

Amendment No. 400

Senate Amendment to Senate Bill No. 264

(BDR 10-780)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: Yes 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

WBD/NCA



Date: 4/13/2015

S.B. No. 264—Exempts spendthrift trusts from the application of the Uniform Fraudulent Transfer Act. (BDR 10-780)



SENATE BILL NO. 264—SENATORS LIPPARELLI, HARDY, HARRIS, FARLEY;
GOICOECHEA AND SETTELMAYER

MARCH 13, 2015

Referred to Committee on Judiciary

SUMMARY—Exempts spendthrift trusts from the application of the periods of limitation set forth in the Uniform Fraudulent Transfer Act. (BDR 10-780)

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; clarifying that the ~~provisions of~~ periods of limitation set forth in the Uniform Fraudulent Transfer Act do not apply to spendthrift trusts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Uniform Fraudulent Transfer Act, which sets forth various provisions relating to the fraudulent transfer of property by a debtor to avoid an obligation or creditor's claim. (Chapter 112 of NRS) Those provisions include the periods of limitation within which various claims for relief with respect to a fraudulent transfer must be brought. Existing law also establishes the Spendthrift Trust Act of Nevada, which sets forth various provisions relating to the creation of a spendthrift trust. (Chapter 166 of NRS) This bill clarifies that the ~~provisions of~~ periods of limitation set forth in the Uniform Fraudulent Transfer Act do not apply to any ~~transfer~~ claim for relief with respect to a transfer of property made to a spendthrift trust pursuant to the Spendthrift Trust Act of Nevada.

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 a new section to read as follows:~~

~~The provisions of this chapter do not apply to any transfer made to a spendthrift trust pursuant to chapter 166 of NRS.~~ (Deleted by amendment.)

Sec. 2. NRS 112.230 is hereby amended to read as follows:

112.230 ~~Except as otherwise provided in NRS 166.170, a~~

1. A claim for relief with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(a) Under paragraph (a) of subsection 1 of NRS 112.180, within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year

after the transfer or obligation was or could reasonably have been discovered by the claimant;

~~12-1~~ (b) Under paragraph (b) of subsection 1 of NRS 112.180 or subsection 1 of NRS 112.190, within 4 years after the transfer was made or the obligation was incurred; or

~~12-1~~ (c) Under subsection 2 of NRS 112.190, within 1 year after the transfer was made or the obligation was incurred.

2. This section does not apply to a claim for relief with respect to a transfer of property to a spendthrift trust subject to chapter 166 of NRS.

Sec. 3. ~~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 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] does 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 property was originally transferred to the trust. The mortgage or deed of trust on the property shall be enforceable against the trust.~~

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

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

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

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

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

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

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

~~10. As used in this section:~~

~~(a) "Adviser" means any person, including, without limitation, an accountant, attorney or investment adviser, who gives advice concerning or was involved in the creation of, transfer of property to, or administration of the spendthrift trust or who participated in the preparation of accountings, tax returns or other reports related to the trust.~~

~~(b) "Creditor" has the meaning ascribed to it in subsection 4 of NRS 112.150.]~~
(Deleted by amendment.)