

## Amendment No. 754

Senate Amendment to Assembly Bill No. 378 First Reprint (BDR 13-656)

Proposed by: Senate 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	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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: 5/20/2013

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.

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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~~ **revising provisions governing** persons ~~from being~~ **who act as a** distribution trustee **or distribution adviser** 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 a 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 1.2 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 1.2 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 1.2 of this bill provides that a transfer of property to a self-settled spendthrift trust is presumed to be made with actual intent to defraud an obligee named in a family support order and is void if: (1) the transfer is made after the commencement of a domestic relations proceeding; (2) the transfer is made less than 2 years before the**

commencement of such a proceeding; (3) the transfer is 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 ~~being~~ acting as a distribution trustee or a distribution adviser of a self-settled spendthrift trust ~~if~~ 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 ~~1-3~~ 1.1 and ~~1-6~~ 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 named in the family support order, if the family support order expressly requires such notice. A written notice required by this subsection must:

(a) State:

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

(2) The amount of the distribution; and

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

(b) Unless a written agreement entered into by the obligee who is required to be provided the written notice provides otherwise, be sent by personal delivery, by

certified mail, return receipt requested, or by any other delivery service for which a receipt for delivery is obtained to the address provided to the trustee by the obligee required to be provided the written notice.

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

(a) The amount of such distribution; and

(b) The amount due the obligee pursuant to the family support order.

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

4. As used in this section:

(a) "Child" means a person to whom a settlor of a self-settled spendthrift trust owes a parental duty of support pursuant to:

(1) The laws of this State;

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

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

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

(c) "Domestic relations order" means a family support order or a property transfer order.

(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.

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

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

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

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

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

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

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

27       ~~4. As used in this section:~~

28       ~~(a) "Domestic partner" means a person who is in a domestic partnership that~~  
29 ~~is registered pursuant to chapter 122.4 of NRS, and that has not been terminated~~  
30 ~~pursuant to that chapter.~~

31       ~~(b) "Self settled spendthrift trust" means a spendthrift trust of which a settlor~~  
32 ~~is a beneficiary.] (Deleted by amendment.)~~

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

40       ~~2. As used in this section:~~

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

43       ~~(b) "Domestic partner" has the meaning ascribed to it in NRS 122.4.030.]~~  
44 ~~(Deleted by amendment.)~~

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

46       166.015 1. Unless the writing declares to the contrary, expressly, this  
47 chapter governs the construction, operation and enforcement, in this State, of all  
48 spendthrift trusts created in or outside this State if:

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

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

52       (c) The declared domicile of the creator of a spendthrift trust affecting personal  
53 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-<sup>st</sup>~~:

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

~~1-<sup>st</sup>~~ (1) A natural person who resides and has his or her domicile in this State;

~~1-<sup>st</sup>~~ (2) A trust company that:

~~1-<sup>st</sup>~~ (I) Is organized under federal law or under the laws of this State or another state; and

~~1-<sup>st</sup>~~ (II) Maintains an office in this State for the transaction of business; or

~~1-<sup>st</sup>~~ (3) A bank that:

~~1-<sup>st</sup>~~ (I) Is organized under federal law or under the laws of this State or another state;

~~1-<sup>st</sup>~~ (II) Maintains an office in this State for the transaction of business; and

~~1-<sup>st</sup>~~ (III) Possesses and exercises trust powers.

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

(1) The following persons ~~may~~ must not ~~be~~ act as a distribution trustee ~~or~~ a distribution adviser:

~~1-<sup>st</sup>~~ (I) The settlor;

~~1-<sup>st</sup>~~ (II) The spouse or domestic partner of the settlor;

~~1-<sup>st</sup>~~ (III) Any person related to the settlor by blood, adoption or marriage within the second degree of consanguinity or affinity;

~~1-<sup>st</sup>~~ (IV) An employee of the settlor;

~~1-<sup>st</sup>~~ (V) A subordinate employee of the settlor or of a business entity in which the settlor is an executive; or

~~1-<sup>st</sup>~~ (VI) A business entity in which the settlor, or any person listed in ~~subparagraphs (2) to (5),~~ sub-subparagraphs (II) to (V), 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.~~

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

(3) The trust is not made void by:

(I) The lack of a distribution trustee or a distribution adviser; or

(II) The appointment or existence of a distribution trustee or a distribution adviser who is unable to act as a distribution trustee or a distribution adviser pursuant to subparagraph (1).

Sec. 2. (Deleted by amendment.)

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

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

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

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