

ASSEMBLY BILL NO. 378—ASSEMBLYMEN DONDERO LOOP,
FRIERSON; AND BUSTAMANTE ADAMS

MARCH 18, 2013

JOINT SPONSOR: SENATOR SEGERBLOM

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing spendthrift trusts.
(BDR 13-656)

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 spendthrift trusts; revising provisions governing self-settled spendthrift trusts; revising provisions governing the transfer of community property to a spendthrift trust; prohibiting certain persons from being a distribution trustee of a spendthrift trust; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a person to create a spendthrift trust, which is a trust the terms of which provide that the interest of a beneficiary may not be transferred voluntarily or involuntarily to another person. (NRS 166.020, 166.040) Under existing law, a beneficiary of a spendthrift trust may not transfer his or her interest in the trust and a creditor of the beneficiary may not satisfy the creditor's claim from the beneficiary's interest in the trust. (NRS 166.120) Existing law further authorizes the creation of self-settled spendthrift trusts, which are spendthrift trusts in which the settlor is a beneficiary. Under existing law, a self-settled spendthrift trust may be created only if the trust is irrevocable, does not require any part of the income or principal to be distributed to the settlor and is not be intended to hinder, delay or defraud known creditors. (NRS 166.040)

Section 1.3 of this bill provides that a self-settled spendthrift trust is not enforceable against the settlor's child, spouse or domestic partner, or former spouse or domestic partner who has a judgment or court order against the settlor for support or maintenance. **Section 1.3** further authorizes: (1) the settlor's child, spouse or domestic partner, or former spouse or domestic partner to obtain a court order attaching present or future distributions from a self-settled spendthrift trust to or for the benefit of the settlor; and (2) authorizes a court to order distributions from



a self-settled spendthrift trust to satisfy a judgment or court order against the settlor for the support or maintenance of his or her child, spouse or domestic partner or former spouse or domestic partner. **Section 1.6** of this bill enacts provisions governing the transfer of community property to a spendthrift trust. **Section 1.9** of this bill prohibits the settlor, certain relatives and employees of the settlor, and business entities in which the settlor or certain relatives or employees of the settlor hold certain voting power, from being a distribution trustee of a self-settled spendthrift trust.

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 the provisions set forth as sections 1.3 and 1.6 of this act.

Sec. 1.3. 1. *Notwithstanding any other provision of law, if a spendthrift trust is a self-settled spendthrift trust:*

(a) The trust is unenforceable against the settlor's child, spouse or domestic partner, or former spouse or domestic partner who has a judgment or court order against the settlor for support or maintenance; and

(b) A claimant against whom the trust cannot be enforced pursuant to paragraph (a) may obtain from a court an order attaching present or future distributions to or for the benefit of a beneficiary of the trust who is a settlor of the trust.

2. *Notwithstanding any other provision of law, if a trustee of a self-settled spendthrift trust has discretion to determine whether or not to make a distribution to a beneficiary who is a settlor of the trust:*

(a) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary who is a settlor of the trust for the support or maintenance of that beneficiary's child, spouse or domestic partner, or former spouse or domestic partner; and

(b) The court shall direct the trustee to pay to the child, spouse or domestic partner, or former spouse or domestic partner such amount as is equitable under the circumstances.

3. *Notwithstanding any other provision of law, if a child, spouse or domestic partner, or former spouse or domestic partner has a judgment or court order for support or maintenance against a beneficiary of a self-settled spendthrift trust who is a settlor of the trust, the child, spouse or domestic partner, or former spouse or domestic partner may reach a distribution of income or principal which the trustee is required to make to that beneficiary under the terms of the trust, including, without limitation, a distribution upon termination of the trust.*

4. *As used in this section:*



(a) "Domestic partner" means a person who is in a domestic partnership that is registered pursuant to chapter 122A of NRS, and that has not been terminated pursuant to that chapter.

(b) "Self-settled spendthrift trust" means a spendthrift trust of which a settlor is a beneficiary.

Sec. 1.6. 1. A transfer of community property to a spendthrift trust is void unless both spouses or domestic partners, whichever is applicable, agree to the transfer in a writing which expressly waives the community property rights of each spouse or domestic partner, whichever is applicable, in the property being transferred to the trust. An agreement between spouses or domestic partners pursuant to this subsection must meet the standards which govern the actions of persons occupying relations of confidence and trust toward each other.

2. As used in this section:

(a) "Community property" means property that is community property pursuant to NRS 123.220.

(b) "Domestic partner" has the meaning ascribed to it in NRS 122A.030.

Sec. 1.9. NRS 166.015 is hereby amended to read as follows:

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

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

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

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

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

2. If the settlor is a beneficiary of the trust ~~1, a1~~:

(a) ~~At~~ least one trustee of a spendthrift trust must be:

~~1(a)~~ (I) A natural person who resides and has his or her domicile in this State;

~~1(b)~~ (2) A trust company that:

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

~~1(2)~~ (II) Maintains an office in this State for the transaction of business; or

~~1(e)~~ (3) A bank that:



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

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

~~(3)~~ (III) Possesses and exercises trust powers.

(b) The following persons may not be a distribution trustee:

(1) The settlor;

(2) The spouse or domestic partner of the settlor;

(3) Any person related to the settlor by blood, adoption or marriage within the second degree of consanguinity or affinity;

(4) An employee of the settlor;

(5) A subordinate employee of the settlor or of a business entity in which the settlor is an executive; or

(6) A business entity in which the settlor, or any person listed in subparagraphs (2) to (5), inclusive, holds at least 30 percent of the total voting power of all interests entitled to vote.

3. As used in this section, "domestic partner" has the meaning ascribed to it in NRS 122A.030.

Sec. 2. (Deleted by amendment.)

