



**Colorado  
Legislative  
Council  
Staff**

**HB17-1157**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 17-0231 **Date:** February 13, 2017  
**Prime Sponsor(s):** Rep. Kraft-Tharp; Nordberg **Bill Status:** House Business  
 Sen. Priola **Fiscal Analyst:** Anna Gerstle (303-866-4375)

**BILL TOPIC:** BANK & CREDIT UNION RELIANCE ON A CERT OF TRUST

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017 (current year)</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>State Revenue</b> Cash Funds	Minimal decrease.		
<b>State Expenditures</b>	Minimal workload impact.		
<b>TABOR Impact</b>	Minimal decrease.		
<b>Appropriation Required:</b> None.			
<b>Future Year Impacts:</b> Ongoing minimal revenue decrease and workload impact.			

**Summary of Legislation**

Under current law, a certificate of trust must be provided to a bank when a deposit account is opened by a person acting as a trustee and must include certain information. The bill requires that a certificate of trust be provided for any bank transaction and expands the information that must be on a certificate of trust to include the following:

- a statement that the trust exists and the date the trust instrument was first executed;
- the identity of the settlor;
- identity of the current trustee;
- power of the trustee in the transaction;
- whether the trust is revocable and the identity of any person who can revoke the trust;
- the authority of cotrustees to sign and whether all the cotrustees are required to sign an order to exercise the powers of the trustees; and
- the name in which the title to trust property may be taken.

If the bank accepts a certificate of trust for a transaction to obtain, guarantee, or encumber trust property to secure a loan, or enter into any agreement with a bank, the trustee is presumed to have the authority specified in the certificate of trust, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust. The bill clarifies that knowledge of the terms of a written trust agreement may not be inferred based on the fact that a copy of the written trust agreement is held by the bank.

The bill does not obligate a bank to enter into a transaction with a trustee who refuses to provide the bank with a copy of a written trust agreement, and it does not prohibit a bank from requesting additional information before entering into a transaction with a trustee.

In addition, the bill allows credit unions to rely on a certificate of trust in the same manner as a bank, including that if a credit union accepts a certificate of trust in opening a deposit account, the credit union may withhold funds in the deposit account upon the death, resignation, or adjudication of incompetence of a trustee, until a court order directs the disposition of the funds or a new certificate of trust is created.

## **Background**

A certificate of trust serves as evidence of a trust and the trustee's authority and can be provided to a financial organization or other institution to prove that the trust is valid.

## **State Revenue**

To the extent that the bill decreases court filings, the bill will decrease state cash fund revenue to the Judicial Department from filing fees beginning in FY 2016-17. Any decrease is expected to be minimal.

## **TABOR Impact**

This bill reduces state cash fund revenue from filing fees, which will reduce the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. TABOR refund obligations are not expected for FY 2016-17. Since the bill reduces the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will increase by an identical amount.

## **State Expenditures**

The bill impacts the workload in the Judicial Department by a minimal amount beginning in FY 2016-17. To the extent the bill decreases court filings related to whether a bank has knowledge of the terms of a written trust agreement, the workload in the trial courts will decrease. To the extent that additional court orders are required to release funds in deposit accounts that are withheld by a credit union due to the death, resignation, or adjudication of incompetence of a trustee, the workload for the courts will increase. Any impact is expected to be minimal.

## **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

**State and Local Government Contacts**

Judicial  
Secretary of State

Law

Regulatory Agencies