

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0231.02 Kip Kolkmeier x4510 &Jery Payne x2157

HOUSE BILL 17-1157

HOUSE SPONSORSHIP

Kraft-Tharp and Nordberg,

SENATE SPONSORSHIP

Priola,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING RELIANCE BY A FINANCIAL INSTITUTION ON A**
102 **CERTIFICATE OF TRUST.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Currently, a bank may rely on a certificate of trust when trustees open a trust deposit account. The bill requires trustees to provide additional information in a certificate of trust. The bill also permits a bank to rely on a certificate of trust for any transaction between the bank and the trustees unless the bank has knowledge that the certificate of trust is contrary to the trust agreement. Knowledge will not be inferred solely

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

because the bank has a copy of the trust agreement.

The bill allows credit unions to rely on a certificate of trust in the same manner as a bank.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 11-105-111
3 as follows:

4 **11-105-111. Trust account - limited documentation required**
5 **- certificate of trust.** (1) For any ~~deposit account that is opened~~
6 TRANSACTION with any bank transacting business in this state by one or
7 more persons expressly acting as a trustee or trustees for one or more
8 other named person or persons pursuant to or purporting to be pursuant
9 to a written trust agreement, a trustee may provide the bank with a
10 certificate of trust to evidence the trust relationship. The certificate of
11 trust ~~shall~~ MUST be ~~an~~ A DULY ACKNOWLEDGED affidavit OR OTHER
12 WRITTEN STATEMENT EXPRESSLY MADE UNDER PENALTY OF PERJURY
13 executed by any trustee and ~~shall~~ MUST include the following:

14 (a) ~~The name of the trust~~ A STATEMENT THAT THE TRUST EXISTS
15 AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED;

16 (b) ~~The effective date of the trust~~ THE IDENTITY OF THE SETTLOR;

17 (c) ~~The name~~ IDENTITY and address of ~~each~~ THE CURRENT ACTING
18 trustee;

19 (d) ~~The name of each known successor trustee~~ THE POWERS OF
20 THE TRUSTEE IN THE PENDING TRANSACTION;

21 (e) A statement ~~that the trustee has authority or that the trustees~~
22 ~~have authority to open the account on behalf of the trust, and~~ WHETHER
23 THE TRUST IS REVOCABLE AND THE IDENTITY OF ANY PERSON HOLDING THE
24 POWER TO REVOKE THE TRUST;

1 (f) THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE
2 AUTHENTICATE AND WHETHER ALL OR FEWER THAN ALL COTRUSTEES ARE
3 REQUIRED IN ORDER TO EXERCISE THE POWERS OF THE TRUSTEE;

4 (g) THE NAME IN WHICH TITLE TO TRUST PROPERTY MAY BE
5 TAKEN; AND

6 ~~(f)~~ (h) Any other information that may be required by the bank,
7 including an indemnification that is acceptable to the bank.

8 (2) If a bank decides to accept a certificate of trust pursuant to this
9 section:

10 (a) FOR A TRANSACTION THAT CONSISTS OF OPENING A DEPOSIT
11 ACCOUNT, the bank may administer the account in accordance with the
12 certificate of trust without requiring receipt of a copy of the written trust
13 agreement; AND

14 (b) FOR A TRANSACTION THAT CONSISTS OF OBTAINING,
15 GUARANTEEING, OR ENCUMBERING TRUST PROPERTY TO SECURE A LOAN,
16 OR ENTERING INTO ANY AGREEMENT WITH A BANK, THE TRUSTEE OR
17 TRUSTEES SHALL BE CONCLUSIVELY PRESUMED TO HAVE HAD THE
18 AUTHORITY SPECIFIED IN THE TRUST CERTIFICATE FOR PURPOSES OF
19 DETERMINING WHETHER THE TRUSTEES WERE ACTING WITHIN THEIR
20 AUTHORITY IN ENTERING INTO, OR CAUSING THE TRUST TO ENTER INTO, A
21 TRANSACTION, EVEN IF THE CERTIFICATE OF TRUST IS CONTRARY TO THE
22 TERMS OF THE WRITTEN TRUST AGREEMENT, UNLESS THE BANK HAS
23 ACTUAL KNOWLEDGE THAT THE TERMS OF THE WRITTEN TRUST
24 AGREEMENT ARE CONTRARY TO THE TERMS OF THE CERTIFICATE OF TRUST.

25 (3) If a bank decides to accept a certificate of trust IN OPENING A
26 DEPOSIT ACCOUNT pursuant to this section, upon the death, resignation,
27 or adjudication of incompetence of all named trustees and successor

1 trustees noted on the certificate of trust, the bank may withhold
2 disposition of any funds on deposit in the account until receipt of one of
3 the following:

4 (a) An order by a court of competent jurisdiction directing the
5 disposition of funds;

6 (b) A newly executed certificate of trust created pursuant to this
7 section from a person acting or purporting to act as a newly appointed
8 successor trustee under the same trust; or

9 (c) Other documentation that establishes to the satisfaction of the
10 bank the manner in which the funds are to be administered or distributed.

11 (4) If a bank decides to accept a certificate of trust IN OPENING A
12 DEPOSIT ACCOUNT pursuant to this section, the bank shall not be liable for
13 administering the account as provided by the certificate of trust, even if
14 the certificate of trust is contrary to the terms of the written trust
15 agreement, unless the bank has actual knowledge that the terms of the
16 written trust agreement are contrary to the terms of the certificate of trust.

17 (5) Nothing in this section ~~shall obligate~~ OBLIGATES a bank to
18 ~~establish a deposit account for~~ ENTER INTO A TRANSACTION WITH a trustee
19 who refuses to furnish the bank with a copy of a written trust agreement.
20 In addition, nothing in this section shall be construed to prohibit a bank
21 from requesting additional information in order to ~~establish a deposit~~
22 ~~account for~~ ENTER INTO A TRANSACTION WITH a trustee, including a
23 request that the certificate of trust be executed by all trustees.

24 (6) KNOWLEDGE OF THE TERMS OF A WRITTEN TRUST AGREEMENT
25 MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR
26 PART OF A WRITTEN TRUST AGREEMENT IS HELD BY THE PERSON RELYING
27 UPON THE CERTIFICATION OR AFFIDAVIT.

1 **SECTION 2.** In Colorado Revised Statutes, **add** 11-30-126 as
2 follows:

3 **11-30-126. Trust account - limited documentation required -**
4 **certificate of trust.** (1) FOR ANY TRANSACTION WITH ANY CREDIT UNION
5 IN THIS STATE BY ONE OR MORE PERSONS EXPRESSLY ACTING AS A
6 TRUSTEE OR TRUSTEES FOR ONE OR MORE OTHER NAMED PERSON OR
7 PERSONS PURSUANT TO OR PURPORTING TO BE PURSUANT TO A WRITTEN
8 TRUST AGREEMENT, A TRUSTEE MAY PROVIDE THE CREDIT UNION WITH A
9 CERTIFICATE OF TRUST TO EVIDENCE THE TRUST RELATIONSHIP. THE
10 CERTIFICATE OF TRUST MUST BE A DULY ACKNOWLEDGED AFFIDAVIT
11 EXECUTED BY ANY TRUSTEE AND MUST INCLUDE THE FOLLOWING:

12 (a) A STATEMENT THAT THE TRUST EXISTS AND THE DATE THE
13 TRUST INSTRUMENT WAS EXECUTED;

14 (b) THE IDENTITY OF THE SETTLOR;

15 (c) THE IDENTITY AND ADDRESS OF THE CURRENT ACTING
16 TRUSTEE;

17 (d) THE POWERS OF THE TRUSTEE IN THE PENDING TRANSACTION;

18 (e) A STATEMENT WHETHER THE TRUST IS REVOCABLE AND THE
19 IDENTITY OF ANY PERSON HOLDING THE POWER TO REVOKE THE TRUST;

20 (f) THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE
21 AUTHENTICATE AND WHETHER ALL OR FEWER THAN ALL COTRUSTEES ARE
22 REQUIRED IN ORDER TO EXERCISE THE POWERS OF THE TRUSTEE;

23 (g) THE NAME IN WHICH TITLE TO TRUST PROPERTY MAY BE
24 TAKEN; AND

25 (h) ANY OTHER INFORMATION THAT MAY BE REQUIRED BY THE
26 CREDIT UNION, INCLUDING AN INDEMNIFICATION THAT IS ACCEPTABLE TO
27 THE CREDIT UNION.

1 (2) IF A CREDIT UNION DECIDES TO ACCEPT A CERTIFICATE OF
2 TRUST PURSUANT TO THIS SECTION:

3 (a) FOR A TRANSACTION THAT CONSISTS OF OPENING A DEPOSIT
4 ACCOUNT, THE CREDIT UNION MAY ADMINISTER THE ACCOUNT IN
5 ACCORDANCE WITH THE CERTIFICATE OF TRUST WITHOUT REQUIRING
6 RECEIPT OF A COPY OF THE WRITTEN TRUST AGREEMENT; AND

7 (b) FOR A TRANSACTION THAT CONSISTS OF OBTAINING,
8 GUARANTEEING, OR ENCUMBERING TRUST PROPERTY TO SECURE A LOAN,
9 OR ENTERING INTO ANY AGREEMENT WITH A CREDIT UNION, THE TRUSTEE
10 OR TRUSTEES SHALL BE CONCLUSIVELY PRESUMED TO HAVE HAD THE
11 AUTHORITY SPECIFIED IN THE TRUST CERTIFICATE FOR PURPOSES OF
12 DETERMINING WHETHER THE TRUSTEES WERE ACTING WITHIN THEIR
13 AUTHORITY IN ENTERING INTO, OR CAUSING THE TRUST TO ENTER INTO, A
14 TRANSACTION, EVEN IF THE CERTIFICATE OF TRUST IS CONTRARY TO THE
15 TERMS OF THE WRITTEN TRUST AGREEMENT, UNLESS THE CREDIT UNION
16 HAS ACTUAL KNOWLEDGE THAT THE TERMS OF THE WRITTEN TRUST
17 AGREEMENT ARE CONTRARY TO THE TERMS OF THE CERTIFICATE OF TRUST.

18 (3) IF A CREDIT UNION DECIDES TO ACCEPT A CERTIFICATE OF
19 TRUST IN OPENING A DEPOSIT ACCOUNT PURSUANT TO THIS SECTION, UPON
20 THE DEATH, RESIGNATION, OR ADJUDICATION OF INCOMPETENCE OF ALL
21 NAMED TRUSTEES AND SUCCESSOR TRUSTEES NOTED ON THE CERTIFICATE
22 OF TRUST, THE CREDIT UNION MAY WITHHOLD DISPOSITION OF ANY FUNDS
23 ON DEPOSIT IN THE ACCOUNT UNTIL RECEIPT OF ONE OF THE FOLLOWING:

24 (a) AN ORDER BY A COURT OF COMPETENT JURISDICTION
25 DIRECTING THE DISPOSITION OF FUNDS;

26 (b) A NEWLY EXECUTED CERTIFICATE OF TRUST CREATED
27 PURSUANT TO THIS SECTION FROM A PERSON ACTING OR PURPORTING TO

1 ACT AS A NEWLY APPOINTED SUCCESSOR TRUSTEE UNDER THE SAME
2 TRUST; OR

3 (c) OTHER DOCUMENTATION THAT ESTABLISHES TO THE
4 SATISFACTION OF THE CREDIT UNION THE MANNER IN WHICH THE FUNDS
5 ARE TO BE ADMINISTERED OR DISTRIBUTED.

6 (4) IF A CREDIT UNION DECIDES TO ACCEPT A CERTIFICATE OF
7 TRUST IN OPENING A DEPOSIT ACCOUNT PURSUANT TO THIS SECTION, THE
8 CREDIT UNION SHALL NOT BE LIABLE FOR ADMINISTERING THE ACCOUNT
9 AS PROVIDED BY THE CERTIFICATE OF TRUST, EVEN IF THE CERTIFICATE OF
10 TRUST IS CONTRARY TO THE TERMS OF THE WRITTEN TRUST AGREEMENT,
11 UNLESS THE CREDIT UNION HAS ACTUAL KNOWLEDGE THAT THE TERMS OF
12 THE WRITTEN TRUST AGREEMENT ARE CONTRARY TO THE TERMS OF THE
13 CERTIFICATE OF TRUST.

14 (5) NOTHING IN THIS SECTION OBLIGATES A CREDIT UNION TO
15 ENTER INTO A TRANSACTION WITH A TRUSTEE WHO REFUSES TO FURNISH
16 THE CREDIT UNION WITH A COPY OF A WRITTEN TRUST AGREEMENT. IN
17 ADDITION, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT
18 A CREDIT UNION FROM REQUESTING ADDITIONAL INFORMATION IN ORDER
19 TO ENTER INTO A TRANSACTION WITH A TRUSTEE, INCLUDING A REQUEST
20 THAT THE CERTIFICATE OF TRUST BE EXECUTED BY ALL TRUSTEES.

21 (6) KNOWLEDGE OF THE TERMS OF A WRITTEN TRUST AGREEMENT
22 MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR
23 PART OF A WRITTEN TRUST AGREEMENT IS HELD BY THE PERSON RELYING
24 UPON THE CERTIFICATION OR AFFIDAVIT.

25 **SECTION 3. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.