document is maintained with the permanent records of the family trust company.

(3) Once designated, a "designated relative" may not be changed.

(E) "Family affiliate" means a business entity controlled by family members or affiliates.

(F)(1) "Family client" means all of the following:

(a) Any family member;

(b) Any former family member;

(c) Any key employee;

(d) Any former key employee provided that, upon the end of the individual's employment by the family trust company, the individual does not receive investment advice from the family trust company, or invest additional assets with a family trust company-advised trust, foundation, or entity, other than with respect to assets advised directly or indirectly by the family trust company immediately prior to the end of the individual's employment. Nothing in division (F)(1)(d) of this section shall be considered to preclude a former key employee from being a family client if the employee received investment advice from the family trust company with respect to additional investments that the individual was contractually obligated to make, and that relate to a family trust company-advised investment existing, prior to the end of the individual's employment by the family trust company.

(e) Any nonprofit organization, charitable foundation, charitable trust, including a charitable lead trust and charitable remainder trust whose only current beneficiaries are other family clients and charitable or nonprofit organizations, or other charitable organization, so long as all of the contributions to the organization, foundation, or trust came exclusively from one or more other family clients;

(f) Any estate of a family member, former family member, key employee, or former key employee;

(g) Any irrevocable trust in which one or more other family clients are the only current beneficiaries;

(h) Any irrevocable trust funded exclusively by one or more other family clients in which other family clients and nonprofit organizations, charitable foundations, charitable trusts, or other charitable organizations are the only current beneficiaries;

(i) Any revocable trust of which one or more other family clients are the sole grantors;

(j) Any trust to which both of the following conditions apply:

(i) Each trustee or other person authorized to make decisions with respect to the trust is a key employee.

(ii) Each settlor or other person who has contributed assets to the trust is a key employee or the key employee's current or former spouse or spousal equivalent who, at the time of the contribution, holds a joint, community property, or other similar shared ownership interest with the key employee.

(k) Any business entity wholly owned, either directly or indirectly, exclusively by and operated for the sole benefit of one or more other family clients.

(2) With respect to licensed family trust companies only, "family client" also means a family affiliate and any shareholder, partner, member, director, officer, or employee of a family affiliate who is an individual described in division (F)(1) of this section.

(G)(1) "Family member" means all of the following, provided that the designated relative is

not more than ten generations removed from the youngest generation of family members:

(a) All lineal descendants, including adopted children, stepchildren, foster children, and individuals who were a minor when another family member became a legal guardian of the individual, of the designated relative;

(b) Such lineal descendants' spouses or spousal equivalents.

(2) With respect to licensed family trust companies only, "family member" also means all of the following:

(a) An ancestor or sibling of a spouse or spousal equivalent described in division (G)(1) of this section;

(b) Any individual who is a beneficiary of a will or trust established by an individual described in division (G)(1) of this section, provided that, at any given time, the number of individuals qualifying as family members under division (G)(2)(b) of this section does not exceed twenty-five.

(H) "Family trust company" means a corporation or limited liability company organized under the laws of this state that meets all of the following requirements:

(1) It is organized to serve only family clients.

(2) It is wholly owned by family clients and is exclusively controlled, either directly or indirectly, by one or more family members or family entities. For purposes of division (H)(2) of this section, "family entity" means any of the trusts, estates, or other entities described in division (F)(1) (e), (f), (g), (h), (i), or (k) of this section, except for key employees and their trusts.

(3) It acts as a fiduciary.

(4) It does not transact trust business with, propose to act as a fiduciary for, or accept trust business from, a person that is not a family client.

(I) "Former family member" means a spouse, spousal equivalent, or stepchild who was a family member but is no longer a family member due to a divorce or other similar event.

(J) "Key employee" means all of the following:

(1) Any natural person who is an executive officer, director, trustee, or general partner of, or a person serving in a similar capacity to, the family trust company. For purposes of division (J)(1) of this section, "executive officer" means the president, any vice-president in charge of a principal business unit, division, or function such as administration or finance, any other officer who performs a policymaking function, or any other person who performs a similar policymaking function.

(2) The spouse or spousal equivalent of a person described in division (J)(1) of this section, if the spouse or spousal equivalent holds a joint, community property, or other similar shared ownership interest with that person;

(3) Any employee of the family trust company, other than an employee performing solely clerical, secretarial, or administrative functions or duties, who participates in the investment activities of the family trust company, provided that the employee has been participating in those investment activities for or on behalf of the family trust company, or has been performing similar functions or duties for or on behalf of another business entity, for at least one year.

(K) "Licensed family trust company" means a family trust company licensed under this chapter.

(L) "Spousal equivalent" means a cohabitant occupying a relationship generally equivalent to

that of a spouse.

(M) "Trust business" has the same meaning as in section 1111.01 of the Revised Code.

**Sec. 1112.02.** Except as otherwise provided in this chapter or in any other provision of the Revised Code, a family trust company is subject to this chapter only to the extent that the family trust company transacts trust business in this state.

**Sec. 1112.03.** (A)(1) A family trust company may be, but is not required to be, licensed under this chapter. If a family trust company does not apply for a license under this chapter, it is not subject to supervision by the superintendent of financial institutions, so long as the family trust company meets the criteria as set forth in this chapter for an unlicensed family trust company. It shall, however, before commencing operations as a family trust company and annually thereafter, submit to the superintendent an affidavit signed by a senior officer of the family trust company verifying that the family trust company meets all of the requirements set forth under this chapter to transact business as an unlicensed family trust company in this state. The superintendent may charge and collect a fee from the unlicensed family trust company when the unlicensed family trust company files the affidavit with the superintendent.

(2) If the superintendent requires a fee under division (A)(1) of this section, the superintendent shall adopt rules in accordance with Chapter 119. of the Revised Code to establish the amount of the fee.

(B) Except as otherwise provided in this chapter, a family trust company licensed under this chapter is not subject to any other chapter of Title XI of the Revised Code.

**Sec. 1112.04.** (A) A family trust company may do any of the following for the benefit of family clients only:

(1) Act as a fiduciary, including as a personal representative, within and outside this state;

(2) Act within and outside this state as advisory agent, agent, assignee, assignee for the benefit of creditors, attorney in fact, authenticating agent, bailee, bond or indenture trustee, conservator, conversion agent, curator, custodian, escrow agent, exchange agent, fiscal or paying agent, financial adviser, investment adviser, investment manager, managing agent, purchase agent, receiver, registrar, safekeeping agent, subscription agent, transfer agent except for public business entities, warrant agent, or in any similar capacity generally performed by corporate trustees and, in so acting, possess, purchase, sell, invest, reinvest, safe keep, or otherwise manage or administer the real or personal property of other persons;

(3) Exercise the powers of a corporation or limited liability company organized under the laws of this state and any incidental powers to enable it to fully exercise any power authorized under this chapter.

(B) A family trust company shall not do any of the following:

(1) Except as otherwise provided in division (A)(10) of section 1112.05 of the Revised Code, receive money or its equivalent from any individual or entity for deposit, make loans of any nature to any individual or entity, or otherwise conduct a general banking business;

(2) Engage in trust business with, or advertise its services to, the public;

(3) Use "trust" or any direct derivative of that word as any part of its name, unless it is a licensed family trust company.

**Sec. 1112.05.** (A) Notwithstanding any other provision of law to the contrary, while acting

as the fiduciary of a trust, a family trust company may do all of the following:

- (1) Invest in a security of an investment company or investment trust for which the family trust company or a family affiliate provides services in a capacity other than as a fiduciary;
- (2) Place a security transaction using a broker that is a family affiliate;
- (3) Invest in an investment contract that is purchased from an insurance company or carrier owned by or affiliated with the family trust company or a family affiliate;
- (4) Enter into an agreement with a beneficiary or grantor of a trust relative to the appointment or compensation of the fiduciary or a family affiliate;
- (5) Transact with another trust, estate, guardianship, or conservatorship for which the family trust company is a fiduciary or in which a beneficiary has an interest;
- (6) Make an equity investment in a nonpublicly traded entity that may or may not be marketable and that is owned or controlled, either directly or indirectly, by one or more beneficiaries, family members, or family affiliates;
- (7) Deposit trust money in a financial institution that is owned or operated by a family affiliate;
- (8) Delegate the authority to conduct any transaction or action under this section to an agent of the family trust company or a family affiliate;
- (9) Purchase, sell, hold, own, or invest in any security, bond, real or personal property, stock, or other asset of a family affiliate;
- (10) Loan money to or borrow money from a family member or the family member's legal representative, another trust managed by the family trust company, or a family affiliate;
- (11) Act as proxy in voting any shares of stock that are assets of the trust;
- (12) Exercise any powers of control with respect to any interest in a business entity that is an asset of the trust, including, without limitation, the appointment of officers or directors who are family members;
- (13) Receive reasonable compensation for its services.

(B) After full disclosure to the governing body of the family trust company is provided, nothing in this section prohibits a family trust company from entering into a transaction with or investing in any asset of any of the following:

- (1) A trust, estate, guardianship, or conservatorship for which the family trust company is a fiduciary;
- (2) A family affiliate;
- (3) Any other business entity, agent, or person for which a conflict of interest may exist.

**Sec. 1112.06.** Each member of the governing board of a family trust company shall take and subscribe an oath that the member will administer the affairs of the family trust company diligently and honestly and that the member will not knowingly or willfully permit noncompliance with or violation of any of the laws relating to family trust companies.

**Sec. 1112.07.** (A) A family trust company wishing to be licensed under this chapter shall file an application with the superintendent of financial institutions. The application shall be in the form prescribed by the superintendent and shall be accompanied by a nonrefundable application fee of five thousand dollars.

(B) Within sixty days after a complete application for a license is filed, the division of

financial institutions shall investigate the relevant facts concerning the applicant. If the application involves investigation outside this state, the division may require the applicant to advance sufficient funds to pay any of the actual expenses of that investigation.

(C) In determining whether to approve or disapprove an application for a family trust company license, the superintendent shall consider all of the following:

(1) Whether the applicant is a corporation or limited liability company described in division (H) of section 1112.01 of the Revised Code;

(2) Whether the applicant's articles of incorporation or articles of organization authorize the applicant to serve as a trustee;

(3) Whether the applicant satisfies the requirements of section 1112.13 of the Revised Code;

(4) Whether it is reasonable to believe the applicant will comply with applicable laws and observe sound fiduciary standards in conducting trust business in this state.

(D) If an application for a license does not contain all of the information required or is not accompanied by the required fee, and if that information or fee is not submitted to the superintendent within twelve months after the superintendent first requests the information or fee, or within such later period as determined by the superintendent, the superintendent shall consider the application withdrawn. If an application is considered withdrawn under this division or if an applicant otherwise withdraws its application, the superintendent shall not issue a license to the applicant unless the applicant submits a new application and pays the required fee.

(E) When an applicant has satisfied all prior conditions imposed by the superintendent in approving the applicant's application for a family trust company license and has pledged securities as required by section 1112.12 of the Revised Code, the superintendent shall issue the applicant a trust company license. A license issued pursuant to this section shall remain in force and effect until surrendered by the licensee pursuant to section 1112.17 of the Revised Code or suspended or revoked by the superintendent pursuant to section 1112.24 or 1112.25 of the Revised Code.

**Sec. 1112.08.** (A) Upon the conclusion of the investigation required under section 1112.07 of the Revised Code, the superintendent of financial institutions shall issue a license to the applicant if the superintendent finds that all of the following conditions are met:

(1) The applicant is organized as a corporation or limited liability company under the laws of this state.

(2) The articles of incorporation or articles of organization of the applicant contain both of the following:

(a) A name for the family trust company that includes "family trust company" or "FTC" and that distinguishes it from any trust company licensed under Chapter 1111. of the Revised Code or any other family trust company licensed under this chapter;

(b) The purpose for which it is formed, including a statement that its services will be provided only to family clients of a designated relative.

(3) The individuals who will serve as directors or officers of the corporation, or the managers or family members acting in a managerial capacity for the limited liability company, as applicable:

(a) Have a reputation for honesty, trustworthiness, and integrity and display competence to transact the business of a licensed family trust company;

(b) Have not been convicted of, or pleaded guilty or nolo contendere to, a felony or any

crime involving fraud, misrepresentation, or moral turpitude:

(c) Have not made a false statement of material fact on the application;

(d) Have not had a license issued under Chapter 1111. of the Revised Code or under this chapter suspended or revoked within the ten years immediately preceding the date of the application;

(e) Have not had a trust company license issued in any other state or any foreign country suspended or revoked within the ten years immediately preceding the date of the application;

(f) Have not failed to comply with any of the provisions of this chapter or any rule adopted thereunder that, in the judgment of the superintendent, would render the person unfit for the proposed position.

(4) The qualifications of the directors and the president, vice-presidents, and treasurer of the corporation, or the managers and family members acting in a managerial capacity for the limited liability company, as applicable, are consistent with their responsibilities and duties.

(5) The initial stockholders' equity meets the minimum requirement set forth in division (E) (2) of section 1112.14 of the Revised Code.

(B) If the superintendent does not find that all of the conditions set forth in division (A) of this section have been met, the superintendent shall enter an order denying the application and notify the applicant of the denial and the applicant's reasonable opportunity to be heard in accordance with Chapter 119. of the Revised Code, excepting any such related hearings shall not be open to the public. The notice shall be in writing, either served personally or sent by certified mail.

**Sec. 1112.09.** A family trust company's license to engage in trust business in this state is not transferable or assignable.

**Sec. 1112.10.** Not more than one place of business shall be maintained under the same license issued under this chapter, but the superintendent of financial institutions may issue additional licenses to the same licensee. For every additional place of business in this state, the licensee shall submit an application in the form prescribed by the superintendent and pay a one-time nonrefundable fee of five hundred dollars. For every additional place of business outside of this state, the licensee shall give written notice thereof to the superintendent.

**Sec. 1112.11.** The existence of any licensed family trust company shall date from the filing of its articles of incorporation or articles of organization, from which time it shall have and may exercise the incidental powers conferred by law upon corporations or limited liability companies, as applicable. However, until it has obtained a license issued under this chapter, a family trust company shall not transact any business as a licensed family trust company, other than the election of officers, the taking and approving of their official bonds, the receipts of payment upon stock subscriptions, and other business incidental to its organization.

**Sec. 1112.12.** (A) Prior to transacting any business as a licensed family trust company, a family trust company shall pledge to the treasurer of state interest-bearing securities authorized in division (B) of this section, having a par value, not including unaccrued interest, of one hundred thousand dollars, and approved by the superintendent of financial institutions. The family trust company may pledge the securities either by delivery to the treasurer of state or by placing the securities with a qualified trustee for safekeeping to the account of the treasurer of state.

(B) Securities pledged by a family trust company to satisfy the requirements of division (A) of this section shall be one or more of the following, provided that the bonds or other obligations are



rated at the time of purchase in the three highest classifications established by at least one nationally recognized standard rating service and purchased through a registered securities broker or dealer:

(1) Bonds, notes, or other obligations of or guaranteed by the United States or for which the full faith and credit of the United States is pledged for the payment of principal and interest;

(2) Bonds, notes, debentures, or other obligations or securities issued by any agency or instrumentality of the United States.

(C) The treasurer of state shall accept delivery of securities pursuant to this section when accompanied by the superintendent's approval of the securities or the written receipt of a qualified trustee describing the securities and showing the superintendent's approval of the securities, and shall issue a written acknowledgment of the delivery of the securities or the qualified trustee's receipt and the superintendent's approval to the family trust company.

(D) The superintendent shall approve securities to be pledged by a family trust company pursuant to this section if the securities are all of the following:

(1) Interest-bearing and of the value required by division (A) of this section;

(2) Of one or more of the kinds authorized by division (B) of this section and not a derivative of or merely an interest in any of those securities;

(3) Not in default.

(E) The treasurer of state shall, with the approval of the superintendent, permit a family trust company to pledge securities in substitution for securities pledged pursuant to this section and the withdrawal of the securities substituted for so long as the securities remaining pledged satisfy the requirements of division (A) of this section. The treasurer of state shall permit a family trust company to collect interest paid on securities pledged pursuant to this section so long as the family trust company is solvent. The treasurer of state shall, with the approval of the superintendent, permit a licensed family trust company to withdraw securities pledged pursuant to this section when the family trust company has discontinued its business as a licensed family trust company in this state.

(F) For purposes of this section, a qualified trustee is a federal reserve bank, a federal home loan bank, a trust company as defined in section 1101.01 of the Revised Code, or a bank or savings association that has pledged securities pursuant to section 1111.04 of the Revised Code, is authorized to accept and execute trusts, and is doing business under authority granted by the comptroller of the currency.

(G) The superintendent, with the approval of the treasurer of state, shall prescribe the form of all receipts and acknowledgments provided for by this section, and upon request shall furnish a copy of each form, with the superintendent's certification attached, to each qualified trustee eligible to hold securities for safekeeping under this section.

**Sec. 1112.13.** (A) Each licensed family trust company shall obtain and maintain all of the following:

(1) Fidelity bonds in such amounts as it considers advisable, but not less than an aggregate amount of one million dollars, on any active officer, manager, family member acting in a managerial capacity, or employee, whether or not such persons receive a salary or other compensation from the family trust company, to indemnify it against loss because of any dishonest, fraudulent, or criminal act or omission by any of the persons bonded, acting alone or in combination with any other person. The bonds may be in any form and may be paid for by the family trust company.

(2) Directors and officers liability insurance coverage in the amount of at least one million dollars.

(B) A licensed family trust company may also procure property and casualty insurance of a nature and with such coverage amounts as it considers advisable.

**Sec. 1112.14.** Each licensed family trust company shall do all of the following:

(A) Maintain office space in this state for the transaction of trust business and for the storage of, and access to, family trust company records;

(B) Hold in this state at least two governing board meetings per year at which a quorum of the board members are physically present;

(C) Employ, engage, or contract with at least one individual, on a part-time basis, to provide services in this state for the family trust company;

(D) Perform at least three of the following trust administration activities wholly or partly in this state for the accounts under the management, administration, or custody of the family trust company:

(1) Annual account reviews;

(2) Annual investment reviews;

(3) Trust accountings;

(4) Account correspondence;

(5) Completion of trust account tax returns;

(6) Distribution of account statements.

(E) Maintain all of the following:

(1) A minimum of three directors or managers, at least one of whom is a resident of this state;

(2) A minimum stockholders' equity of an amount determined by the division of financial institutions, which amount shall be at least two hundred thousand dollars but not more than five hundred thousand dollars. The equity may be comprised of cash, securities, including stock of a nonpublicly traded business entity, or other reasonably liquid assets exclusive of all organization expenses.

(3) All applicable state and local business licenses and permits;

(4) A bank account with a state chartered or national bank having a principal or branch office in this state.

**Sec. 1112.15.** The governing board of a licensed family trust company shall hold at least one regular meeting during each calendar quarter. At each of the quarterly meetings, the board, or an auditor selected by the board, shall thoroughly review the books, records, funds, and securities held by the family trust company. If the board selects an auditor, the auditor's findings shall be reported directly to the board. In lieu of the quarterly examinations, the board may accept an annual audit conducted by a certified public accountant or an independent auditor selected by the board.

**Sec. 1112.16.** Except as otherwise provided in section 1112.04 of the Revised Code, a licensed family trust company has all the rights, privileges, and exemptions from licensing and regulation requirements that are granted by any law of this state to trust companies licensed under Chapter 1111. of the Revised Code, including, without limitation, the requirements for registration, licensing, and supervision set forth in Chapter 1707. of the Revised Code. A family trust company established under Chapter 1112. of the Revised Code is not subject to taxation under Chapter 5726.

of the Revised Code.

Sec. 1112.17. (A) A family trust company licensed under this chapter may cease doing trust business and voluntarily surrender its license to engage in trust business in this state, and as a consequence be relieved of the necessity to comply with the requirements of this chapter, only with the consent of the superintendent of financial institutions.

(B) A licensed family trust company proposing to cease doing trust business in this state shall submit both of the following to the superintendent:

(1) A certified copy of the resolution of the licensed family trust company's board of directors reflecting the board's decision that the trust company should cease doing trust business in this state and adopting a plan for winding up its trust business in this state;

(2) The licensed family trust company's plan for winding up its trust business in this state.

(C) The superintendent may approve or deny the licensed family trust company's plan for winding up its trust business in this state based on the superintendent's evaluation of whether the plan provides adequate protection for those persons and interests that the trust company serves as a fiduciary. The superintendent's approval may be subject to any condition the superintendent determines appropriate under the circumstances.

(D) During the implementation of a licensed family trust company's plan for winding up its trust business in this state, the superintendent shall retain the authority to supervise the trust company and may conduct any examination relating to either the trust company or the plan the superintendent considers necessary or appropriate.

(E) If the superintendent has reason to conclude that the licensed family trust company is not safely or expeditiously implementing the approved plan for winding up the licensed family trust company's trust business in this state, the superintendent may do either of the following:

(1) Begin revocation proceedings under section 1112.24 of the Revised Code;

(2) Take possession of the trust company's trust business in this state in the same manner, with the same effect, and subject to the same rights accorded to the trust company under section 1112.26 of the Revised Code.

(F) The superintendent shall cancel the family trust company's license to do trust business in this state if the superintendent has approved the licensed family trust company's plan for winding up its trust business in this state and, when applicable, the licensed family trust company has met all of the following conditions:

(1) The licensed family trust company has completed its plan for winding up its trust business in this state consistent with any conditions imposed by the superintendent in approving the plan.

(2) The licensed family trust company has been relieved in accordance with the law of all duties as trustee, executor, administrator, registrar of stocks and bonds, or any other fiduciary under court, private, or other appointment the trust company had accepted.

(3) The licensed family trust company has, in accordance with the law, wound up its trust business in each of the other jurisdictions in which the family trust company solicited appointment or served as a fiduciary or engaged in trust business.

(G) Upon the superintendent's canceling the licensed family trust company's license to do trust business in this state, the company shall no longer, without obtaining a license from the superintendent, engage in trust business in this state.

**Sec. 1112.18.** (A) A family trust company shall keep separate and complete records for each fiduciary account or relationship, including a record of any securities constituting assets of each particular estate, trust, or account.

(B) A family trust company may place securities it holds in any fiduciary capacity with a qualified custodian of securities. A qualified custodian of securities that has custody of securities held by a family trust company in a fiduciary capacity may place those securities with another qualified custodian of securities.

(C) A family trust company may register and hold securities it holds in any fiduciary capacity in its own name, in the name of a nominee, or, if appropriate to the securities, in bearer form. A custodian of securities that has custody of securities held by a family trust company in a fiduciary capacity may hold or place those securities in the name of the family trust company, the custodian's own name, the name of either of their nominees, or, if appropriate to the securities, in bearer form.

(D) A family trust company, and a custodian of securities that has custody of securities held by a family trust company in any fiduciary capacity, may hold securities it holds in any fiduciary capacity, including those held in bearer form, in bulk, whether or not the securities are certificated, without certification of ownership attached to the securities.

(E)(1) A family trust company that serves as a cofiduciary may, with the consent of the other cofiduciaries, do any of the following:

(a) Place securities it holds in any fiduciary capacity with a custodian of securities, as provided in division (B) of this section;

(b) Register and hold securities it holds in any fiduciary capacity in its own name, in the name of a nominee, or in bearer form, as provided in division (C) of this section;

(c) Hold securities it holds in any fiduciary capacity in bulk, as provided in division (D) of this section.

(2) Any person that serves as a cofiduciary with a family trust company for any property in this state consisting of securities may consent to the family trust company taking any of the actions authorized by division (E)(1) of this section.

**Sec. 1112.19.** (A) A family trust company may, for any business purpose, retain a document, paper, or other instrument. A family trust company may record by use of a process to record, copy, photograph, or store a representation of the original document, paper, or other instrument or record if all of the following apply:

(1) The process correctly and accurately copies or reproduces, or provides a means for correctly and accurately copying or reproducing, the original document, paper, or other instrument or record with regard to both its substance and appearance, except the copy or reproduction need not reflect the original paper or other medium, size, or color, unless the medium, size, or color is necessary to establish the authenticity of the original.

(2) The process does not permit the recording, copy, photographic image, or stored representation of the original document, paper, or other instrument or record to be altered or manipulated.

(3) Any medium the process uses to record, copy, photograph, or store a representation of the original document, paper, or other instrument or record is a durable medium for retaining and reproducing records.

(B) The superintendent of financial institutions shall identify and publish a list of processes that satisfy the conditions of division (A) of this section.

(C) Each family trust company that uses a process authorized by this section to preserve any of its records shall also provide for safekeeping and for examining, viewing, or projecting the records preserved, and for producing reproductions of the original records.

**Sec. 1112.20.** (A) Any licensed family trust company is subject to all powers of, and remedies and sanctions available to, the superintendent of financial institutions and the division of financial institutions under Chapters 1101. to 1127. of the Revised Code, in addition to the specific powers, remedies, and sanctions provided for in this chapter.

(B)(1) With regard to a licensed family trust company, "regulated person," as used in division (B) of this section, means a director, officer, employee, or controlling shareholder of or agent for the licensed family trust company or a person who participates in the management of the licensed family trust company, whether or not the person is assigned to an office of the licensed family trust company in this state or specifically to the licensed trust company's trust business in this state.

(2) An order to cease and desist issued under section 1121.32 of the Revised Code, a removal or prohibition order issued under section 1121.33 of the Revised Code, or a suspension order issued under section 1121.34 of the Revised Code, which order is issued against a regulated person who is a regulated person because of the person's relationship with a licensed family trust company doing trust business in this state, does not affect the relationship between the regulated person and the licensed family trust company except as it relates to the conduct of the licensed family trust company's trust business in this state.

**Sec. 1112.21.** Each family trust company licensed under this chapter shall file with the superintendent of financial institutions any report the superintendent may require, in the form and manner and containing the information prescribed by the superintendent.

**Sec. 1112.22.** (A) Not later than eighteen months after a licensed family trust company receives its initial license under this chapter, and as often thereafter as the superintendent of financial institutions considers necessary, but at least once each thirty-six-month cycle, the superintendent, or any deputy or examiner appointed by the superintendent for that purpose, shall thoroughly examine the records and affairs of the licensed family trust company. For purposes of the examination, the superintendent may require the attendance of, and examine under oath, any governing board member, officer, manager, employee, or agent of a licensed family trust company. A licensed family trust company shall produce and make available all records or other documents requested by the superintendent, in either electronic or paper form, whether the examination is conducted at the office of the family trust company or wholly or partially off-site.

(B) The findings of any examination conducted under this section shall be recorded in a written examination report that contains a full, true, and careful statement of the condition of the licensed family trust company. The superintendent shall provide a copy of the written examination report to the governing board of the licensed family trust company.

(C) A licensed family trust company being examined shall pay the expense of any examination conducted under this section, including salaries, travel expenses, supplies, and equipment.

**Sec. 1112.23.** (A) Except as provided in division (D) of this section, the superintendent of

financial institutions, the superintendent's agents, and employees shall keep privileged and confidential all of the following information:

(1) Application information and other information obtained from a family trust company, including the names and addresses of the directors and officers, the names and addresses of the stockholders, family members, or other owners, capital contributions, and business affiliations;

(2) Information required to be reported to, or filed with, the superintendent of financial institutions under this chapter, including the affidavit described in division (A)(1) of section 1112.03 of the Revised Code;

(3) Information leading to, arising from, or obtained in the course of an examination or investigation conducted under the authority of this chapter;

(4) Information relating to a family trust company that qualifies as nonpublic personal information under 15 U.S.C. 6809 and the regulations adopted thereunder;

(5) Information or agreements relating to any merger, consolidation, or transfer;

(6) Any other private information relating to a family trust company.

(B) Any person who receives privileged and confidential information as described in division (A) of this section is subject to the requirements of this section. No person, knowing the information is privileged and confidential, shall purposely divulge the information in any manner.

(C) Neither the superintendent, nor any agent or employee of the superintendent, shall purposely make, or cause to be made, any false statements or reports regarding the affairs or condition of a family trust company.

(D) The information described in division (A) of this section shall remain confidential and not discoverable from any source, and shall not be introduced into evidence, except in the following circumstances:

(1) When it is necessary for the superintendent to take official action regarding the affairs of a family trust company;

(2) To assist another state or a federal agency investigating activities regulated under this chapter;

(3) When obtained by a law enforcement officer pursuant to a subpoena, court order, search warrant, or other lawful means.

(E) The discovery of information pursuant to division (D) of this section shall be limited to information that directly relates to the family trust company that is the subject of the enforcement action or litigation.

**Sec. 1112.24.** (A) The superintendent of financial institutions may revoke a license issued under this chapter if, after notice and an opportunity for hearing in accordance with Chapter 119. of the Revised Code (which hearing shall not be open to the public), the superintendent finds either of the following:

(1) An officer or director of, or any manager or family member acting in a managerial capacity for, the licensed family trust company has failed to comply with any provision of this chapter.

(2) The licensed family trust company, or any person authorized to act on its behalf, refuses to allow the superintendent or any deputy or examiner appointed by the superintendent to inspect all books, records, papers, and effects related to the family trust company's business.

(B) In addition to any other remedy provided under this chapter, the superintendent may impose a fine of not more than ten thousand dollars upon either of the following:

(1) A person who fails to comply with any provision of this chapter or any rule adopted thereunder;

(2) A family trust company that is not licensed under this chapter that operates in any manner that is authorized only for licensed family trust companies.

Sec. 1112.25. (A) The superintendent of financial institutions may revoke a trust company's license to do trust business in this state, if the superintendent determines, after notice in accordance with section 1121.37 of the Revised Code and opportunity for hearing in accordance with section 1121.38 of the Revised Code, that any of the following factors is true:

(1) The existence of the family trust company, or its authority to transact business, has been terminated or suspended under the laws of the state or country in which the trust company is incorporated.

(2) The family trust company's authority to transact trust business has been terminated or suspended under the laws of the state or country in which the trust company is incorporated, or its license to engage in trust business has been terminated or suspended under the laws of any other jurisdiction in which the family trust company had been licensed to engage in trust business.

(3) A receiver, liquidator, or conservator has been appointed for the family trust company under the laws of the state or country in which the family trust company is incorporated or for its business in any other jurisdiction in which the family trust company transacts business.

(4) The family trust company is violating or has violated, or the superintendent has reasonable cause to believe the family trust company is about to violate, any of the following:

(a) A law or rule;

(b) A condition imposed by the superintendent in writing in connection with approving an application or notice or granting any other request of the family trust company;

(c) A written agreement the family trust company entered into with the superintendent;

(d) A cease and desist order issued by the superintendent under section 1121.32 of the Revised Code.

(5) The family trust company is engaging or has engaged, or the superintendent has reasonable cause to believe the family trust company is about to engage, in any unsafe or unsound practice.

(6) The family trust company has ceased to pay its debts in the ordinary course of business, is incapable of paying its debts as they mature, has liabilities in excess of its assets, or is subject to or has applied for an adjudication in bankruptcy, reorganization, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law.

(7) The family trust company has ceased or failed to conduct trust business in this state.

(8) The family trust company has failed to pay any fees, charges, forfeitures, or penalties assessed under Chapters 1101. to 1127. of the Revised Code.

(B)(1) If the superintendent has reasonable cause to believe any of the factors in division (A) of this section is true, and the superintendent determines it is necessary to protect the persons and interests in this state that the family trust company serves as a fiduciary or the property in this state that the trust company holds title to or an interest in a fiduciary, the superintendent may immediately

suspend the family trust company's license to do trust business in this state.

(2) Within ten days after the order suspending a family trust company's license to do trust business in this state is served upon it, the family trust company may apply to the court of common pleas of any county in this state in which the family trust company is doing business, or the court of common pleas of Franklin county, for an injunction setting aside, limiting, or suspending enforcement of the suspension order pending an opportunity for hearing on whether the family trust company's license to do trust business in this state should be revoked, and the court has jurisdiction to issue the injunction.

Sec. 1112.26. (A) If the superintendent of financial institutions revokes a family trust company's license to do trust business in this state pursuant to division (A) of section 1111.32 of the Revised Code, the superintendent may take possession of the family trust company's trust business in this state and may appoint a receiver for the liquidation of the trust business in this state. If the family trust company has its principal place of business in this state, the superintendent may take possession of, and appoint a receiver for the liquidation of, its entire trust business wherever it is conducted.

(B) The superintendent's taking possession of, and appointing a receiver for the liquidation of, a family trust company's trust business in this state under division (A) of this section and the liquidation of the family trust company's trust business in this state shall be conducted in accordance with the procedures and subject to the rights, powers, duties, requirements, and limitations provided in Chapter 1125. of the Revised Code for taking possession of the business and property and liquidation of a bank, except for the following:

(1) After payment of the expenses of the liquidation and claims against the family trust company arising from its doing trust business in this state in accordance with divisions (A) and (B) of section 1125.25 of the Revised Code, the receiver shall distribute any remaining funds from the liquidation of the trust company's trust business in this state to the receiver for liquidation of the family trust company's trust business in another state of the United States or for conducting a liquidation of all or part of the family trust company's trust business under laws of the United States, or equitably among the receivers if the trust company's trust business is being liquidated under the laws of more than one other state or the United States, for payment of the expenses of liquidation and claims against the family trust company's trust business. If there is no liquidation of the family trust company's trust business under way in any other state or under laws of the United States, the receiver shall, after satisfying the requirements of divisions (A) and (B) of section 1125.25 of the Revised Code, pay any remaining funds from the liquidation of the family trust company's trust business in this state to the family trust company.

(2) When the receiver has completed the liquidation of the family trust company's trust business in this state, the receiver shall, with notice to the superintendent, petition the court for an order declaring the family trust company's trust business in this state is properly wound up in the manner provided in section 1125.30 of the Revised Code. Upon the filing of the petition, the court shall proceed as provided in section 1125.30 of the Revised Code.

An order issued by the court pursuant to a petition filed under division (B)(2) of this section shall comply with section 1125.30 of the Revised Code. However, the order shall only declare the family trust company's trust business in this state has been properly wound up and shall not declare the family trust company is dissolved. The court may make whatever additional orders and grant



whatever additional relief the court determines is proper upon the evidence submitted.

Once the order is issued declaring the family trust company's trust business in this state is properly wound up, both of the following shall occur:

(a) The family trust company shall, except for any further winding up, cease engaging in trust business in this state and, if the family trust company has its principal place of business in this state, cease engaging in trust business in any jurisdiction.

(b) The receiver shall promptly file, with both the secretary of state and the superintendent, a copy of the order, certified by the clerk of the court.

(C) If the family trust company is a bank doing business under authority granted by the superintendent, all of the following apply:

(1) If the family trust company is being liquidated under Chapter 1125. of the Revised Code, the trust company's trust business shall also be liquidated even if there would not be independent grounds for liquidation of the trust business under this section.

(2) If the family trust company's trust business is being liquidated under this section and the trust company as a whole is being liquidated under Chapter 1125. of the Revised Code, the liquidations shall be merged.

(3) If the family trust company is not authorized to engage in any business other than trust business, its liquidation shall be of the company as a whole, conducted under Chapter 1125. of the Revised Code, and completed by the dissolution of the trust company.

**Sec. 1112.27.** The superintendent of financial institutions shall not have an ownership interest in a licensed family trust company.

**Sec. 1112.28.** The superintendent of financial institutions may, in accordance with Chapter 119. of the Revised Code, adopt any rule necessary to carry out the purposes of this chapter.

**Sec. 1112.99.** Whoever violates division (B) of section 1112.23 of the Revised Code is guilty of a felony of the fourth degree.

**SECTION 2.** That existing section 1111.01 of the Revised Code is hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_