

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

MARCH 18, 2013

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JOINT SPONSOR: SENATOR SEGERBLOM

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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.

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AN ACT relating to spendthrift trusts; revising provisions governing self-settled spendthrift trusts; revising provisions governing the transfer of property to a spendthrift trust; revising provisions governing persons who act as a distribution trustee or distribution adviser of a spendthrift trust; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

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

12 **Section 1.2** of this bill provides that a transfer of property to a self-settled  
13 spendthrift trust is presumed to be made with actual intent to defraud an obligee  
14 named in a family support order and is void if: (1) the transfer is made after the  
15 commencement of a domestic relations proceeding; (2) the transfer is made less  
16 than 2 years before the commencement of such a proceeding; (3) the transfer is  
17 made while the settlor is subject to certain family support orders; or (4) a court



order expressly requires the settlor to transfer the property to his or her child, spouse or former spouse, or a domestic partner or former domestic partner, or for the benefit of such a person. **Section 1.2** further provides that under certain circumstances, a trustee of a self-settled spendthrift trust is required to provide written notice of certain distributions from the trust to an obligee named in a family support order. **Section 3** of this bill provides that the provisions of **section 1.2** apply only to: (1) family support orders issued on or after October 1, 2013; (2) transfers of property to a self-settled spendthrift trust made on or after October 1, 2013; and (3) distributions from a self-settled spendthrift trust made on or after October 1, 2013.

**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 acting as a distribution trustee or a distribution adviser of a self-settled spendthrift trust while the settlor is subject to a family support order.

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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 1.1 and 1.2 of this act.

**Sec. 1.1.** *As used in this chapter, unless the context otherwise requires, the term "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.*

**Sec. 1.2.** *1. Notwithstanding any other provision of law, a transfer of property to a self-settled spendthrift trust is presumed to be made with actual intent to defraud each obligee of a domestic relations order, and the transfer is presumed void as to each such obligee, if:*

*(a) The transfer is made after the commencement of a domestic relations proceeding;*

*(b) The transfer is made within the 2 years immediately preceding the commencement of a domestic relations proceeding;*

*(c) The transfer is made while the settlor is subject to a family support order; or*

*(d) An order, judgment or decree of a court of competent jurisdiction expressly requires the settlor to transfer the property to his or her child, spouse or former spouse, or domestic partner or former domestic partner, or to a trust for the benefit of such a person.*

*2. Regardless of whether the self-settled spendthrift trust or the trustee of the self-settled spendthrift trust is a party to an action resulting in a family support order, the trustee shall, not later than 30 days before making a distribution of the income or principal of the self-settled spendthrift trust to a beneficiary who is a settlor, provide written notice of the distribution to each obligee*



1 *named in the family support order, if the family support order*  
2 *expressly requires such notice. A written notice required by this*  
3 *subsection must:*

4 (a) *State:*

5 (1) *The date on which the distribution will be made;*

6 (2) *The amount of the distribution; and*

7 (3) *The manner in which payment of the distribution will*  
8 *be made.*

9 (b) *Unless a written agreement entered into by the obligee who*  
10 *is required to be provided the written notice provides otherwise, be*  
11 *sent by personal delivery, by certified mail, return receipt*  
12 *requested, or by any other delivery service for which a receipt for*  
13 *delivery is obtained to the address provided to the trustee by the*  
14 *obligee required to be provided the written notice.*

15 3. *If, after an obligee named in a family support order*  
16 *provides a copy of the family support order to the trustee and an*  
17 *address to which the written notice required by subsection 2 is to*  
18 *be sent, the trustee makes a distribution of the income or principal*  
19 *of the self-settled spendthrift trust to a beneficiary who is a settlor*  
20 *and who is an obligor named in the family support order without*  
21 *sending the written notice required by subsection 2, the trustee is*  
22 *personally liable to the obligee for the lesser of:*

23 (a) *The amount of such distribution; and*

24 (b) *The amount due the obligee pursuant to the family support*  
25 *order,*

26 *↪ unless the trustee establishes to the satisfaction of the court*  
27 *having jurisdiction to enforce the family support order that the*  
28 *information required to be provided in the written notice would*  
29 *not have facilitated enforcement of the family support order.*

30 4. *As used in this section:*

31 (a) *“Child” means a person to whom a settlor of a self-settled*  
32 *spendthrift trust owes a parental duty of support pursuant to:*

33 (1) *The laws of this State;*

34 (2) *A written agreement to which the settlor is a party; or*

35 (3) *The order of a court of competent jurisdiction.*

36 (b) *“Distribution” includes, without limitation, a distribution*  
37 *from a self-settled spendthrift trust to a person other than a*  
38 *beneficiary who is a settlor for the benefit of a beneficiary who is a*  
39 *settlor. The term does not include an authorization given by the*  
40 *trustee of a self-settled spendthrift trust for a beneficiary who is a*  
41 *settlor to use an asset of the self-settled spendthrift trust, the title*  
42 *to which remains in the trust, including, without limitation, a*  
43 *residence or vehicle.*

44 (c) *“Domestic relations order” means a family support order*  
45 *or a property transfer order.*



\* A B 3 7 8 R 2 \*

(d) *“Domestic relations proceeding” means a legal proceeding that may result in the issuance of a domestic relations order, including, without limitation, an action for divorce, annulment or separate maintenance pursuant to chapter 125 of NRS or any proceeding related to the termination of a domestic partnership that is registered pursuant to chapter 122A of NRS.*

(e) *“Family support order” means a judgment, decree or order of a court for the support or maintenance of a child, spouse or former spouse, or domestic partner or former domestic partner.*

(f) *“Obligee” means:*

(1) *With respect to a family support order, a child, spouse or former spouse, or domestic partner or former domestic partner to whom, or for whose benefit, a court has ordered the payment of support or maintenance.*

(2) *With respect to a property transfer order, a child, spouse or former spouse, or domestic partner or former domestic partner to whom, or for whose benefit, a court has ordered one or more property transfers.*

(g) *“Property transfer order” means an order, judgment or decree of a court which requires the transfer of property to a child, spouse or former spouse, or domestic partner or former domestic partner, or to a trust for the benefit of such a person.*

(h) *“Self-settled spendthrift trust” means a spendthrift trust of which a settlor is a beneficiary.*

**Sec. 1.3.** (Deleted by amendment.)

**Sec. 1.6.** (Deleted by amendment.)

**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 ~~to~~ **for** :

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



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

~~3~~ ~~(b)~~ (2) A trust company that:

~~4~~ ~~(1)~~ (I) Is organized under federal law or under the laws of  
5 this State or another state; and

~~6~~ ~~(2)~~ (II) Maintains an office in this State for the transaction  
7 of business; or

~~8~~ ~~(c)~~ (3) A bank that:

~~9~~ ~~(1)~~ (I) Is organized under federal law or under the laws of  
10 this State or another state;

~~11~~ ~~(2)~~ (II) Maintains an office in this State for the transaction  
12 of business; and

~~13~~ ~~(3)~~ (III) Possesses and exercises trust powers.

~~14~~ (b) *At any time a settlor is subject to a family support order as  
15 defined in section 1.2 of this act:*

~~16~~ (1) *The following persons must not act as a distribution  
17 trustee or a distribution adviser:*

~~18~~ (I) *The settlor;*

~~19~~ (II) *The spouse or domestic partner of the settlor;*

~~20~~ (III) *Any person related to the settlor by blood, adoption or  
21 marriage within the second degree of consanguinity or affinity;*

~~22~~ (IV) *An employee of the settlor;*

~~23~~ (V) *A subordinate employee of the settlor or of a business  
24 entity in which the settlor is an executive; or*

~~25~~ (VI) *A business entity in which the settlor, or any person  
26 listed in sub-subparagraphs (II) to (V), inclusive, holds at least 30  
27 percent of the total voting power of all interests entitled to vote.*

~~28~~ (2) *Notwithstanding any provision of the trust agreement, a  
29 distribution as defined in section 1.2 of this act must not be made  
30 to the settlor unless the distribution is subject to the discretion of a  
31 distribution trustee or a distribution adviser who is not prohibited  
32 from acting as a distribution trustee or distribution adviser  
33 pursuant to subparagraph (1).*

~~34~~ (3) *The trust is not made void by:*

~~35~~ (I) *The lack of a distribution trustee or a distribution  
36 adviser; or*

~~37~~ (II) *The appointment or existence of a distribution  
38 trustee or a distribution adviser who is unable to act as a  
39 distribution trustee or a distribution adviser pursuant to  
40 subparagraph (1).*

~~41~~ Sec. 2. (Deleted by amendment.)

~~42~~ Sec. 3. The provisions of section 1.2 of this act apply only to:

~~43~~ 1. A family support order, as defined in section 1.2 of this act,  
44 issued on or after October 1, 2013.



- 1        2. A transfer of property to a self-settled spendthrift trust, as
- 2 defined in section 1.2 of this act, made on or after October 1, 2013.
- 3        3. A distribution, as defined in section 1.2 of this act, from a
- 4 self-settled spendthrift trust made on or after October 1, 2013.

