

ASSEMBLY BILL NO. 469—ASSEMBLYMAN GOLDWATER

MARCH 10, 1999

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning spendthrift trusts. (BDR 13-1296)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trusts; enlarging the class of permitted beneficiaries of a spendthrift trust; enlarging the category of spendthrift trusts to which the law of this state applies; providing a limitation of actions; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 166 of NRS is hereby amended by adding thereto a new section to read as follows:

A person may not bring an action with respect to a transfer of property to a spendthrift trust:

1. If he is a creditor when the transfer is made, unless the action is commenced within:

(a) Two years after the transfer is made; or

(b) Six months after he discovers or reasonably should have discovered the transfer, whichever is later.

2. If he becomes a creditor after the transfer is made, unless the action is commenced within 2 years after the transfer is made.

Sec. 2. NRS 166.040 is hereby amended to read as follows:

166.040 ***1.*** Any person competent by law to execute a will or deed may, by writing only, duly executed, by will, conveyance or other writing, create a spendthrift trust in real, personal or mixed property for ~~any other person or persons.~~ ***the benefit of:***

(a) A person other than the settlor;

1 (b) *The settlor if the writing is irrevocable, does not require that any*
2 *part of the income or principal of the trust be distributed to the settlor,*
3 *and was not intended to hinder, delay or defraud known creditors; or*

4 (c) *Both the settlor and another person if the writing meets the*
5 *requirements of paragraph (b).*

6 2. *For the purposes of this section, a writing:*

7 (a) *Is “irrevocable” even if the settlor may prevent a distribution from*
8 *the trust or holds a testamentary special power of appointment or similar*
9 *power.*

10 (b) *Does not “require” a distribution to the settlor if he may receive it*
11 *only in the discretion of another person.*

12 **Sec. 3.** NRS 166.060 is hereby amended to read as follows:

13 166.060 1. Unless the writing ~~{shall-declare}~~ **declares** to the contrary,
14 expressly, this chapter ~~{shall-govern}~~ **governs** the construction, operation
15 and enforcement, in this state, of all spendthrift trusts ~~{wheresoever created,~~
16 ~~when:~~

17 ~~—(a) The}~~ **created in or outside this state if:**

18 (a) **All or part of the** land, rents, issues or profits affected are in this
19 state;

20 (b) ~~{The}~~ **All or part of the** personal property, interest of money,
21 dividends upon stock and other produce thereof, affected, are in this state;
22 ~~{or}~~

23 (c) The declared domicile of the creator of a spendthrift trust affecting
24 ~~{such}~~ personal property is in this state ~~{.}~~ **; or**

25 (d) **At least one trustee qualified under subsection 2 has powers that**
26 **include maintaining records and preparing income tax returns for the**
27 **trust, and all or part of the administration of the trust is performed in this**
28 **state.**

29 2. **If the settlor is a beneficiary of the trust, at least one trustee of a**
30 **spendthrift trust must be:**

31 (a) **A natural person who resides and has his domicile in this state;**

32 (b) **A trust company that:**

33 (1) **Is organized under federal law or under the laws of this state or**
34 **another state; and**

35 (2) **Maintains an office in this state for the transaction of business;**
36 **or**

37 (c) **A bank that:**

38 (1) **Is organized under federal law or under the laws of this state or**
39 **another state;**

40 (2) **Maintains an office in this state for the transaction of business;**
41 **and**

42 (3) **Possesses and exercises trust powers.**

1 **3.** Except as ~~{stated}~~ *otherwise provided* in subsection 1, this chapter
2 ~~{shall also govern}~~ *also governs* the construction, operation and
3 enforcement, outside of this state, of all spendthrift trusts created in this
4 state, except so far as prohibited by valid laws of other states. Unless the
5 writing ~~{of trust shall declare}~~ *declares* to the contrary, expressly, it shall be
6 deemed to be made in the light of this chapter and all other acts relating to
7 spendthrift trusts enacted in this state.

8 **Sec. 4.** NRS 166.140 is hereby amended to read as follows:

9 166.140 A spendthrift trust ~~{shall}~~ *may* not continue for a period longer
10 than ~~{the life or lives of specified persons in being at the time of its creation~~
11 ~~and for 21 years after the death of the survivor of them.}~~ *that allowed*
12 *under NRS 111.103 to 111.1039, inclusive.* The free alienation of the legal
13 estate by the trustee ~~{shall}~~ *may* not be suspended for a period exceeding
14 the limit prescribed in any constitutional or statutory prohibition against
15 perpetuities existing in this state or in the state where the lands affected by
16 the trust are situate , ~~{;}~~ but a contingent remainder in fee may be created on
17 a prior remainder in fee, to take effect ~~{in the event that}~~ *if* the persons to
18 whom the first remainder is limited die under the age of 21 years, or upon
19 any other contingency by which the estate of ~~{such}~~ *those* persons may be
20 determined before they attain ~~{their full}~~ *that* age.

21 **Sec. 5.** NRS 11.190 is hereby amended to read as follows:

22 11.190 Except as otherwise provided in NRS 125B.050 and 217.007,
23 actions other than those for the recovery of real property, unless further
24 limited by specific statute, may only be commenced as follows:

25 1. Within 6 years:

26 (a) An action upon a judgment or decree of any court of the United
27 States, or of any state or territory within the United States, or the renewal
28 thereof.

29 (b) An action upon a contract, obligation or liability founded upon an
30 instrument in writing, except those mentioned in the preceding sections of
31 this chapter.

32 2. Within 4 years:

33 (a) An action on an open account for goods, wares and merchandise sold
34 and delivered.

35 (b) An action for any article charged on an account in a store.

36 (c) An action upon a contract, obligation or liability not founded upon
37 an instrument in writing.

38 3. Within 3 years:

39 (a) An action upon a liability created by statute, other than a penalty or
40 forfeiture.

41 (b) An action for waste or trespass of real property, but when the waste
42 or trespass is committed by means of underground works upon any mining

1 claim, the cause of action shall be deemed to accrue upon the discovery by
2 the aggrieved party of the facts constituting the waste or trespass.

3 (c) An action for taking, detaining or injuring personal property,
4 including actions for specific recovery thereof, but in all cases where the
5 subject of the action is a domestic animal usually included in the term
6 "livestock," which has a recorded mark or brand upon it at the time of its
7 loss, and which strays or is stolen from the true owner without his fault, the
8 statute does not begin to run against an action for the recovery of the
9 animal until the owner has actual knowledge of such facts as would put a
10 reasonable person upon inquiry as to the possession thereof by the
11 defendant.

12 (d) Except as otherwise provided in NRS 112.230 ~~H~~ and section 1 of
13 this act, an action for relief on the ground of fraud or mistake, but the cause
14 of action in such a case shall be deemed to accrue upon the discovery by
15 the aggrieved party of the facts constituting the fraud or mistake.

16 (e) An action pursuant to NRS 40.750 for damages sustained by a
17 financial institution because of its reliance on certain fraudulent conduct of
18 a borrower, but the cause of action in such a case shall be deemed to accrue
19 upon the discovery by the financial institution of the facts constituting the
20 concealment or false statement.

21 4. Within 2 years:

22 (a) An action against a sheriff, coroner or constable upon liability
23 incurred by acting in his official capacity and in virtue of his office, or by
24 the omission of an official duty, including the nonpayment of money
25 collected upon an execution.

26 (b) An action upon a statute for a penalty or forfeiture, where the action
27 is given to a person or the state, or both, except when the statute imposing
28 it prescribes a different limitation.

29 (c) An action for libel, slander, assault, battery, false imprisonment or
30 seduction.

31 (d) An action against a sheriff or other officer for the escape of a
32 prisoner arrested or imprisoned on civil process.

33 (e) Except as otherwise provided in NRS 11.215, an action to recover
34 damages for injuries to a person or for the death of a person caused by the
35 wrongful act or neglect of another. The provisions of this paragraph
36 relating to an action to recover damages for injuries to a person apply only
37 to causes of action which accrue after March 20, 1951.

38 5. Within 1 year:

39 (a) An action against an officer, or officer de facto to recover goods,
40 wares, merchandise or other property seized by the officer in his official
41 capacity, as tax collector, or to recover the price or value of goods, wares,
42 merchandise or other personal property so seized, or for damages for the
43 seizure, detention or sale of, or injury to, goods, wares, merchandise or

1 other personal property seized, or for damages done to any person or
2 property in making the seizure.

3 (b) An action against an officer, or officer de facto for money paid to the
4 officer under protest, or seized by the officer in his official capacity, as a
5 collector of taxes, and which, it is claimed, ought to be refunded.

6 **Sec. 6.** NRS 112.230 is hereby amended to read as follows:

7 112.230 ~~[A]~~ *Except as otherwise provided in section 1 of this act, a*
8 claim for relief with respect to a fraudulent transfer or obligation under this
9 chapter is extinguished unless action is brought:

10 1. Under paragraph (a) of subsection 1 of NRS 112.180, within 4 years
11 after the transfer was made or the obligation was incurred or, if later, within
12 1 year after the transfer or obligation was or could reasonably have been
13 discovered by the claimant;

14 2. Under paragraph (b) of subsection 1 of NRS 112.180 or subsection
15 1 of NRS 112.190, within 4 years after the transfer was made or the
16 obligation was incurred; or

17 3. Under subsection 2 of NRS 112.190, within 1 year after the transfer
18 was made or the obligation was incurred.

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