

A BILL FOR AN ACT
CONCERNING RELIANCE UPON A CERTIFICATION OF A TRUST

Section 1. In Colorado Revised Statutes, amend 11-105-111 as follows:

11-105-111. Trust ~~transaction~~ ~~account~~ - limited documentation required - certificate of trust

(1) ___ For any ~~transaction~~ ~~deposit account that is opened~~ with any bank transacting business in this state by one or more persons expressly acting as a trustee or trustees for one or more other named person or persons pursuant to or purporting to be pursuant to a written trust agreement, a trustee may provide the bank with a certificate of trust to evidence the trust relationship. The certificate of trust shall be an affidavit executed by any trustee and shall include the following:

___ (a) ~~That~~ ~~The name of~~ the trust exists and the;

~~(b) The effective date of the trust instrument was executed;~~

___ (b) The identity of the settlor;

___ (c) ___ The ~~identity~~ ~~name~~ and address of ~~the currently acting~~ ~~each~~ trustee;

___ (d) ___ The ~~powers~~ ~~name~~ of ~~the~~ ~~each known successor~~ trustee in the pending transaction;

___ (e) ___ ~~The revocability~~ ~~A statement that the trustee has authority or~~ irrevocability ~~that the trustees have authority to open the account on behalf~~ of the trust; and the identity of any person holding a power to revoke the trust;

___ (f) The authority of co-trustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

___ (g) The name in which title to trust property may be taken; and

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

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

(a) For a transaction that consists of opening a deposit account, the bank may administer the account in accordance with the certificate of trust without requiring receipt of a copy of the written trust agreement; and.

(b) For a transaction that consists of obtaining, guaranteeing or encumbering trust property to secure a loan, or entering into any agreement with a bank, the trustee or trustees shall be conclusively presumed to have had the authority specified in the trust certificate for purposes of determining whether the trustees were acting within their authority in entering into (or causing the trust to enter into) such transaction, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(3) ___ If a bank decides to accept a certificate of trust in opening a deposit account pursuant to this section, upon the death, resignation, or adjudication of incompetence of all named trustees and successor trustees noted on the certificate of trust, the bank may withhold disposition of any funds on deposit in the account until receipt of one of the following:

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

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

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

(4) ___ If a bank decides to accept a certificate of trust in opening a deposit account pursuant to this section, the bank shall not be liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(5) ___ Nothing in this section shall obligate a bank to enter into establish a transaction with deposit account for a trustee who refuses to furnish the bank with a copy of a written trust agreement. In addition, nothing in this section shall be construed to prohibit a bank from requesting additional information in order to enter into establish a transaction with deposit account for a trustee, including a request that the certificate of trust be executed by all trustees.

(6) Knowledge of the terms of a written trust agreement may not be inferred solely from the fact that a copy of all or part of a written trust agreement is held by the person relying upon the certification or affidavit.

Section 2. In Colorado Revised Statutes, add 11-30-126 as follows:

11-30-126. Trust transaction – listed documentation required – certificate of trust

(1) For any deposit account that is opened with any credit union business in this state by one or more persons expressly acting as a trustee or trustees for one or more other named person or persons pursuant to or purporting to be pursuant to a written trust agreement, a trustee may provide the credit union with a certificate of trust to evidence the trust relationship. The certificate of trust must be an affidavit executed by any trustee and must include the following:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the settlor;

(c) The identity and address of the currently acting trustee;

(d) The powers of the trustee in the pending transaction;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The authority of co-trustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise periods;

(g) The name in which title to trust property may be taken; and

(h) Any other information that may be required by the bank, including an indemnification that is acceptable to the bank, including an indemnification that is acceptable to the credit union.

(2) If a credit union decides to accept a certificate of trust pursuant to this section:

(a) A transaction to open the credit union account. The credit union may administer the account in accordance with the certificate of trust without requiring receipt of a copy of the written trust agreement; and

(b) For a transaction to secure a loan by obtaining, guaranteeing, or encumbering property, or for any other transaction that is an agreement with a credit union, the trustees are conclusively presumed to have the authority specified in the certificate of the trust for purpose of determining whether the

trustees were acting within their authority in entering into the transaction and the authority of the trustee is presumed even if the certificate of trust is contrary to the terms of the written trust agreement, unless the credit union has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(3) If a credit union decides to accept a certificate of trust to open an account pursuant to this section, upon the death, resignation, or adjudication of incompetence of all named trustees and successor trustees noted on page 2 of the certificate of trust, the bank may withhold disposition of any funds on deposit in the account until receipt of one of the following:

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

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

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

(4) If a credit union decides to accept a certificate of trust to open an account pursuant to this section, the credit union shall not be liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(5) Nothing in this section shall obligate a credit union to establish an account or enter into a transaction with a trustee who refuses to furnish the bank with a copy of a written trust agreement. In addition, nothing in this section shall be construed to prohibit a credit union from requesting additional information in order to establish a deposit account or entering into a transaction with a trustee, including a request that the certificate of trust be executed by all trustees.

(6) Knowledge of the terms of a written trust agreement may not be inferred solely from the fact that a copy of all or part of a written trust agreement is held by the person relying upon the certification or affidavit.

[Section 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.]