

SENATE BILL NO. 382—COMMITTEE ON JUDICIARY

MARCH 29, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to trusts.
(BDR 13-727)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; authorizing a fiduciary to transfer trust property to a corporation, limited-liability company or other entity formed by the fiduciary; authorizing such an entity that acts as a fiduciary or trustee to be owned or controlled by the trust under certain circumstances; making various changes relating to spendthrift trusts; 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 162 is hereby amended by adding thereto a new section to read as follows:

1. A fiduciary may form a corporation, limited-liability company or other entity, and transfer, assign and convey to the corporation, limited-liability company or entity all or any part of an estate or of any trust property in exchange for the stock, securities or obligations of the corporation, limited-liability company or entity, and continue to hold the stock and securities and obligations.

2. A corporation, limited-liability company or other entity incorporated, organized or registered under the laws of this State that acts as a fiduciary or trustee of an estate or trust administered under the laws of this State may be owned or controlled by the trust if the trust instrument authorizes the trust to own an affiliate.



1 3. As used in this section, "affiliate" has the meaning
2 ascribed to it in NRS 163.020.

3 Sec. 2. Chapter 166 of NRS is hereby amended by adding
4 thereto the provisions set forth as sections 3 to 6, inclusive, of this
5 act.

6 Sec. 3. 1. A person may not bring an action against a
7 distribution of income or principal made from a spendthrift trust
8 and to or for the benefit of a beneficiary of the spendthrift trust if
9 the beneficiary is a person other than the settlor, or against any
10 income, growth or other proceeds, accumulations or any
11 replacement properties from any sales, exchanges or other
12 transfers of property arising from the distribution.

13 2. A person may not bring an action against a distribution of
14 income or principal made from a spendthrift trust and to or for the
15 benefit of a beneficiary of the spendthrift trust if the beneficiary is
16 the settlor, or against any income, growth or other proceeds,
17 accumulations or any replacement properties from any sales,
18 exchanges or other transfers of property arising from the
19 distribution, if and to the extent:

20 (a) The distribution, income, growth or other proceeds or
21 accumulations from such distribution, or any replacement
22 properties, are maintained by the beneficiary or any other person
23 in one or more qualified segregated accounts or are transferred by
24 the beneficiary to one or more spendthrift trusts settled by the
25 beneficiary who received the distribution from the original
26 spendthrift trust;

27 (b) The distribution is transferred by the beneficiary, or the
28 beneficiary's guardian, trustee, executor or other representative
29 having the power to make such a transfer, within 60 days after the
30 date the beneficiary received the distribution, to the one or more
31 qualified segregated accounts or to the one or more spendthrift
32 trusts settled by the beneficiary who received the distribution from
33 the original spendthrift trust; and

34 (c) The cumulative distributions to the beneficiary from the
35 spendthrift trust during a calendar year that are transferred to the
36 one or more qualified segregated accounts or one or more
37 spendthrift trusts are either:

38 (1) Not more than all of the trust income;

39 (2) Not more than 15 percent of the trust corpus from a
40 trust that qualifies under section 664 of the Internal Revenue
41 Code or any successor provision as a charitable remainder
42 annuity trust, based on the initial value as valued pursuant to the
43 relevant valuation date in the trust instrument;

44 (3) Not more than 15 percent of the trust corpus from a
45 trust that qualifies under section 664 of the Internal Revenue



1 *Code or any successor provision as a charitable remainder*
2 *unitrust, based on the initial value as valued pursuant to the*
3 *annually determined value as valued pursuant to the relevant*
4 *valuation date in the trust instrument;*

5 (4) *Not more than 15 percent of the trust corpus from a*
6 *trust that qualifies under section 2702 of the Internal Revenue*
7 *Code or any successor provision as a trust commonly known as a*
8 *grantor retained annuity trust, based on the initial value as valued*
9 *pursuant to the relevant valuation date in the trust instrument;*

10 (5) *Not more than 15 percent of the trust corpus from a*
11 *trust that qualifies under section 2702 of the Internal Revenue*
12 *Code or any successor provision as a trust commonly known as a*
13 *grantor retained unitrust, based on the annually determined value*
14 *as valued pursuant to the relevant valuation date in the trust*
15 *instrument; or*

16 (6) *Not more than 15 percent of the trust corpus, as valued*
17 *on January 1 of the applicable calendar year.*

18 3. *After distribution of property from a spendthrift trust and*
19 *deposit to a qualified segregated account pursuant to subsection 2,*
20 *if:*

21 (a) *The property is distributed to the beneficiary from the*
22 *qualified segregated account; or*

23 (b) *The property is otherwise transferred or invested such that*
24 *it is no longer owned in the qualified segregated account,*

25 *↳ the property is no longer protected under this chapter unless,*
26 *within 60 days of the distribution, transfer or investment pursuant*
27 *to this subsection, the property is transferred to one or more*
28 *spendthrift trusts settled by the beneficiary who received the*
29 *original distribution from the original spendthrift trust. During*
30 *such 60-day period, a person may not bring an action against such*
31 *distribution, transfer or investment to the extent NRS 166.170*
32 *limited the person from bringing an action with regard to the*
33 *transfer of the property to the original spendthrift trust.*

34 4. *No action may be brought against property to the extent it*
35 *is held in a qualified segregated account or in a new spendthrift*
36 *trust pursuant to the provisions of this section except to the extent*
37 *that the limitation on actions pursuant to NRS 166.170 does not*
38 *apply. For the purposes of NRS 166.170, the date of the transfer of*
39 *property pursuant to this section relates back to the date the*
40 *property was transferred to the original spendthrift trust and*
41 *the property shall be deemed to have come from the assets in the*
42 *original spendthrift trust on a first-in, first-out basis even if the*
43 *distribution is of an asset that can be traced to a later transfer to*
44 *the original spendthrift trust. The provisions of section 4 of this*
45 *act apply to such a transfer. If the limitation on actions pursuant*



1 *to NRS 166.170 does not apply with respect to some or all of the*
2 *property in a qualified segregated account, then any such property*
3 *does not disqualify the qualified segregated account except with*
4 *respect to the property in the qualified segregated account for*
5 *which the limitation on actions does not apply, and to the extent*
6 *any income, growth or other proceeds, accumulations or*
7 *replacement properties from any sales, exchanges, or other*
8 *transfers of property arising from such property can be traced to*
9 *such property, or alternatively, to the extent it cannot be traced, an*
10 *amount of property equal to or approximately equal to the value of*
11 *such property, including a reasonable amount of interest on such*
12 *property to be set by the court.*

13 *5. For the purposes of this section, a “qualified segregated*
14 *account” is a bank account or brokerage account held in this*
15 *State in the name of the beneficiary or the beneficiary’s revocable*
16 *trust in which the beneficiary, or the beneficiary’s guardian,*
17 *trustee, executor or other representative, has check-writing*
18 *authority or withdrawal authority, and which is segregated from*
19 *assets that are not protected under this section.*

20 **Sec. 4. 1.** *A trust administered under the laws of another*
21 *state, or under the laws of a foreign jurisdiction, may be held as a*
22 *spendthrift trust under this chapter if:*

23 *(a) The trustee of the trust complies with any requirements set*
24 *forth in the trust document and any requirements of the laws of*
25 *the state or jurisdiction from which the trust is being transferred;*

26 *(b) The trustee or other person having the power to transfer*
27 *the domicile of the trust declares such intent in writing;*

28 *(c) The writing declaring the intent to transfer the domicile of*
29 *the trust is delivered to the trustee, if it is executed by a person*
30 *other than the trustee; and*

31 *(d) All requirements of this chapter are satisfied*
32 *simultaneously with or immediately after the change of domicile.*

33 **2.** *For the purposes of NRS 166.170, if the domicile of an*
34 *existing trust is transferred from another state or from a foreign*
35 *jurisdiction to this State and the laws of the state or other*
36 *jurisdiction are similar to the provisions of this chapter, except*
37 *section 3 of this act, the transfer shall be deemed to have occurred*
38 *at the date the settlor of the trust transferred assets into the trust if*
39 *the applicable law of the trust has at all times been substantially*
40 *similar to the provisions of this chapter, other than section 3 of*
41 *this act, or at the earliest date on which the applicable laws of the*
42 *trust were substantially similar to the provisions of this chapter,*
43 *other than section 3 of this act.*

44 **Sec. 5.** *Notwithstanding any other provision to the contrary,*
45 *including NRS 112.180, a creditor of a settlor or beneficiary, or*



1 *any other person, has only the rights provided in this chapter, and*
2 *no such person has a claim or cause of action against a trustee of*
3 *a spendthrift trust or against any person involved in counseling,*
4 *drafting, preparation, execution or funding of a spendthrift trust.*

5 **Sec. 6.** 1. *If the defendant in a civil action against a*
6 *spendthrift trust is the prevailing party, the defendant is entitled to*
7 *recover all attorney's fees and costs expended in defending the*
8 *action. This provision shall be deemed to be substantive and not*
9 *procedural.*

10 2. *A creditor who brings an action or proceeding against a*
11 *spendthrift trust or against the property of a spendthrift trust*
12 *governed by the provisions of this chapter must first post a bond*
13 *with the court in the amount of \$25,000 for securing the payment*
14 *of all attorney's fees and costs that may become payable by the*
15 *creditor pursuant to subsection 1.*

16 **Sec. 7.** NRS 166.015 is hereby amended to read as follows:

17 166.015 1. Unless the writing declares to the contrary,
18 expressly, this chapter governs the construction, operation and
19 enforcement, in this State, of all spendthrift trusts created in or
20 outside this State if:

21 (a) All or part of the land, rents, issues or profits affected are in
22 this State;

23 (b) All or part of the personal property, interest of money,
24 dividends upon stock and other produce thereof, affected, are in this
25 State;

26 (c) The declared domicile of the creator of a spendthrift trust
27 affecting personal property is in this State; or

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

32 2. If the settlor is a beneficiary of the trust, at least one trustee
33 of a spendthrift trust must be:

34 (a) A natural person who resides and has his domicile in this
35 State;

36 (b) A trust company that:

37 (1) Is organized under federal law or under the laws of this
38 State or another state; and

39 (2) Maintains an office in this State for the transaction of
40 business; or

41 (c) A bank that:

42 (1) Is organized under federal law or under the laws of this
43 State or another state;

44 (2) Maintains an office in this State for the transaction of
45 business; and



(3) Possesses and exercises trust powers.

3. Except as otherwise provided in subsection 1, this chapter also governs the construction, operation and enforcement, outside of this State, of all *trusts that qualify as* spendthrift trusts ~~[created in this State, except so far as prohibited by valid laws of other states.]~~ *under this chapter.* Unless the writing declares to the contrary, expressly, it shall be deemed to be made in the light of this chapter and all other acts relating to spendthrift trusts enacted in this State.

Sec. 8. 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 the benefit of:

(a) A person other than the settlor;

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

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

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

(a) Is "irrevocable" even if the settlor may prevent a distribution from the trust or holds a testamentary special power of appointment or similar power.

(b) Does not "require" a distribution to the settlor if he may receive it only in the discretion of another person.

3. For the purposes of this chapter:

(a) The plaintiff has the burden of proof to demonstrate that a transfer was made to hinder, delay or defraud known creditors.

(b) A transfer may be deemed to be intended to hinder, delay or defraud known creditors only if the plaintiff demonstrates the intent by clear and convincing evidence.

4. A trust in which the settlor is the beneficiary must not be disqualified because one or more of the following occurs:

(a) The settlor has the power to remove a trustee with or without cause and replace the trustee with a trustee who is not a related or subordinate party to the settlor within the meaning of section 672(c) of the Internal Revenue Code or any successor provision, or has the power to remove a trustee with or without cause and has a substantially similar restriction as to who can be named as replacement trustee, as long as the settlor may not be named as trustee having discretionary distribution powers.

(b) The settlor can potentially receive, has received or has the right to receive income or principal from the trust.



1 (c) *The settlor can potentially receive, has received or has the*
2 *right to receive income or principal from a trust that qualifies*
3 *under section 664 of the Internal Revenue Code or any successor*
4 *provision as a charitable remainder annuity trust or as a*
5 *charitable remainder unitrust.*

6 (d) *The settlor can potentially receive, has received or has the*
7 *right to receive, each year or other period of time, a fixed*
8 *percentage specified in the trust agreement of the initial value of*
9 *the trust or of its value determined from time to time pursuant to*
10 *the trust agreement, or a series of fixed, increasing payments,*
11 *including, but not limited to, a trust that qualifies under section*
12 *2702(b) of the Internal Revenue Code or any successor provision*
13 *as a trust commonly known as a grantor retained annuity trust or*
14 *as a grantor retained unitrust.*

15 (e) *The settlor can potentially use or actually uses real*
16 *property held under a trust commonly known as a personal*
17 *residence trust or a qualified personal residence trust as described*
18 *in section 2702 of the Internal Revenue Code or any successor*
19 *provision.*

20 (f) *The settlor can potentially use or actually uses real or*
21 *personal property held under the trust.*

22 **Sec. 9.** NRS 21.080 is hereby amended to read as follows:

23 21.080 1. All goods, chattels, ~~monneys~~ **money** and other
24 property, real and personal, of the judgment debtor, or any interest
25 therein of the judgment debtor not exempt by law, and all property
26 and rights of property seized and held under attachment in the
27 action, ~~shall be~~ **are** liable to execution. Subject to the provisions of
28 chapter 104 of NRS, shares and interests in any corporation or
29 company, and debts and credits and other property not capable of
30 manual delivery, may be attached in execution in like manner as
31 upon writs of attachments. Gold dust and bullion ~~shall~~ **must** be
32 returned by the officer as so much money collected, at its current
33 value, without exposing ~~the same~~ **it** to sale. Until a levy, property
34 ~~shall not be~~ **is not** affected by the execution.

35 2. This chapter does not authorize the seizure of, or other
36 interference with, any money, thing in action, lands or other
37 property held in spendthrift trust for a judgment debtor, or held in
38 such trust for any beneficiary, pursuant to any judgment, order or
39 process of any bankruptcy or other court directed against any such
40 beneficiary or his trustee . ~~[, where the trust has been created by, or~~
41 ~~the fund so held in trust has proceeded from, any person other than~~
42 ~~the judgment debtor or beneficiary himself.]~~

43 **Sec. 10.** The provisions of chapter 166 of NRS, as amended by
44 this act, shall operate only prospectively on all transfers,
45 distributions and other actions involving spendthrift trusts now or in



- 1 the future governed by chapter 166 of NRS, but all such spendthrift
- 2 trusts shall be deemed to have been created and maintained pursuant
- 3 to chapter 166 of NRS, as amended by this act, for all such
- 4 prospective purposes.

