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FISCAL IMPACT REPORT

SPONSOR Cook ORIGINAL DATE 02/11/15
LAST UPDATED 03/03/15 HB 184/aHfI#1
SHORT TITLE Uniform Trust Code Changes SB _____
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
Human Services Department (HSD)

SUMMARY

Synopsis of HfI#1

The House Floor Amendment #1 to HB 184 adds language to the section of the Uniform Trust Code governing exceptions to a spendthrift provision that provides that such a provision is unenforceable against a judgment creditor pursuant to an order for payment of child support entered against a beneficiary of a trust. Similarly, it also adds a new subsection to the section governing discretionary trusts clarifying that nothing in that section shall prevent a claim against a trust to satisfy an order of child support entered against a beneficiary of the trust.

Synopsis of Original Bill

House Bill 184 amends (or repeals and replaces) four sections of the Uniform Trust Act:

Section 1 removes the public policy exception to the requirement that the law of the jurisdiction specified in the terms of the trust controls. Existing law provides that a strong public policy of the jurisdiction having the most significant relationship to the matter at issue overrides the law of the specified jurisdiction.

Section 2 repeals the existing provision governing representation of a minor, incapacitated person, unborn persons or unidentifiable or unlocatable persons, and replaces it with a new section which changes the “substantially identical interest” requirement to one that is “substantially similar”. It modifies the existing prohibition against such representation if a conflict of interest is present to apply when the conflict is material. It extends this power of representation to a presumptive remainder beneficiary as to a beneficiary with a contingent remainder for the same purpose and to a custodial parent or guardian of the minor’s or incapacitated beneficiary’s estate (which representation is also binding on an unborn or unascertainable person under specified conditions).

Section 3 repeals the existing section providing exceptions to a spendthrift provision and replaces it with a new section setting forth exceptions that do not include the exception that currently applies to orders or judgments for child support or for the maintenance of a spouse or former spouse.

Section 4 also repeals existing law governing discretionary trusts and replaces it with a much more detailed new section that includes provisions specifying the rights of different types of beneficiaries and the scope of different interests in a trust as well as narrowly defining the bases for challenging the actions of a trustee and restricting creditors’ ability to force or reach certain distributions.

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

FISCAL IMPLICATIONS

Responding agencies report no fiscal impact on the State.

SIGNIFICANT ISSUES

As AGO points out, HB 184 removes language from the Uniform Trust Code that expressly allows child support orders and judgments to be pursued against the beneficiary’s interest in a trust despite the existence of a spendthrift clause (which clause restrains both voluntary and involuntary transfer of the beneficiary’s interest). This provision may conflict with federal laws that provide for the enforcement of child support orders. See, e.g. 45 C.F.R. Subt. B, Ch. III.

Similarly, Section 4 does not appear to include a provision such as that in existing law providing for court-ordered distribution from discretionary trusts to satisfy judgments or orders for support of the beneficiary’s child, spouse or former spouse. See Section 46A-5-504(C) (1), NMSA 1978.

AOC advises that the change in Section 1 eliminating the public policy exception to application of the law of the jurisdiction specified in the trust document is contrary to the Model Uniform Trust Code, approved and recommended for enactment in 2000. (It also differs from the Hague Convention on the Law Applicable to Trusts and on their Recognition, signed on July 1, 1985, upon which the model statutory section was partially patterned, and listing particular public policies for which the forum may decide to override the choice of law that would otherwise apply.)

Further, the changes in Sections 2 regarding representation of minors and incapacitated and

unknown or unlocatable persons and those in Section 4 as to discretionary trusts are also contrary to the provisions of the Model Uniform Trust Code as well. Current law embodies the language of the model code. See the Uniform Law Commission's annotated "Uniform Trust Code," http://www.uniformlaws.org/shared/docs/trust_code/UTC_Final_rev2014.pdf.

HSD reports that Medicaid-allowed trusts written under these new provisions could be compromised, as beneficiaries cannot be empowered as provided for in this bill, and still be allowed eligibility to participate in the Medicaid program. Further, eligibility determinations that rely on a recipient/beneficiary's access to trust assets will be difficult to make. It may be difficult or impossible to draft provisions in a trust document to ensure eligibility, given the focus of this bill on granting powers to beneficiaries to revoke or otherwise innovate as to trust provisions.

MD/bb/je