

Amendment No. 312

Assembly Amendment to Assembly Bill No. 378

(BDR 13-656)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

BFG/BAW



Date: 4/14/2013

A.B. No. 378—Revises provisions governing spendthrift trusts. (BDR 13-656)



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.

~

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; ~~repealing certain provisions governing the powers of a settlor;~~ 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 ~~1.1~~ 1.9 of this bill prohibits the settlor, certain relatives and employees of the settlor, and ~~in a business entity in which the settlor holds at least 30 percent of the total voting power of all interests entitled to vote,~~ business entities

24 in which the settlor or certain relatives or employees of the settlor hold certain voting
25 power, from being a distribution trustee of a self-settled spendthrift trust.

26 ~~1. Section 2 of this bill repeals a provision of existing law which provides that any~~
27 ~~agreement or understanding between the settlor of a spendthrift trust and the trustee that~~
28 ~~attempts to grant or permit the retention of greater rights or authority than is stated in the trust~~
29 ~~instrument is void.~~

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

1 Section 1. Chapter 166 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 1.3 and 1.6 of this act.

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

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

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

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

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

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

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

29 4. As used in this section:

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

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

35 Sec. 1.6. 1. A transfer of community property to a spendthrift trust is void
36 unless both spouses or domestic partners, whichever is applicable, agree to the
37 transfer in a writing which expressly waives the community property rights of
38 each spouse or domestic partner, whichever is applicable, in the property being
39 transferred to the trust. An agreement between spouses or domestic partners
40 pursuant to this subsection must meet the standards which govern the actions of
41 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.

~~Section 1.9~~ 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 ~~1.9.1~~:

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

- ~~1.9.1(1)~~ (1) A natural person who resides and has his or her domicile in this State;
- ~~1.9.1(2)~~ (2) A trust company that:
 - ~~1.9.1(2)(1)~~ (I) Is organized under federal law or under the laws of this State or another state; and
 - ~~1.9.1(2)(2)~~ (II) Maintains an office in this State for the transaction of business;
- or
- ~~1.9.1(3)~~ (3) A bank that:
 - ~~1.9.1(3)(1)~~ (I) Is organized under federal law or under the laws of this State or another state;
 - ~~1.9.1(3)(2)~~ (II) Maintains an office in this State for the transaction of business;
- and
- ~~1.9.1(4)~~ (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. ~~NRS 166.045 is hereby repealed.~~ (Deleted by amendment.)

†

TEXT OF REPEALED SECTION

~~166.045 Powers of settlor. The settlor of a spendthrift trust has only those powers and rights that are conferred to the settlor by the trust instrument. An agreement or understanding, express or implied, between the settlor and the trustee~~

~~that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument is void.~~