



# Ohio Legislative Service Commission

## Final Analysis

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### Sub. H.B. 229

131st General Assembly  
(As Passed by the General Assembly)

**Reps.** Hambley and Bishoff, Terhar, Dovilla, Amstutz, Anielski, Baker, Buchy, Conditt, Grossman, Henne, Hill, T. Johnson, Koehler, Perales, Reineke, Rezabek, Rogers, Romanchuk, Schaffer, Sears, Thompson, Rosenberger

**Sens.** Bacon, Beagle, Coley, Eklund, Hackett, Hite, Hottinger, Jordan, Oelslager, Patton, Seitz

**Effective date:** September 14, 2016

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## ACT SUMMARY

- Creates the Ohio Family Trust Company Act for the establishment and operation of family trust companies in Ohio.
- 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 accept 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 act.
- Authorizes the Superintendent of Financial Institutions to oversee FTCs, including the authority 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 licensed FTCs to conduct certain trust-related activities in Ohio.
- Exempts FTCs from the financial institution tax.
- Establishes procedures in which a licensed FTC may voluntarily discontinue business.

- Requires an FTC to follow certain protocols regarding fiduciary accounts and relationships.
- Authorizes the Superintendent to revoke or suspend an FTC license, or liquidate FTC assets under certain circumstances.
- Permits the Superintendent to impose a fine on an FTC or a person under certain circumstances.
- Prohibits the Superintendent from having an ownership interest in a licensed FTC.
- Exempts a person, home, or residential facility that is serving as a trustee or taking actions related to a Medicaid qualified income trust from the application of the Ohio Trust Company Law.

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## CONTENT AND OPERATION

### Overview

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

Under the act, a **family trust company (FTC)** is 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 accept 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 act. Except as otherwise provided in the act, a licensed FTC is not subject to any other chapter of R.C. Title 11 (Financial Institutions).

If an FTC does not apply to be licensed, it is not subject to supervision by the Superintendent of Financial Institutions, as long as it meets the act's criteria for an unlicensed FTC. It must, however, before commencing operations as an FTC and annually thereafter, submit to the Superintendent an affidavit signed by a senior officer verifying it meets all the act's requirements to transact business as an unlicensed FTC in Ohio. The Superintendent may charge and collect a fee from the unlicensed FTC when it

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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).



files the affidavit. If the Superintendent requires a fee, the Superintendent must set the amount pursuant to the Administrative Procedure Act.<sup>4</sup>

To put it more simply, an FTC is a business entity designed to act as a fiduciary to a single family: it has the duty to act primarily for the family's benefit in matters.<sup>5</sup> The FTC may provide accounting services or investment management services, for example. An FTC generally would provide services to a family that had set up one or more trusts for the members of the family, which could house acquired assets or a family business.

A family business placed into a trust provides an illustrative example. Under prior law, when setting up a trust to house the business, the trust settlor (creator) had only two choices for trustee: an individual or a trust company.

Naming an individual as trustee had the strength of permitting the settlor pick a trustee who had sufficient expertise in the business and knew the needs of the family. The settlor also generally identified a successor trustee, who would assume trustee duties decades in the future. This task of selecting a successor trustee is more problematic, as the most qualified individual at the time of succession maybe a child at the time the succession decision is made.

Naming a trust company as trustee avoided the succession question. But an independent trust company would be unlikely to have sufficient expertise in the business or adequate knowledge of the needs of the family members. Setting up a trust company to service the family trust is expensive, as a trust company generally must be organized as a financial institution.<sup>6</sup>

The act addresses this situation by creating two types of family trust companies: unlicensed family trust companies and licensed family trust companies. Being an FTC of either type offers several differences from a regular trust company:

- Forming an FTC requires lower amounts of capital (none for an unlicensed FTC, and a minimum of \$200,000 for a licensed FTC).
- Having more limited ownership, it allows for the trustees (directors) to have greater expertise relating to the family business and family needs; the directors need not all be identified at the time the trust is created.
- FTCs are not subject to the financial institutions tax.

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

<sup>5</sup> *Black's Law Dictionary*, 5th Edition, p. 562.

<sup>6</sup> R.C. 1111.02, not in the act.



Given the limited purpose of an FTC, FTCs are not permitted to (1) solicit trust business or engage in trust business with the public or (2) conduct banking activities.

A licensed FTC:

- Can serve a broader range of "family clients."
- Has all the rights, privileges, and exemptions from licensing and regulation requirements that are granted to Ohio licensed trust companies.
- Is subject to Superintendent and Division of Financial Institutions oversight.
- Must maintain fidelity bonds and insurance, and maintain a specified level of equity.

## Definitions

Key terms defined for purposes of the act are as follows:<sup>7</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.

(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, "**designated relative**" means the common ancestor of the family, whether living or deceased, who is designated in the application for a license.

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

(c) Once designated, a "designated relative" cannot be changed.

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<sup>7</sup> R.C. 1112.01.



(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;

(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, 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:

--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) The 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 (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 executive officer, director, trustee, or general partner of the FTC, or an individual serving in a similar capacity. ("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), who 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 FTC's investment activities, provided that the employee has been participating in those investment activities for or on behalf of the FTC, or has been performing similar functions 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 may 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 act.<sup>8</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>9</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>10</sup>)

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<sup>8</sup> R.C. 1112.04(A).

<sup>9</sup> R.C. 1112.04(B)(1) and (2).

<sup>10</sup> R.C. 1112.01(M), by reference to R.C. 1111.01.



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.<sup>11</sup>

### **Authorized fiduciary activities**

While acting as the fiduciary of a trust, an FTC may:<sup>12</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;

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<sup>11</sup> R.C. 1112.04(B)(2) and (3).

<sup>12</sup> R.C. 1112.05(A).



(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 members;

(13) Receive reasonable compensation for its services.

The act specifies that the above provisions do not prohibit an FTC from transacting business with or investing in any asset of certain entities if the FTC has provided full disclosure to its governing body. These entities are (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>13</sup>

### **Governing board**

Each member of an FTC's governing board must take and subscribe an oath that the member will administer the FTC's affairs diligently and honestly and that the member will not knowingly or willfully permit noncompliance with or violation of any laws relating to family trust companies.<sup>14</sup>

### **Exemption from financial institution tax**

An FTC established under the act is exempt from Ohio's financial institution tax.<sup>15</sup>

### **Licensed family trust companies**

An FTC licensed under the act 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 Ohio Securities Law.<sup>16</sup>

### **Superintendent oversight**

A licensed FTC is subject to all powers of, and remedies and sanctions available to, the Superintendent and the Division of Financial Institutions under the Ohio

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<sup>13</sup> R.C. 1112.05(B).

<sup>14</sup> R.C. 1112.06.

<sup>15</sup> R.C. 1112.16.

<sup>16</sup> R.C. 1112.16.

banking laws, in addition to the specific powers, remedies, and sanctions provided under the act.<sup>17</sup>

## Process

### Application and investigation

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

If a license application does not contain all required information or is not accompanied by the required fee, and if that information or fee is not submitted within 12 months after the Superintendent first requests it, or within a later period determined by the Superintendent, the application is to be considered withdrawn.<sup>18</sup>

In determining whether to approve or disapprove an application for an FTC license, the Superintendent must consider whether (1) the applicant is a corporation or limited liability company that meets the definition of FTC described in "**Overview**," above, (2) the applicant's articles of incorporation or articles of organization authorize the applicant to serve as a trustee, (3) the applicant satisfies the bond and liability insurance requirements described in "**Bonds and insurance; minimum stockholders' equity**," below, and (4) it is reasonable to believe the applicant will comply with applicable laws and observe sound fiduciary standards in conducting trust business in Ohio.<sup>19</sup>

### Conditions for licensure

After the investigation, the Superintendent must issue a license to the applicant if the Superintendent finds that the following conditions are met:

(1) The applicant is organized as a corporation or limited liability company under Ohio law.

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<sup>17</sup> R.C. 1112.20(A).

<sup>18</sup> R.C. 1112.07(A), (B), and (D).

<sup>19</sup> R.C. 1112.07(C).



(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 act 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:

(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 act suspended or revoked within the ten years 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 preceding the date of the application;

(f) Have not failed to comply with any of the act's provisions or any rule adopted under it 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, are consistent with their responsibilities and duties.

(5) The initial stockholders' equity meets the minimum requirement (see "**Bonds and insurance; minimum stockholders' equity**," below).

When an applicant has satisfied all prior conditions imposed by the Superintendent in approving the application and the FTC has pledged securities as required (see "**Pledging of securities**," below), the Superintendent must issue the applicant a trust company license. If the Superintendent does not find that all of these conditions have been met, the Superintendent must 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 the Administrative Procedure Act, except any related hearing must not be open to the public. The notice must be in writing, served personally or sent by certified mail.<sup>20</sup>

The existence of a licensed FTC dates from the filing of its articles of incorporation or articles of organization. From that time, it 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 the license.<sup>21</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 need only give the Superintendent written notice of it.<sup>22</sup>

### **License transfers and assignments**

An FTC license to engage in trust business in Ohio is not transferable or assignable.<sup>23</sup>

### **License duration**

A license remains in force and effective until surrendered by the licensee or suspended or revoked by the Superintendent (see "**Discontinuing business**" and "**Administrative actions**," below).<sup>24</sup>

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

Each licensed FTC must maintain a fidelity bond on any active officer, manager, family member acting in a managerial capacity, or employee, regardless of whether the

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<sup>20</sup> R.C. 1112.07(E) and 1112.08.

<sup>21</sup> R.C. 1112.11.

<sup>22</sup> R.C. 1112.10.

<sup>23</sup> R.C. 1112.09.

<sup>24</sup> R.C. 1112.07(E).

FTC compensates the person bonded. The bond's purpose is to indemnify the FTC against loss because of dishonesty, fraud, or a criminal act or omission by the person bonded. While the bond must be in an amount the FTC considers advisable, that amount must be at least \$1 million. The bond 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 coverage amounts as it considers advisable.<sup>25</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 consist of cash, securities, including stock of a nonpublicly traded company, or other reasonably liquid assets exclusive of all organization expenses.<sup>26</sup>

### **Pledging of securities**

A licensed FTC must pledge certain approved securities to the Treasurer of State prior to engaging in business as a licensed FTC. 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.<sup>27</sup>

The securities pledged must 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 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.<sup>28</sup>

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<sup>25</sup> R.C. 1112.13.

<sup>26</sup> R.C. 1112.14(E)(2).

<sup>27</sup> R.C. 1112.12(A), (C), and (E).

<sup>28</sup> R.C. 1112.12(B).



The act requires that the Superintendent approve the securities 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.<sup>29</sup>

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 act's requirements. The Treasurer of State must also permit an FTC to collect interest paid on the securities pledged as long as the FTC is solvent. 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.

Finally, the Superintendent, with the approval of the Treasurer of State, must prescribe the form of all receipts and acknowledgments relating to the pledging of securities, and upon request must furnish a copy of each form, with the Superintendent's certification attached, to each qualified trustee eligible to hold securities for safekeeping.<sup>30</sup>

### **Minimum activities in Ohio**

Each licensed FTC must:

--Maintain office space in Ohio for the transaction of trust business and for 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 its management, administration, or custody: (1) annual account reviews, (2) annual investment reviews, (3) trust accountings, (4)

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<sup>29</sup> R.C. 1112.12(D).

<sup>30</sup> R.C. 1112.12(E) and (G).



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) a bank account with a state chartered or national bank having a principal or branch office in Ohio.<sup>31</sup>

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

The governing board of a licensed FTC must hold at least one regular meeting during each calendar quarter. At each quarterly meeting, 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 must 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>32</sup>

### **Discontinuing business**

If a licensed FTC desires to discontinue business as an FTC, it may cease doing trust business and voluntarily surrender its license, and with the Superintendent's consent be relieved of complying with the act's requirements. To cease doing trust business, it must furnish to the Superintendent both:

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

(2) The plan for winding up its trust business in Ohio.

The Superintendent may approve or deny the licensed FTC's plan for winding up its trust business in Ohio 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 or any other condition the Superintendent determines appropriate under the circumstances.<sup>33</sup>

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<sup>31</sup> R.C. 1112.14.

<sup>32</sup> R.C. 1112.15.

<sup>33</sup> R.C. 1112.17(A), (B), and (C).



## **Winding up process**

During the FTC's winding up process, the Superintendent retains authority to supervise the FTC and may conduct any examination relating to either the FTC or the plan the Superintendent considers necessary or appropriate. If the Superintendent has reason to conclude that the licensed FTC is not safely or expeditiously implementing the approved plan for winding up its business in Ohio, the Superintendent may either begin revocation proceedings, or take possession of FTC's business in the same manner, with the same effect, and subject to the same rights accorded to the trust company under the act's revocation provisions.<sup>34</sup>

## **Cancellation of FTC license**

The Superintendent must cancel the FTC's license to do trust business in Ohio if the Superintendent has approved the licensed FTC's winding up plan, and, when applicable, the licensed FTC has (1) completed its plan for winding up its trust business in Ohio consistent with any conditions imposed by the Superintendent in approving the plan, (2) been relieved from 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, and (3) wound up its trust business in each of the other jurisdictions in which the FTC solicited appointment or served as a fiduciary or engaged in trust business.

The FTC is prohibited from engaging in trust business in Ohio after the Superintendent cancels the FTC's license, unless the FTC obtains another license from the Superintendent.<sup>35</sup>

## **Examinations**

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

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<sup>34</sup> R.C. 1112.17(D) and (E).

<sup>35</sup> R.C. 1112.17(F) and (G).



The findings of an examination must be recorded in a written examination report that contains a full, true, and careful statement of the licensed FTC's condition. The Superintendent must provide a copy of the examination report to the FTC's governing board.<sup>36</sup>

### **Cease and desist**

The act establishes that a cease and desist order, removal or prohibition order, or a suspension order issued under continuing law against a regulated person because of the person's relationship with a licensed FTC doing trust business in Ohio, does not affect the relationship between the regulated person and the licensed FTC except as it relates to the conduct of the licensed FTC's trust business in Ohio. The act defines "regulated person" in this context to mean a director, officer, employee, or controlling shareholder of or agent for the licensed FTC or a person who participates in the licensed FTC's management, whether or not the person is assigned to an office of the licensed FTC in Ohio or specifically to its trust business in Ohio.<sup>37</sup>

### **Reports**

The act requires a licensed FTC to file with the Superintendent any report the Superintendent may require, in the form and manner and containing the information prescribed by the Superintendent.<sup>38</sup>

### **Confidential information**

The act requires the Superintendent, the Superintendent's agents, and employees to keep privileged and confidential:<sup>39</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 act, including the affidavit verifying compliance that it must annually submit to the Superintendent (described above under "**Overview**");

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<sup>36</sup> R.C. 1112.22.

<sup>37</sup> R.C. 1112.20(B).

<sup>38</sup> R.C. 1112.21.

<sup>39</sup> R.C. 1112.23(A).

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

(4) Information relating to an FTC that qualifies as nonpublic personal information under specified federal law and regulations;<sup>40</sup>

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

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

Any person who receives privileged and confidential information described above is subject to the preceding confidentiality requirements, and any person who knows the information is privileged and confidential must not purposely divulge it in any manner. In addition, neither the Superintendent, nor any agent or employee of the Superintendent, may purposely make, or cause to be made, any false statements or reports regarding an FTC's affairs or condition. A violation of the confidentiality requirement is a fourth degree felony.<sup>41</sup>

### **Exception to confidentiality requirement**

The information described above must remain confidential and not discoverable from any source, and must not be introduced into evidence, except (1) when it is necessary for the Superintendent to take official action regarding the affairs of an FTC, (2) to assist another state or a federal agency investigating activities regulated under the act, or (3) when obtained by a law enforcement officer pursuant to a subpoena, court order, search warrant, or other lawful means.

If the information is discoverable because it falls into one of these exceptions, the discovery is limited to information that directly relates to the FTC that is the subject of the enforcement action or litigation.<sup>42</sup>

### **Fiduciary accounts and relationships**

An FTC must 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. An FTC may place securities it holds in any fiduciary capacity with a qualified custodian of securities, who may also place those securities with another qualified custodian of securities.

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<sup>40</sup> 15 U.S.C. 6809.

<sup>41</sup> R.C. 1112.23 and 1112.99.

<sup>42</sup> R.C. 1112.23.

An FTC or a custodian may register and hold securities it holds in any fiduciary capacity in the name of the FTC, the custodian's own name, in the name of a nominee, or, if appropriate to the securities, in bearer form. An FTC and a custodian may hold securities, including those held in bearer form, in bulk, whether or not the securities are certificated, without certification of ownership attached to the securities.<sup>43</sup>

An FTC that serves as a cofiduciary may, with the consent of the other cofiduciaries, do any of the following:

(1) Place securities it holds in any fiduciary capacity with a custodian of securities;

(2) Register and hold securities it holds in any fiduciary capacity in its own name, in the name of a nominee, or in bearer form;

(3) Hold securities it holds in any fiduciary capacity in bulk.

Any person that serves as a cofiduciary with an FTC for any property in Ohio consisting of securities may consent to the FTC taking any of the actions authorized above.<sup>44</sup>

## **Records and documentation**

An FTC may for any business purpose, retain a document, paper, or other instrument, and may record, copy, photograph, or store a representation of the original if all of the following apply:

(1) The process used correctly and accurately copies or reproduces, or provides a means for correctly and accurately copying or reproducing, the original 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 necessary to establish the authenticity of the original;

(2) The process used does not permit the representation of the original to be altered or manipulated;

(3) Any medium used to store a representation of the original must be a durable medium for retaining and reproducing records.

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<sup>43</sup> R.C. 1112.18(A), (B), (C), and (D).

<sup>44</sup> R.C. 1112.18(E).



The Superintendent must identify and publish a list of processes that satisfy these conditions. Each FTC that uses a process authorized by the act to preserve any of its records must also provide for safekeeping and for examining, viewing, or projecting the records preserved, and for producing reproductions of the original records.<sup>45</sup>

## **Administrative actions**

### **License revocation**

The Superintendent is authorized to revoke a license if, after notice and an opportunity for hearing (which must not be open to the public) in accordance with the Administrative Procedure Act, the Superintendent finds either:

--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 act's provisions.

--The licensed FTC, or any person authorized to act on its behalf, refuses to allow the Superintendent to inspect all records and effects related to the FTC's business.<sup>46</sup>

The Superintendent may revoke a trust company's license to do trust business in Ohio if the Superintendent determines, after notice and opportunity for hearing under the Financial Institutions Administrative Procedures Law, that any of the following factors is true:

(1) The existence of the FTC, or its authority to transact business, has been terminated or suspended under the jurisdiction in which the FTC is incorporated;

(2) The FTC's authority to transact trust business has been terminated or suspended under the laws of any other jurisdiction in which the FTC is licensed to engage in trust business;

(3) A receiver, liquidator, or conservator has been appointed for the FTC by the jurisdiction in which the FTC is incorporated or for its business in any other jurisdiction in which the FTC transacts business;

(4) The FTC is violating or has violated, or the Superintendent has reasonable cause to believe the FTC is about to violate (a) a law or rule, (b) a condition imposed by the Superintendent in writing in connection with approving an application or notice or

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<sup>45</sup> R.C. 1112.19.

<sup>46</sup> R.C. 1112.24(A).



granting any other request of the FTC, (c) a written agreement the FTC entered into with the Superintendent, or (d) a cease and desist order issued by the Superintendent;

(5) The FTC is engaging or has engaged, or the Superintendent has reasonable cause to believe the FTC is about to engage, in any unsafe or unsound practice;

(6) The FTC has ceased to pay its debts in the ordinary course of business, is incapable of paying its debts as they mature, has liabilities exceeding 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 FTC has ceased or failed to conduct trust business in Ohio;

(8) The FTC has failed to pay any fees, charges, forfeitures, or penalties assessed under the Ohio banking laws.<sup>47</sup>

### **Suspension order**

The act permits the Superintendent to immediately suspend an FTC's license to do trust business in Ohio, if the Superintendent (1) has reasonable cause to believe any of the listed factors above are true, and (2) the Superintendent determines it is necessary to protect the persons and interests in Ohio that the FTC serves as a fiduciary or the property in Ohio the FTC holds title to or an interest in as a fiduciary.

If served with a suspension order, the FTC may, within ten days after being served, apply to an appropriate court for an injunction setting aside, limiting, or suspending the suspension order pending an opportunity for hearing on whether the license should be revoked.<sup>48</sup>

### **Liquidation**

If the Superintendent revokes an FTC's Ohio license pursuant to the Trust Company Law, the Superintendent may take possession of the FTC's trust business in Ohio and may appoint a receiver to liquidate the trust business in Ohio. If the FTC has its principal place of business in Ohio, the Superintendent may take possession of, and appoint a receiver to liquidate, its entire trust business wherever it is conducted.<sup>49</sup>

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<sup>47</sup> R.C. 1112.25(A).

<sup>48</sup> R.C. 1112.25(B).

<sup>49</sup> R.C. 1112.26(A).

After paying the expenses of the liquidation and claims against the FTC arising from its trust business in Ohio, the receiver must distribute any remaining funds either:

- To a receiver for liquidation of the FTC's trust business in another state or for conducting a liquidation of all or part of the FTC's trust business under federal law; or
- Equitably among all the receivers if the FTC's trust business is being liquidated under the laws of more than one other state or the United States.

These remaining funds must be used to pay the expenses of liquidation and claims against the FTC's trust business. However, if there is no liquidation of the FTC's trust business under way in another state or under federal law, the receiver must, after complying with the requirements described in "**License revocation**" and "**Suspension order**," above, pay any remaining funds from the liquidation of the FTC trust business in Ohio to the FTC.<sup>50</sup>

#### **Court order**

Once the receiver has completed the liquidation of the FTC trust business in Ohio, the receiver must, with notice to the Superintendent, petition the court for an order declaring the FTC trust business in Ohio is properly wound up. The order can only state that the FTC's trust business in Ohio has been properly wound up and cannot declare that the FTC is dissolved. The court, however, may make additional orders and grant any additional relief it determines is proper. The receiver must promptly file, with both the Secretary of State and the Superintendent, a certified copy of the order.<sup>51</sup>

#### **Procedures after court order**

Once the court has declared the FTC's trust business in Ohio is properly wound up, the FTC must stop engaging in trust business in Ohio, except for any further winding up. If the FTC has its principal place of business in Ohio, it must stop engaging in trust business in any state.<sup>52</sup>

#### **Procedures for FTC that is a bank**

The act establishes the following additional liquidation procedures if the FTC is a bank doing business under authority granted by the Superintendent:

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<sup>50</sup> R.C. 1112.26(B)(1).

<sup>51</sup> R.C.1112.26(B)(2).

<sup>52</sup> R.C. 1112.26(B)(2)(a).

(1) If the FTC is being liquidated under the Banking Liquidation Law, the FTC's trust business must also be liquidated, even if there would not be independent grounds for liquidation of the trust business under the act.

(2) If the FTC's trust business is being liquidated under the act and the company as a whole is being liquidated under the Banking Liquidation Law, the liquidations must be merged.

(3) If the FTC is not authorized to engage in any business other than trust business, its liquidation must be of the company as a whole, conducted under the Banking Liquidation Law, and completed by the dissolution of the trust company.<sup>53</sup>

### **Fines**

In addition to any other remedy provided under the act, the Superintendent may impose a fine of not more than \$10,000 on (1) a person who fails to comply with any of the act's provisions or any rule adopted under it or (2) an FTC *not* licensed under the act that operates in any manner that is authorized only for licensed FTCs.<sup>54</sup>

### **Ownership interest prohibited**

The Superintendent is prohibited from having an ownership interest in a licensed FTC.<sup>55</sup>

### **Rule-making authority**

The act authorizes the Superintendent to adopt, in accordance with the Administrative Procedure Act, any rule necessary to carry out its purposes.<sup>56</sup>

### **Exclusion of Medicaid qualified income trusts from Trust Company Law**

The Ohio Trust Company Law prohibits persons from engaging in "trust business" in Ohio unless the person is a corporation that meets certain criteria. That law also regulates the operation of corporations engaged in trust business. The act creates an additional exception to what is not considered trust business for purposes of the Ohio Trust Company Law to exempt any person, "home," or residential facility that

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<sup>53</sup> R.C. 1112.26(C).

<sup>54</sup> R.C. 1112.24(B).

<sup>55</sup> R.C. 1112.27.

<sup>56</sup> R.C. 1112.28.



serves as a trustee or takes actions related to a qualified income trust. Qualified income trusts are special trusts used to receive and disburse Medicaid beneficiaries' income.<sup>57</sup>

Under the act:

A "**home**" is all of the following:

(1) An institution, residence, or facility that provides, for a period of more than 24 hours, accommodations to three or more unrelated individuals who are dependent upon the services of others;

(2) Any facility that a person proposes for certification as a skilled nursing facility or nursing facility and for which a certificate of need, other than a certificate to recategorize hospital beds has been granted to the person;

(3) A county home or district home that is or has been licensed as a residential care facility;

(4) Any facility or part of a facility not defined as a home described in (1), (2), or (3) that is a skilled nursing facility or nursing facility;

(5) A county home or district home.

A "**residential facility**" is a home or facility, including an intermediate care facility for individuals with intellectual disabilities, in which an individual with mental retardation or a developmental disability resides.

Under continuing law, "**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 the person's 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;

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<sup>57</sup> R.C. 1111.01(E), (G), and (I)(4), by reference to 42 U.S.C. 1396p(d)(4)(B).



(4) Other fiduciary activities the Superintendent determines are not undertaken as a business.

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## HISTORY

ACTION	DATE
Introduced	05-26-15
Reported, H. Financial Institutions, Housing & Urban Development	11-19-15
Passed House (84-8)	12-09-15
Reported, S. Financial Institutions	05-24-16
Passed Senate (29-3)	05-24-16
House concurred in Senate amendments (86-7)	05-24-16

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