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## FISCAL IMPACT REPORT

**SPONSOR** Cook **ORIGINAL DATE** 02/11/15 **HB** 124  
**LAST UPDATED**

**SHORT TITLE** Appointment of Assets Between Trusts **SB** \_\_\_\_\_

**ANALYST** Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 124 enacts six new sections of the Uniform Trust Code which address the appointment (giving) of income or principal from one trust to another trust by an authorized trustee. These new sections allow a trustee of a trust, if the trust instrument grants the trustee the discretion to make a distribution of income or principal to or for the benefit of one or more beneficiaries of the trust, to appoint a part or all of the income or principal to a second trust, subject to the discretion in favor of a trustee of a second trust under a trust instrument separate from the trust instrument of the first trust. Before exercising its discretion to appoint and distribute assets to a second trust, the trustee of the first trust must determine whether the appointment is necessary and desirable after taking into account the purposes of the first trust. The exercise of power to distribute the income or principal of a trust pursuant to HB 124 would be considered the exercise of a power of appointment other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate or the creditors of the trustee's estate. The exercise of power to distribute the income or principal of a trust would occur only by written instrument and with twenty days' prior notification to all beneficiaries of the first trust.

The second trust must only have as beneficiaries one or more beneficiaries of the first trust to or for whom a distribution may be made. In addition, no restricted trustee would be allowed to take any action not authorized by the first trust or to remove restrictions imposed by the first trust on discretionary distributions from the trust. Any appointment cannot be exercised in violation of the statutory rule against perpetuities. The bill also includes provisions governing the change, removal and replacement of a trustee for the purpose of appointment.

The effective date of this bill is July 1, 2015.

### **FISCAL IMPLICATIONS**

No fiscal impact on the State is anticipated.

### **SIGNIFICANT ISSUES**

HB 124 clarifies the requirements and limitations concerning the appointment of trust assets to a second trust. AGO notes that existing law does not preclude a trustee, if fair to the beneficiaries, from entering into a transaction between a trust and another trust, decedent's estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest. See Section 46A-8-802, NMSA 1978.

The Uniform Law Commission reports that trust decanting is a nonjudicial method for modifying an irrevocable trust. The technique has gained wide currency in the past several years, and more than ten states have enacted legislation on the subject. Common law support for this technique is uncertain in many states.

### **AMENDMENTS**

AGO comments that because HB 124 would allow a trustee to appoint income or principal to a second trust whose beneficiaries are also beneficiaries of the first trust to or for whom a distribution "may be made in the future," the intent of Section 4 seems to be to ensure that any appointment of income or principal not violate the rule against perpetuities, as codified at Section 45-2-901, NMSA 1978, but the proposed language is less than clear. Section 4 might be clearer if it read:

The power pursuant to Section 46A-8-818 shall not be exercised in any manner not consistent with the rule against perpetuities, as may be applicable to the first trust.

MD/je