



# Ohio Legislative Service Commission

## Bill Analysis

Carla Napolitano

### S.B. 175

131st General Assembly  
(As Introduced)

**Sens.** Eklund, Hite, Seitz

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## BILL SUMMARY

- Creates the Ohio Family Trust Company Act to provide for the establishment and operation of family trust companies in this state.
- Defines "family trust company" (FTC) as a corporation or limited liability company that (1) is organized in Ohio to serve only family clients, (2) is wholly owned by family clients and is exclusively controlled by one or more family members or family entities, (3) acts as a fiduciary, and (4) does not transact business with, propose to act as fiduciary for, or solicit trust business from, a person that is not a family client.
- Allows, but does not require, an FTC to be licensed as a trust company under the bill.
- Authorizes the Superintendent of Financial Institutions to issue a license to FTCs that are organized as a corporation or limited liability company under Ohio law and meet other specified conditions.
- Requires FTCs licensed under the bill to conduct certain trust-related activities in Ohio.

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## CONTENT AND OPERATION

### Overview

The bill enacts the Ohio Family Trust Company Act (R.C. Chapter 1112.) to provide for the establishment and operation of family trust companies in this state. A family trust company is subject to this new chapter only to the extent that the family trust company transacts trust business in Ohio.<sup>1</sup>

A "**family trust company**" (FTC) is defined as a corporation or limited liability company that (1) is organized in Ohio to serve only family clients, (2) is wholly owned by family clients and is exclusively controlled, either directly or indirectly, by one or more family members or family entities,<sup>2</sup> (3) acts as a fiduciary, and (4) does not transact business with, propose to act as fiduciary for, or solicit trust business from, a person that is not a family client.<sup>3</sup>

An FTC may be, but is not required to be, licensed as a trust company under the bill. As used in the bill, the term "**licensed family trust company**" refers to an FTC licensed under the bill. A licensed FTC is not subject to any other chapter of R.C. Title XI (Financial Institutions).<sup>4</sup>

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<sup>1</sup> R.C. 1112.02.

<sup>2</sup> As used here, "family entity" means any of the trusts, estates, or other entities described in (6)(e), (f), (g), (h), (i), or (k) under "**Definitions**," below, except for key employees and their trusts.

<sup>3</sup> R.C. 1112.01(H).

<sup>4</sup> R.C. 1112.01(K) and 1112.03(B).



If an FTC does not apply to be licensed under the bill, it is not subject to supervision by the Superintendent of Financial Institutions. It must, however, annually submit to the Superintendent of Financial Institutions an affidavit signed by a senior officer of the FTC verifying it meets all the requirements set forth in the bill to transact business as FTC in Ohio.<sup>5</sup>

## Definitions

Key terms defined for purposes of the bill are as follows:<sup>6</sup>

(1) "**Affiliate**" means any individual or entity controlling, controlled by, or under common control with an FTC.

(2) "**Business entity**" means a partnership, corporation, limited liability company, or other entity engaged in business.

(3) "**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.

(4)(a) With respect to an FTC licensed or applying for a license under the bill, "**designated relative**" means the common ancestor of the family, whether living or deceased, who is designated in the application for an original or renewal license.

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

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

(6) "**Family client**" means all of the following:

- (a) Any family member;
- (b) Any former family member;
- (c) Any key employee;

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<sup>5</sup> R.C. 1112.03(A).

<sup>6</sup> R.C. 1112.01.



(d) Any former key employee if, upon the end of the individual's employment by the FTC, the individual does not receive investment advice from the FTC, or invest additional assets with an FTC-advised trust, foundation, or entity, other than with respect to assets advised directly or indirectly by the FTC immediately prior to the end of the individual's employment. (A former key employee may still be considered a family client if the individual received investment advice from the FTC with respect to additional investments that the individual was contractually obligated to make, and that relate to an FTC-advised investment existing, prior to the end of the individual's employment by the FTC.)

(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, if all of the funding the organization, foundation, or trust holds 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:

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

--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.

However, with respect to licensed FTCs *only*, "**family client**" also means a family affiliate and the shareholders, partners, members, directors, officers, and employees of a family affiliate.

(7) "**Family member**" means all of the following, provided that the designated relative is no more than ten generations removed from the youngest generation of family members:

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

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

However, with respect to licensed FTCs licensed *only*, "**family member**" also means an ancestor or sibling of a spouse or spousal equivalent described in (7), and any individual who is a beneficiary of a will or trust established by an individual described in division (7), provided that the number of these individuals is not more than 25.

(8) "**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.

(9) "**Key employee**" means all of the following:

(a) Any natural person who is an executive officer, director, trustee, or general partner of, or a person serving in a similar capacity to, the FTC. ("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.)

(b) The spouse or spousal equivalent of a person described in (9)(a), if the spouse or spousal equivalent holds a joint, community property, or other similar shared ownership interest with that person;

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

(10) "**Spousal equivalent**" means a cohabitant occupying a relationship generally equivalent to that of a spouse.

### **Powers of family trust companies**

An FTC is permitted to do any of the following for the benefit of family clients *only*:

--Act as a fiduciary, including as a personal representative, within and outside Ohio;

--Act within and outside Ohio 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 advisor, investment advisor, 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;

--Exercise the powers of a corporation or limited liability company organized under Ohio law and any incidental powers to enable it to fully exercise any power authorized under the bill.<sup>7</sup>

An FTC cannot, however, 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 (except as otherwise provided under "**Authorized fiduciary activities**," below). It also cannot engage in trust business with the public.<sup>8</sup> ("**Trust business**" is generally defined as accepting and executing trusts of property, serving as a trustee, executor, administrator, guardian, receiver, or conservator, and providing fiduciary services as a business.<sup>9</sup>)

Additionally, an FTC cannot advertise its services to the public. It cannot use the word "trust" or any direct derivative of that word as any part of its name unless it is licensed under the bill.<sup>10</sup>

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<sup>7</sup> R.C. 1112.06(A).

<sup>8</sup> R.C. 1112.06(B)(1) and (2).

<sup>9</sup> R.C. 1112.01(M), by reference to R.C. 1111.01, not in the bill.

<sup>10</sup> R.C. 1112.06(B)(2) and (3).

## Authorized fiduciary activities

While acting as the fiduciary of a trust, an FTC may:<sup>11</sup>

- (1) Invest in a security of an investment company or investment trust for which the FTC 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 FTC 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 FTC 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 of these transactions or actions to an agent of the FTC 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 FTC, 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 the appointment of officers or directors who are family affiliates;
- (13) Receive reasonable compensation for its services.

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<sup>11</sup> R.C. 1112.07(A).



The bill does not prohibit an FTC from transacting business with or investing in any asset of (a) a trust, estate, guardianship, or conservatorship for which the FTC is a fiduciary, (b) a family affiliate, or (c) any other business entity, agent, or person for which a conflict of interest may exist.<sup>12</sup>

## **Governing board**

Each member of the governing board of an FTC must take and subscribe an oath that the member will administer the affairs of the FTC 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.<sup>13</sup>

## **Licensed family trust companies**

An FTC licensed under the bill generally has all the rights, privileges, and exemptions from licensing and regulation requirements that are granted by any Ohio law to trust companies licensed under the Ohio Trust Company Law, including the requirements for registration, licensing, and supervision set forth in R.C. Chapter 1707. (Ohio Securities Law).<sup>14</sup>

### **Process**

#### **Application and investigation**

An FTC wishing to be licensed under the bill must file an application with the Superintendent of Financial Institutions and pay a nonrefundable application fee of \$5,000. Within 60 days after a complete application is filed, the Division of Financial Institutions is required to investigate the relevant facts concerning the applicant. If investigation outside Ohio is involved, the applicant may be required to advance sufficient funds to pay any of the actual expenses of that investigation.

If a license application 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 12 months after the Superintendent first requests the information or fee, or within such later period as determined by the Superintendent, the application is to be considered withdrawn.<sup>15</sup>

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<sup>12</sup> R.C. 1112.07(B).

<sup>13</sup> R.C. 1112.08.

<sup>14</sup> R.C. 1112.21.

<sup>15</sup> R.C. 1112.11.





### **Conditions for licensure**

After the required investigation, the Superintendent must 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 Ohio law.

(2) The articles of incorporation or articles of organization of the applicant contain (a) a name for the FTC that includes "family trust company" or "FTC" and that distinguishes it from any other trust company licensed under the Ohio Trust Company Law or the bill and (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 FTC;

(b) Have not been convicted of, or pleaded guilty or no contest 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 the Ohio Trust Company Law or under the bill 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 the bill or any rule adopted under the bill that, in the judgment of the Superintendent, would render the person unfit for the proposed position.

(4) The financial status 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, is consistent with their responsibilities and duties.

(5) The initial stockholders' equity meets the bill's minimum requirement (see "**Bonds and insurance; minimum stockholders' equity**," below).<sup>16</sup>

If the Superintendent does not find that all of these conditions have been met, the Superintendent is to 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 R.C. Chapter 119. (the Administrative Procedure Act). The notice must be in writing, either served personally or sent by certified mail.<sup>17</sup>

The existence of any licensed FTC dates from the filing of its articles of incorporation or articles of organization, from which time it has and may exercise the incidental powers conferred by law upon corporations or limited liability companies, as applicable. However, an FTC cannot transact any business as a licensed FTC, 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, until it has obtained a license under the bill.<sup>18</sup>

#### **One place of business per license**

Only one place of business can be maintained under the same license, but the Superintendent may issue additional licenses to the same licensee. For every additional place of business in Ohio, the licensee must submit an application in the form prescribed by the Superintendent and pay a one-time nonrefundable fee of \$500. If the additional place of business is outside Ohio, the licensee is only required to give the Superintendent written notice of it.<sup>19</sup>

#### **License renewal**

A license issued under the bill may be renewed annually on or before April 1 if the renewal application is accompanied by a nonrefundable renewal fee of \$500 (and any additional fee required by the Superintendent if the renewal application identifies a new designated relative) and the applicant meets the conditions set forth above for the issuance of a license.<sup>20</sup>

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<sup>16</sup> R.C. 1112.12(A).

<sup>17</sup> R.C. 1112.12(B).

<sup>18</sup> R.C. 1112.15.

<sup>19</sup> R.C. 1112.14.

<sup>20</sup> R.C. 1112.13.



## **Bonds and insurance; minimum stockholders' equity**

Each licensed FTC must obtain and maintain fidelity bonds in such amounts as it considers advisable, but not less than an aggregate amount of \$1 million, 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 FTC, 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 FTC. A licensed FTC must obtain directors and officers liability insurance coverage in the amount of at least \$1 million.

A licensed FTC may procure property and casualty insurance of a nature and with such coverage amounts as it considers advisable.<sup>21</sup>

A licensed FTC must also maintain stockholders' equity in the amount determined by the Division of Financial Institutions, which must be at least \$200,000, but not more than \$500,000. This equity may be comprised of cash, securities, including stock of a nonpublicly traded company, or other reasonably liquid assets exclusive of all organization expenses.<sup>22</sup>

### **Pledging of securities**

A licensed FTC is required to pledge certain approved securities to the Treasurer of State prior to engaging in any business transaction. The securities may be delivered to the Treasurer of State or placed with a qualified trustee for safekeeping. The securities must be interest bearing securities approved by the Superintendent of Financial Institutions and must have a par value, not including accrued interest, of \$100,000.

The securities pledged must be one or more of the following:

- (1) Bonds, notes, or other obligation of or guaranteed by the United States or full faith and credit of the United States is pledged for payment of principle and interest;
- (2) Bonds, notes, debentures, or other obligations or securities issues by any agency or instrumentality of the United States;
- (3) General obligations of Ohio or any other state or any subdivision of Ohio or any other state.

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<sup>21</sup> R.C. 1112.18.

<sup>22</sup> R.C. 1112.19(E)(2).



The Superintendent must approve the securities to be pledged by the FTC if the securities are all of the following:

(1) Interest bearing and of the value as described above;

(2) The type of security authorized described above and not a derivative of or an interest in any of those securities;

(3) Not in default.

The Treasurer of State must, with the approval of the Superintendent, permit an FTC to substitute securities pledged so long as the securities remaining pledged satisfy the bill's requirements. The Treasurer of State must also permit a FTC to collect interest paid on the securities pledged as long as the FTC is solvent. Finally, the Treasurer of State must, with the approval of the Superintendent, allow a licensed FTC to withdraw securities pledged when the FTC has discontinued its business as a licensed FTC in Ohio.<sup>23</sup>

### **Minimum activities in Ohio**

The bill requires that each licensed FTC:

--Maintain office space in Ohio for the transaction of trust business and for the storage of, and access to, FTC records;

--Hold in Ohio at least two governing board meetings per year at which a quorum of the board members are physically present;

--Employ, engage, or contract with at least one individual, on a part-time basis, to provide services in Ohio for the FTC;

--Perform at least three of the following trust administration activities wholly or partly in Ohio for the accounts under the management, administration, or custody of the FTC: (1) annual account reviews, (2) annual investment reviews, (3) trust accountings, (4) account correspondence, (5) completion of trust account tax returns, or (6) distribution of account statements.

--Maintain (1) a minimum of three directors or managers, at least one of whom is an Ohio resident, (2) all applicable state and local business licenses and permits, and (3)

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<sup>23</sup> R.C. 1112.17.

a bank account with a state chartered or national bank having a principal or branch office in Ohio.<sup>24</sup>

### **Governing board meetings; audits**

The governing board of a licensed FTC is required to 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, must thoroughly review the books, records, funds, and securities held by the FTC. If the board selects an auditor, the auditor's findings are to 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.<sup>25</sup>

### **Discontinuing business**

If a licensed FTC desires to discontinue its business as an FTC, it must furnish to the Superintendent evidence of its release and discharge from all of the obligations and trusts that it has assumed or that have been imposed by law. If the Superintendent is satisfied with the information provided, the Superintendent is to enter an order cancelling its license.<sup>26</sup>

### **Examinations**

Not later than 18 months after an FTC receives its initial license under the bill, and as often thereafter as the Superintendent considers necessary, but at least once each 36-month cycle, the Superintendent must thoroughly examine the records and affairs of the FTC. The Superintendent may require the attendance of, and examine under oath, any governing board member, officer, manager, employee, or agent of the FTC. A licensed FTC is required to 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 FTC's office or wholly or partially off-site. It is also required to pay the examination expenses, including salaries, travel expenses, supplies, and equipment.

The findings of an examination must be recorded in a written examination report that contains a full, true, and careful statement of the condition of the licensed FTC. The

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<sup>24</sup> R.C. 1112.19.

<sup>25</sup> R.C. 1112.20.

<sup>26</sup> R.C. 1112.24.



Superintendent is required to provide a copy of the written examination report to the FTC's governing board.<sup>27</sup>

## Confidential information

The bill makes all of the following information confidential:<sup>28</sup>

(1) Application information and other information obtained from an FTC, 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 under the bill, including the affidavit verifying compliance that it must annually submit to the Superintendent (described above under "**Overview**");

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

(4) Information relating to an FTC that qualifies as nonpublic personal information under specified federal law and the regulations adopted under that law;<sup>29</sup>

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

(6) Any other private information relating to an FTC.

The information described above is to remain confidential for all purposes except (a) when it is necessary for the Superintendent to take official action regarding the affairs of an FTC, (b) to assist another state or a federal agency investigating activities regulated under the bill, or (c) when, in the opinion of the Superintendent, the interests of the public outweigh the interests of the person about whom the information pertains. If the Superintendent intends to disclose information, the Superintendent must provide, in writing, at least ten days' prior notice of the disclosure to the FTC to which the information relates. If the FTC objects to the disclosure, it may request a hearing. The Superintendent cannot disclose the information prior to the conclusion of the hearing and a ruling.

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<sup>27</sup> R.C. 1112.27.

<sup>28</sup> R.C. 1112.28(A).

<sup>29</sup> 15 U.S.C. 6809.



Any information disclosed under the bill remains confidential. The bill specifically prohibits the disclosure of any confidential information to the general public.<sup>30</sup>

The bill does not, however, preclude any of the following:

--A law enforcement officer from gaining access to otherwise confidential records by subpoena, court order, search warrant, or other lawful means;

--The Superintendent from sharing information with other governmental agencies with which the Division of Financial Institutions has entered into sharing arrangements;

--Any Ohio agency from gaining access to otherwise confidential records in accordance with any applicable law.<sup>31</sup>

## **Administrative actions**

### **License revocation**

The Superintendent is authorized to revoke a license issued under the bill if, after notice and an opportunity for hearing in accordance with R.C. Chapter 119., the Superintendent finds either of the following:

--An officer or director of, or any manager or family member acting in a managerial capacity for, the licensed FTC has failed to comply with any of the bill's provisions.

--The licensed FTC, or any person authorized to act on its behalf, refuses to allow the Superintendent to inspect all books, records, papers, and effects related to the FTC's business.<sup>32</sup>

### **Fines**

In addition to any other remedy provided under the bill, the Superintendent may impose a fine of not more than \$10,000 upon (1) a person who fails to comply with any of the bill's provisions or any rule adopted under the bill or (2) an FTC *not* licensed

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<sup>30</sup> R.C. 1112.28(B).

<sup>31</sup> R.C. 1112.28(C).

<sup>32</sup> R.C. 1112.29(A).

under the bill that operates in any manner that is authorized only for licensed FTCs.<sup>33</sup> All fines collected are to be deposited into the existing Banks Fund.<sup>34</sup>

### **Ownership interest prohibited**

The Superintendent is prohibited from having an ownership interest in a licensed FTC.<sup>35</sup>

### **Rule-making authority**

The bill authorizes the Superintendent to adopt, in accordance with R.C. Chapter 119., any rule necessary to carry out the bill's purposes.<sup>36</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	06-01-15

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<sup>33</sup> R.C. 1112.29(B).

<sup>34</sup> R.C. 1121.30.

<sup>35</sup> R.C. 1112.32.

<sup>36</sup> R.C. 1112.33.

