

ASSEMBLY BILL NO. 420—COMMITTEE ON JUDICIARY

MARCH 20, 2015

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Voidable Transactions Act.
(BDR 10-1093)

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 fraudulent conveyances; enacting the Uniform Voidable Transactions Act; repealing the Uniform Fraudulent Transfer Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law, passed during the 1987 Legislative Session, enacted the Uniform Fraudulent Transfer Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 1984. The Uniform Fraudulent Transfer Act governs the ability of a creditor to nullify certain transfers of personal property and real property. (Chapter 112 of NRS)

This bill enacts the Uniform Voidable Transactions Act, as amended by the Uniform Law Commission in 2014, which replaces the Uniform Fraudulent Transfer Act. The Uniform Voidable Transactions Act makes various technical changes to the Uniform Fraudulent Transfer Act and includes a number of new provisions. **Section 29** of this bill provides that the location of the debtor determines which jurisdiction's laws apply to a claim under the Act. **Sections 23, 24 and 27** of this bill establish the burden of proof necessary with respect to claims for relief and defenses to such claims under the Act. **Section 30** of this bill provides that any "series organization," defined as a subset of assets or debt owned by a business entity, that is created is a separate entity for the purposes of the Act.



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

Section 1. Chapter 112 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. *This chapter which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform Voidable Transactions Act.*

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 20, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Affiliate” means:*

1. A person that directly or indirectly owns, controls or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(a) As a fiduciary or agent without sole discretionary power to vote the securities; or

(b) Solely to secure a debt, if the person has not in fact exercised the power to vote;

2. A corporation, 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held, with power to vote, by the debtor or a person that directly or indirectly owns, controls or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(a) As a fiduciary or agent without sole discretionary power to vote the securities; or

(b) Solely to secure a debt, if the person has not in fact exercised the power to vote;

3. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

4. A person that operates the business of the debtor under a lease or other agreement or controls substantially all of the assets of the debtor.

Sec. 5. *“Asset” means the property of a debtor. The term does not include:*

1. Property to the extent it is encumbered by a valid lien;

2. Property to the extent it is generally exempt under nonbankruptcy law; or



1 3. *An interest in property held in tenancy by the entireties to*
2 *the extent it is not subject to process by a creditor holding a claim*
3 *against only one tenant.*

4 Sec. 6. *"Claim" means a right to payment, whether or not*
5 *the right is reduced to judgment, liquidated, unliquidated, fixed,*
6 *contingent, matured, unmatured, disputed, undisputed, legal,*
7 *equitable, secured or unsecured. The term does not include a*
8 *claim for relief.*

9 Sec. 7. *"Creditor" means a person that has a claim.*

10 Sec. 8. *"Debt" means liability on a claim.*

11 Sec. 9. *"Debtor" means a person that is liable on a claim.*

12 Sec. 10. *"Electronic" means relating to technology having*
13 *electrical, digital, magnetic, wireless, optical, electromagnetic or*
14 *similar capabilities.*

15 Sec. 11. *"Insider" includes:*

16 1. *If the debtor is an individual:*

17 (a) *A relative of the debtor or of a general partner of the*
18 *debtor;*

19 (b) *A partnership in which the debtor is a general partner;*

20 (c) *A general partner in a partnership described in paragraph*
21 *(b); or*

22 (d) *A corporation of which the debtor is a director, officer or*
23 *person in control;*

24 2. *If the debtor is a corporation:*

25 (a) *A director of the debtor;*

26 (b) *An officer of the debtor;*

27 (c) *A person in control of the debtor;*

28 (d) *A partnership in which the debtor is a general partner;*

29 (e) *A general partner in a partnership described in paragraph*
30 *(d); or*

31 (f) *A relative of a general partner, director, officer or person in*
32 *control of the debtor;*

33 3. *If the debtor is a partnership:*

34 (a) *A general partner in the debtor;*

35 (b) *A relative of a general partner in, a general partner of or a*
36 *person in control of the debtor;*

37 (c) *Another partnership in which the debtor is a general*
38 *partner;*

39 (d) *A general partner in a partnership described in paragraph*
40 *(c); or*

41 (e) *A person in control of the debtor;*

42 4. *An affiliate, or an insider of an affiliate as if the affiliate*
43 *were the debtor; and*

44 5. *A managing agent of the debtor.*



1 **Sec. 12.** *“Lien” means a charge against or an interest in*
2 *property to secure payment of a debt or performance of an*
3 *obligation, and includes a security interest created by agreement, a*
4 *judicial lien obtained by legal or equitable process or proceedings,*
5 *a common-law lien or a statutory lien.*

6 **Sec. 13.** *“Organization” means a person other than an*
7 *individual.*

8 **Sec. 14.** *“Person” means an individual, estate, business or*
9 *nonprofit entity, public corporation, government or governmental*
10 *subdivision, agency, instrumentality or other legal entity.*

11 **Sec. 15.** *“Property” means anything that may be the subject*
12 *of ownership.*

13 **Sec. 16.** *“Record” means information that is inscribed on a*
14 *tangible medium or that is stored in an electronic or other medium*
15 *and is retrievable in perceivable form.*

16 **Sec. 17.** *“Relative” means an individual related by*
17 *consanguinity within the third degree as determined by the*
18 *common law, a spouse or an individual related to a spouse within*
19 *the third degree as so determined, and includes an individual in an*
20 *adoptive relationship within the third degree.*

21 **Sec. 18.** *“Sign” means, with present intent to authenticate or*
22 *adopt a record:*

23 1. *To execute or adopt a tangible symbol; or*

24 2. *To attach to or logically associate with the record an*
25 *electronic symbol, sound or process.*

26 **Sec. 19.** *“Transfer” means every mode, direct or indirect,*
27 *absolute or conditional, voluntary or involuntary, of disposing of*
28 *or parting with an asset or an interest in an asset, and includes*
29 *payment of money, release, lease, license and creation of a lien or*
30 *other encumbrance.*

31 **Sec. 20.** *“Valid lien” means a lien that is effective against the*
32 *holder of a judicial lien subsequently obtained by legal or*
33 *equitable process or proceedings.*

34 **Sec. 21.** 1. *A debtor is insolvent if, at a fair valuation, the*
35 *sum of the debtor’s debts is greater than the sum of the debtor’s*
36 *assets.*

37 2. *A debtor that is generally not paying the debtor’s debts as*
38 *they become due other than as a result of a bona fide dispute is*
39 *presumed to be insolvent. The presumption imposes on the party*
40 *against whom the presumption is directed the burden of proving*
41 *that the nonexistence of insolvency is more probable than its*
42 *existence.*

43 3. *Assets under this section do not include property that has*
44 *been transferred, concealed or removed with intent to hinder,*



1 *delay or defraud creditors or that has been transferred in a*
2 *manner making the transfer voidable under this chapter.*

3 4. *Debts under this section do not include an obligation to the*
4 *extent it is secured by a valid lien on property of the debtor not*
5 *included as an asset.*

6 **Sec. 22.** 1. *Value is given for a transfer or an obligation if,*
7 *in exchange for the transfer or obligation, property is transferred*
8 *or an antecedent debt is secured or satisfied, but value does not*
9 *include an unperformed promise made otherwise than in the*
10 *ordinary course of the promisor's business to furnish support to*
11 *the debtor or another person.*

12 2. *For the purposes of paragraph (b) of subsection 1 of*
13 *section 23 of this act and section 24 of this act, a person gives a*
14 *reasonably equivalent value if the person acquires an interest of*
15 *the debtor in an asset pursuant to a regularly conducted,*
16 *noncollusive foreclosure sale or execution of a power of sale for*
17 *the acquisition or disposition of the interest of the debtor upon*
18 *default under a mortgage, deed of trust or security agreement.*

19 3. *A transfer is made for present value if the exchange*
20 *between the debtor and the transferee is intended to be*
21 *contemporaneous and is in fact substantially contemporaneous.*

22 **Sec. 23.** 1. *A transfer made or obligation incurred by a*
23 *debtor is voidable as to a creditor, whether the creditor's claim*
24 *arose before or after the transfer was made or the obligation was*
25 *incurred, if the debtor made the transfer or incurred the*
26 *obligation:*

27 (a) *With actual intent to hinder, delay or defraud any creditor*
28 *of the debtor; or*

29 (b) *Without receiving a reasonably equivalent value in*
30 *exchange for the transfer or obligation, and the debtor:*

31 (1) *Was engaged or was about to engage in a business or a*
32 *transaction for which the remaining assets of the debtor were*
33 *unreasonably small in relation to the business or transaction; or*

34 (2) *Intended to incur, or believed or reasonably should*
35 *have believed that the debtor would incur, debts beyond the*
36 *debtor's ability to pay as they became due.*

37 2. *In determining actual intent under paragraph (a) of*
38 *subsection 1, consideration may be given, among other factors, to*
39 *whether:*

40 (a) *The transfer or obligation was to an insider;*

41 (b) *The debtor retained possession or control of the property*
42 *transferred after the transfer;*

43 (c) *The transfer or obligation was disclosed or concealed;*

44 (d) *Before the transfer was made or obligation was incurred,*
45 *the debtor had been sued or threatened with suit;*



- (e) *The transfer was of substantially all the debtor's assets;*
- (f) *The debtor absconded;*
- (g) *The debtor removed or concealed assets;*
- (h) *The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;*
- (i) *The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;*
- (j) *The transfer occurred shortly before or shortly after a substantial debt was incurred; and*
- (k) *The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.*

3. *A creditor making a claim for relief under subsection 1 has the burden of proving the elements of the claim for relief by a preponderance of the evidence.*

Sec. 24. 1. *A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor become insolvent as a result of the transfer or obligation.*

2. *A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.*

3. *Subject to subsection 2 of section 21 of this act, a creditor making a claim for relief under subsection 1 or 2 has the burden of proving the elements of the claim for relief by a preponderance of the evidence.*

Sec. 25. *For the purposes of this chapter:*

1. *A transfer is made:*

(a) *With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and*

(b) *With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.*



2. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

3. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee.

4. A transfer is not made until the debtor has acquired rights in the asset transferred.

5. An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

Sec. 26. 1. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in section 27 of this act, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(3) Any other relief the circumstances may require.

2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Sec. 27. 1. A transfer or obligation is not voidable under paragraph (a) of subsection 1 of section 23 of this act against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

2. To the extent a transfer is avoidable in an action by a creditor under paragraph (a) of subsection 1 of section 26 of this act, the following rules apply:

(a) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the



1 *creditor's claim, whichever is less. The judgment may be entered*
2 *against:*

3 *(1) The first transferee of the asset or the person for whose*
4 *benefit the transfer was made; or*

5 *(2) An immediate or mediate transferee of the first*
6 *transferee, other than:*

7 *(I) A good faith transferee that took for value; or*

8 *(II) An immediate or mediate good faith transferee of a*
9 *person described in sub-subparagraph (I).*

10 *(b) Recovery pursuant to paragraph (a) of subsection 1 of*
11 *section 26 of this act or subsection 2 of that section of or from the*
12 *asset transferred or its proceeds, by levy or otherwise, is available*
13 *only against a person described in subparagraph (I) or (2) of*
14 *paragraph (a).*

15 *3. If the judgment under subsection 2 is based upon the value*
16 *of the asset transferred, the judgment must be for an amount*
17 *equal to the value of the asset at the time of the transfer, subject to*
18 *adjustment as the equities may require.*

19 *4. Notwithstanding voidability of a transfer or an obligation*
20 *under this chapter, a good faith transferee or obligee is entitled, to*
21 *the extent of the value given the debtor for the transfer or*
22 *obligation, to:*

23 *(a) A lien on or a right to retain an interest in the asset*
24 *transferred;*

25 *(b) Enforcement of an obligation incurred; or*

26 *(c) A reduction in the amount of the liability on the judgment.*

27 *5. A transfer is not voidable under paragraph (b) of*
28 *subsection 1 of section 23 of this act or section 24 of this act if the*
29 *transfer results from:*

30 *(a) Termination of a lease upon default by the debtor when the*
31 *termination is pursuant to the lease and applicable law; or*

32 *(b) Enforcement of a security interest in compliance with NRS*
33 *104.9101 to 104.9717, inclusive, other than acceptance of*
34 *collateral in full or partial satisfaction of the obligation it secures.*

35 *6. A transfer is not voidable under subsection 2 of section 24*
36 *of this act:*

37 *(a) To the extent the insider gave new value to or for the*
38 *benefit of the debtor after the transfer was made, except to the*
39 *extent the new value was secured by a valid lien;*

40 *(b) If made in the ordinary course of business or financial*
41 *affairs of the debtor and the insider; or*

42 *(c) If made pursuant to a good faith effort to rehabilitate the*
43 *debtor and the transfer secured present value given for that*
44 *purpose as well as an antecedent debt of the debtor.*



7. The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection 1, 4, 5 or 6 has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraphs (c) and (d), the creditor has the burden of proving each applicable element of subsection 2 or 3.

(c) The transferee has the burden of proving the applicability to the transferee of sub-subparagraph (I) or (II) of subparagraph (2) of paragraph (a) of subsection 2.

(d) A party that seeks adjustment under subsection 3 has the burden of proving the adjustment.

8. The standard of proof required to establish matters referred to in this section is a preponderance of the evidence.

Sec. 28. Except as otherwise provided in NRS 166.170, a claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:

1. Under paragraph (a) of subsection 1 of section 23 of this act, not later than 4 years after the transfer was made or the obligation was incurred or, if later, not later than 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;

2. Under paragraph (b) of subsection 1 of section 23 of this act or subsection 1 of section 24 of this act, not later than 4 years after the transfer was made or the obligation was incurred; or

3. Under subsection 2 of section 24 of this act, not later than 1 year after the transfer was made.

Sec. 29. 1. In this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

2. A claim for relief in the nature of a claim for relief under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Sec. 30. 1. A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

2. As used in this section:



1 (a) *“Protected series” means an arrangement, however*
2 *denominated, created by a series organization that, pursuant to the*
3 *law under which the series organization is organized, has the*
4 *characteristics set forth in paragraph (b).*

5 (b) *“Series organization” means an organization that,*
6 *pursuant to the law under which it is organized, has the following*
7 *characteristics:*

8 (1) *The organic record of the organization provides for*
9 *creation by the organization of one or more protected series,*
10 *however denominated, with respect to specified property of the*
11 *organization, and for records to be maintained for each protected*
12 *series that identify the property of or associated with the protected*
13 *series.*

14 (2) *Debt incurred or existing with respect to the activities*
15 *of, or property of or associated with, a particular protected series*
16 *is enforceable against the property of or associated with the*
17 *protected series only, and not against the property of or associated*
18 *with the organization or other protected series of the organization.*

19 (3) *Debt incurred or existing with respect to the activities or*
20 *property of the organization is enforceable against the property of*
21 *the organization only, and not against the property of or*
22 *associated with a protected series of the organization.*

23 **Sec. 31.** *Unless displaced by the provisions of this chapter,*
24 *the principles of law and equity, including the law merchant and*
25 *the law relating to principal and agent, estoppel, laches, fraud,*
26 *misrepresentation, duress, coercion, mistake, insolvency or other*
27 *validating or invalidating cause, supplement its provisions.*

28 **Sec. 32.** *The provisions of this chapter must be applied and*
29 *construed to effectuate their general purpose to make uniform the*
30 *law with respect to the subject of the provisions of this chapter*
31 *among states enacting it.*

32 **Sec. 33.** *The provisions of this chapter modify, limit and*
33 *supersede the federal Electronic Signatures in Global and*
34 *National Commerce Act, 15 U.S.C. § 7001 et seq., but do not*
35 *modify, limit or supersede § 101(c) of that act, 15 U.S.C. § 7001(c),*
36 *or authorize electronic delivery of any of the notices described in §*
37 *103(b) of that act, 15 U.S.C. § 7003(b).*

38 **Sec. 34.** NRS 11.190 is hereby amended to read as follows:

39 11.190 Except as otherwise provided in NRS 40.4639,
40 125B.050 and 217.007, actions other than those for the recovery of
41 real property, unless further limited by specific statute, may only be
42 commenced as follows:

43 1. Within 6 years:



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(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS ~~112.230 and~~ 166.170, *and section 28 of this act*, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the



1 financial institution or other lender of the facts constituting the
2 concealment or false statement.

3 4. Within 2 years:

4 (a) An action against a sheriff, coroner or constable upon
5 liability incurred by acting in his or her official capacity and in
6 virtue of his or her office, or by the omission of an official duty,
7 including the nonpayment of money collected upon an execution.

8 (b) An action upon a statute for a penalty or forfeiture, where the
9 action is given to a person or the State, or both, except when the
10 statute imposing it prescribes a different limitation.

11 (c) An action for libel, slander, assault, battery, false
12 imprisonment or seduction.

13 (d) An action against a sheriff or other officer for the escape of a
14 prisoner arrested or imprisoned on civil process.

15 (e) Except as otherwise provided in NRS 11.215, an action to
16 recover damages for injuries to a person or for the death of a person
17 caused by the wrongful act or neglect of another. The provisions of
18 this paragraph relating to an action to recover damages for injuries
19 to a person apply only to causes of action which accrue after
20 March 20, 1951.

21 (f) An action to recover damages under NRS 41.740.

22 5. Within 1 year:

23 (a) An action against an officer, or officer de facto to recover
24 goods, wares, merchandise or other property seized by the officer in
25 his or her official capacity, as tax collector, or to recover the price or
26 value of goods, wares, merchandise or other personal property so
27 seized, or for damages for the seizure, detention or sale of, or injury
28 to, goods, wares, merchandise or other personal property seized, or
29 for damages done to any person or property in making the seizure.

30 (b) An action against an officer, or officer de facto for money
31 paid to the officer under protest, or seized by the officer in his or her
32 official capacity, as a collector of taxes, and which, it is claimed,
33 ought to be refunded.

34 **Sec. 35.** NRS 163.5559 is hereby amended to read as follows:

35 163.5559 1. Except as otherwise provided in subsection 2, a
36 creditor of a settlor may not seek to satisfy a claim against the settlor
37 from the assets of a trust if the settlor's sole interest in the trust is
38 the existence of a discretionary power granted to a person other than
39 the settlor by the terms of the trust or by operation of law or to
40 reimburse the settlor for any tax on trust income or principal which
41 is payable by the settlor under the law imposing such tax.

42 2. The provisions of subsection 1 do not apply to trust property
43 transferred by the settlor to the extent a creditor can prove the
44 transfer was ~~fraudulent~~ voidable pursuant to chapter 112 of NRS
45 or was otherwise wrongful as to that creditor.



3. For purposes of this section, a beneficiary of a trust shall be deemed to not be a settlor of a trust because of a lapse, waiver or release of the beneficiary's right to withdraw part or all of the trust property if the value of the property which could have been withdrawn by exercising the right of withdrawal in any calendar year does not, at the time of the lapse, waiver or release, exceed the greater of the amount provided in 26 U.S.C. § 2041(b)(2), 26 U.S.C. § 2503(b) or 26 U.S.C. § 2514(e), as amended, or any successor provision.

Sec. 36. NRS 166.170 is hereby amended to read as follows:

166.170 1. A person may not bring an action with respect to a transfer of property to a spendthrift trust:

(a) If the person is a creditor when the transfer is made, unless the action is commenced within:

(1) Two years after the transfer is made; or

(2) Six months after the person discovers or reasonably should have discovered the transfer,

↳ whichever is later.

(b) If the person becomes a creditor after the transfer is made, unless the action is commenced within 2 years after the transfer is made.

2. A person shall be deemed to have discovered a transfer at the time a public record is made of the transfer, including, without limitation, the conveyance of real property that is recorded in the office of the county recorder of the county in which the property is located or the filing of a financing statement pursuant to chapter 104 of NRS.

3. A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property was a ~~fraudulent~~ voidable transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor. In the absence of such clear and convincing proof, the property transferred is not subject to the claims of the creditor. Proof by one creditor that a transfer of property was fraudulent or wrongful does not constitute proof as to any other creditor and proof of a fraudulent or wrongful transfer of property as to one creditor shall not invalidate any other transfer of property.

4. If property transferred to a spendthrift trust is conveyed to the settlor or to a beneficiary for the purpose of obtaining a loan secured by a mortgage or deed of trust on the property and then reconveyed to the trust, for the purpose of subsection 1, the transfer is disregarded and the reconveyance relates back to the date the



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1 property was originally transferred to the trust. The mortgage or
2 deed of trust on the property shall be enforceable against the trust.

3 5. A person may not bring a claim against an adviser to the
4 settlor or trustee of a spendthrift trust unless the person can show by
5 clear and convincing evidence that the adviser acted in violation of
6 the laws of this State, knowingly and in bad faith, and the adviser's
7 actions directly caused the damages suffered by the person.

8 6. A person other than a beneficiary or settlor may not bring a
9 claim against a trustee of a spendthrift trust unless the person can
10 show by clear and convincing evidence that the trustee acted in
11 violation of the laws of this State, knowingly and in bad faith, and
12 the trustee's actions directly caused the damages suffered by the
13 person. As used in this subsection, "trustee" includes a cotrustee, if
14 any, and a predecessor trustee.

15 7. If more than one transfer is made to a spendthrift trust:

16 (a) The subsequent transfer to the spendthrift trust must be
17 disregarded for the purpose of determining whether a person may
18 bring an action pursuant to subsection 1 with respect to a prior
19 transfer to the spendthrift trust; and

20 (b) Any distribution to a beneficiary from the spendthrift trust
21 shall be deemed to have been made from the most recent transfer
22 made to the spendthrift trust.

23 8. Notwithstanding any other provision of law, no action of any
24 kind, including, without limitation, an action to enforce a judgment
25 entered by a court or other body having adjudicative authority, may
26 be brought at law or in equity against the trustee of a spendthrift
27 trust if, as of the date the action is brought, an action by a creditor
28 with respect to a transfer to the spendthrift trust would be barred
29 pursuant to this section.

30 9. For purposes of this section, if a trustee exercises his or her
31 discretion or authority to distribute trust income or principal to or
32 for a beneficiary of the spendthrift trust, by appointing the property
33 of the original spendthrift trust in favor of a second spendthrift trust
34 for the benefit of one or more of the beneficiaries as authorized by
35 NRS 163.556, the time of the transfer for purposes of this section
36 shall be deemed to have occurred on the date the settlor of the
37 original spendthrift trust transferred assets into the original
38 spendthrift trust, regardless of the fact that the property of the
39 original spendthrift trust may have been transferred to a second
40 spendthrift trust.

41 10. As used in this section:

42 (a) "Adviser" means any person, including, without limitation,
43 an accountant, attorney or investment adviser, who gives advice
44 concerning or was involved in the creation of, transfer of property
45 to, or administration of the spendthrift trust or who participated in



1 the preparation of accountings, tax returns or other reports related to
2 the trust.

3 (b) "Creditor" has the meaning ascribed to it in ~~{subsection 4 of~~
4 ~~NRS 112.150.}~~ *section 7 of this act.*

5 **Sec. 37.** NRS 425.480 is hereby amended to read as follows:

6 425.480 1. If the Division determines that a responsible
7 parent has made a ~~{fraudulent}~~ *voidable* transfer of property for
8 which an action for relief may be brought pursuant to chapter 112 of
9 NRS, the Division shall:

10 (a) Seek to avoid the transfer pursuant to ~~{NRS 112.210 or~~
11 ~~112.220.}~~ *section 26 or 27 of this act;* or

12 (b) Obtain any other relief available pursuant to ~~{NRS 112.210}~~
13 *section 26 of this act* that is in the best interests of the child for
14 whom the support is owed.

15 2. The Division shall adopt regulations establishing the
16 procedures necessary to carry out the provisions of this section.

17 **Sec. 38.** NRS 112.140, 112.150, 112.160, 112.170, 112.180,
18 112.190, 112.200, 112.210, 112.220, 112.230, 112.240 and 112.250
19 are hereby repealed.

LEADLINES OF REPEALED SECTIONS

112.140 Short title.

112.150 Definitions.

112.160 Insolvency.

112.170 Value; reasonably equivalent value; present value.

112.180 Transfer made or obligation incurred with intent
to defraud or without receiving reasonably equivalent value;
determination of intent.

112.190 Transfer made or obligation incurred by insolvent.

112.200 Time at which transfer or obligation deemed made
or incurred.

112.210 Rights of creditor in action for relief against
transfer or obligation.

112.220 Avoidance of transfer or obligation: Protection of
good faith transferee or obligee; recovery of judgment for value
of asset transferred; certain transfers not voidable.

112.230 Limitation of actions.

112.240 Supplementary general provisions of law
applicable.



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112.250 Construction of chapter.

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