

Amendment No. CA19

Conference Committee Amendment to (BDR 13-656)
Assembly Bill No. 378 Second Reprint

Proposed by: Conference Committee

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

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.



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 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:

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 1.2 of this bill provides that *. under certain circumstances*, 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 1.5 of this bill enacts provisions governing: (1) the transfer of property owned jointly by spouses or domestic partners to a self-settled spendthrift trust, which apply to a transfer of property occurring on or after October 1, 2013; and (2) the division of a self-settled spendthrift trust established jointly by spouses or domestic partners into two separate spendthrift trusts upon a divorce, an annulment, a legal separation or the termination of a domestic partnership.

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.

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~~ to 1.5, inclusive, of this act.

Sec. 1.1. *As used in this chapter, unless the context otherwise requires, the ~~term "domestic"~~ words and terms defined in sections 1.11 to 1.16, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 1.11. *"Distribution adviser" means a person other than a trustee in whose discretion a distribution to the settlor must be approved for that distribution to be in compliance with paragraph (g) of subsection 2 of NRS 166.040, regardless of the title of such person and whether such person is acting in a fiduciary or nonfiduciary capacity.*

Sec. 1.12. *"Distribution trustee" means a trustee in whose discretion a distribution to the settlor must be approved for that distribution to be in compliance with paragraph (g) of subsection 2 of NRS 166.040.*

Sec. 1.13. *"Domestic partner" means a person who is in a domestic partnership ~~that~~ which is registered pursuant to chapter 122A of NRS and ~~that~~ which has not been terminated pursuant to that chapter.*

Sec. 1.14. *"Jointly owned property" means property transferred to a self-settled spendthrift trust that was owned jointly by spouses or domestic partners at the time of the transfer, regardless of whether such property was held in joint tenancy, as tenants by the entireties, as tenants in common or as community property, including all investments and reinvestments thereof.*

Sec. 1.15. *"Order" means an order issued by a court of competent jurisdiction of this State or an order granted by a court of competent jurisdiction outside of this State that is properly domesticated.*

Sec. 1.16. *"Self-settled spendthrift trust" means a spendthrift trust of which a settlor is a beneficiary.*

Sec. 1.2. *1. Notwithstanding any other provision of law ~~it~~ and except as otherwise provided in subsection 2, 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

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

5 2. *The presumption set forth in subsection 1 does not apply to a self-settled*
6 *spendthrift trust that is established jointly by spouses or domestic partners and to*
7 *which the provisions of section 1.5 of this act apply.*

8 3. *Regardless of whether a court order restrains a transfer of the property,*
9 *the presumption set forth in subsection 1 applies to all property of either spouse*
10 *or domestic partner, unless a court order expressly excludes the application of the*
11 *presumption to the property.*

12 4. *In an action to determine whether a transfer of property is void pursuant*
13 *to paragraph (a) or (b) of subsection 1, the 2-year limitation period set forth in*
14 *NRS 166.170 does not commence until a court enters a domestic relations order.*

15 5. *An action to determine whether a transfer of property is void pursuant to*
16 *paragraph (c) of subsection 1 may be brought within the period described in*
17 *paragraph (a) of subsection 1 of NRS 166.170 or, if the transfer was made while*
18 *the settlor was delinquent in making payments required under a family support*
19 *order, within 4 years after the transfer.*

20 6. *An action to determine whether a transfer of property is void pursuant to*
21 *paragraph (d) of subsection 1 may be brought within the period described in*
22 *paragraph (a) of subsection 1 of NRS 166.170 or, if the transfer was made in*
23 *violation of a property transfer order, within 4 years after the transfer.*

24 7. *If a transfer described in subsection 1 is determined to be void as to an*
25 *obligee, the court having jurisdiction to enforce the domestic relations order may*
26 *enforce the domestic relations order against the transferred property, and any*
27 *investments or reinvestments thereof, as if such property were owned by the*
28 *transferring settlor to the extent the court finds that the settlor has no other*
29 *property or income from which the court may compel satisfaction of the domestic*
30 *relations order.*

31 8. *Regardless of whether the self-settled spendthrift trust or the trustee of*
32 *the self-settled spendthrift trust is a party to an action resulting in a family*
33 *support order, the trustee shall, not later than 30 days before making a*
34 *distribution of the income or principal of the self-settled spendthrift trust to a*
35 *beneficiary who is a settlor, provide written notice of the distribution to each*
36 *obligee named in the family support order, if the family support order expressly*
37 *requires such notice. A written notice required by this subsection must:*

38 (a) *State:*

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

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

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

42 (b) *Unless a written agreement entered into by the obligee who is required to*
43 *be provided the written notice provides otherwise, be sent by personal delivery, by*
44 *certified mail, return receipt requested, or by any other delivery service for which*
45 *a receipt for delivery is obtained to the address provided to the trustee by the*
46 *obligee required to be provided the written notice.*

47 ~~7~~ 9. *If, after an obligee named in a family support order provides a copy*
48 *of the family support order to the trustee and an address to which the written*
49 *notice required by subsection ~~7~~ 8 is to be sent, the trustee makes a distribution*
50 *of the income or principal of the self-settled spendthrift trust to a beneficiary who*
51 *is a settlor and who is an obligor named in the family support order without*

1 *sending the written notice required by subsection ~~7~~ 8, the trustee is personally*
2 *liable to the obligee for the lesser of:*

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

4 (b) *The amount due the obligee pursuant to the family support order,*
5 *unless the trustee establishes to the satisfaction of the court having jurisdiction*
6 *to enforce the family support order that the information required to be provided*
7 *in the written notice would not have facilitated enforcement of the family support*
8 *order.*

9 ~~4.4~~ 10. This section does not make any property which was the subject of a
10 transfer determined to be void subject to the enforcement of any debt other than a
11 debt owed under a domestic relations order.

12 11. As used in this section:

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

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

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

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

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

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

27 (d) *“Domestic relations proceeding” means a legal proceeding that may*
28 *result in the issuance of a domestic relations order, including, without limitation,*
29 *an action for divorce, annulment or separate maintenance pursuant to chapter*
30 *125 of NRS or any proceeding related to the termination of a domestic*
31 *partnership that is registered pursuant to chapter 122A of NRS.*

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

35 (f) *“Obligee” means:*

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

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

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

46 ~~(h) “Self settled spendthrift trust” means a spendthrift trust of which a~~
47 ~~settlor is a beneficiary.~~

48 Sec. 1.3. (Deleted by amendment.)

49 Sec. 1.5. 1. A transfer of jointly owned property to a spendthrift trust
50 which is made on or after October 1, 2013, is presumed void, unless both spouses
51 or domestic partners, whichever is applicable, jointly transfer the property.

1 2. Any transfer of jointly owned property to a self-settled spendthrift trust
2 which is made on or after October 1, 2013, is presumed void unless both spouses
3 or domestic partners, whichever is applicable, have signed a written agreement,
4 declaration or transfer document in which each spouse or domestic partner, as
5 applicable, expressly acknowledges that any transfer of such property to a self-
6 settled spendthrift trust waives all property rights in the property being
7 transferred to the self-settled spendthrift trust that are inconsistent with the rights
8 of the spouse or domestic partner as a beneficiary under the terms of the trust
9 agreement. An agreement, declaration or transfer document required by this
10 subsection must meet the standards that govern the actions of persons occupying
11 relations of confidence and trust toward each other and is subject to the
12 following:

13 (a) Notwithstanding any provision of chapter 162A of NRS to the contrary, a
14 spouse or domestic partner has no authority as an agent of his or her spouse or
15 domestic partner, as applicable, under a power of attorney, to sign a document
16 effectuating a transfer of jointly owned property or a written agreement,
17 declaration or transfer document required by this subsection.

18 (b) If a guardian has been appointed for a spouse or domestic partner, the
19 guardian may not sign on behalf of the ward a document effectuating a transfer
20 of jointly owned property or a written agreement, declaration or transfer
21 document required by this subsection unless an order of the court having
22 jurisdiction over the guardianship proceeding expressly authorizes the guardian
23 to sign such a document on behalf of the ward.

24 3. The only property interest of a beneficiary of a valid spendthrift trust is a
25 beneficial interest in the spendthrift trust in accordance with the terms of the
26 trust agreement and subject to the applicable laws of this State governing trusts.
27 A self-settled spendthrift trust is not subject to termination in a domestic relations
28 proceeding except in accordance with the terms of the trust agreement, but it may
29 be divided into two separate trusts to the extent permitted under NRS 163.556.

30 4. Except as expressly provided otherwise in a trust agreement governing a
31 self-settled spendthrift trust established jointly by spouses or domestic partners,
32 when the settlors are divorced or legally separated, or terminate a domestic
33 partnership, the trustee must divide the joint self-settled spendthrift trust into two
34 separate spendthrift trusts with each spouse or domestic partner, as applicable, as
35 the settlor of a new spendthrift trust, subject to the following:

36 (a) Any jointly owned property in which the spouses or domestic partners
37 had equal ownership must be divided equally between the two spendthrift trusts,
38 on a pro rata or non-pro rata basis based on the current fair market value
39 thereof.

40 (b) Any jointly owned property in which the spouses or domestic partners
41 had unequal ownership must be divided between the two spendthrift trusts in
42 proportion to the contribution of each spouse or domestic partner, on a pro rata or
43 non-pro rata basis based on the current fair market value.

44 (c) Any trust property that was contributed to the self-settled spendthrift trust
45 as a settlor's separate property, together with all investments and reinvestments
46 thereof, must be allocated to the separate spendthrift trust for that settlor.

47 (d) The court having jurisdiction over the division of the property of the
48 settlors in the action for divorce, annulment, separate maintenance or
49 termination of domestic partnership has jurisdiction over the division of property
50 between the two spendthrift trusts, but to avoid unintended consequences under
51 federal tax laws, the division of property between the separate spendthrift trusts

1 must be done independently from, and without regard to, the division of nontrust
2 property.

3 (e) For the purposes of NRS 166.170, each new spendthrift trust must be
4 deemed a continuation of the original trust, and each transfer of property to a
5 new spendthrift trust relates back to the date the property was transferred to the
6 original trust.

7 (f) The provisions of the new spendthrift trusts must be the same as the terms
8 of the trust agreement of the self-settled spendthrift trust which is being
9 separated, except as otherwise authorized by NRS 163.556. With respect to each
10 new spendthrift trust, unless the former spouse or domestic partner who is not the
11 beneficiary of the new spendthrift trust consents in writing:

12 (1) The former spouse or former domestic partner who is not the
13 beneficiary of the new spendthrift trust does not have any right, power or benefit
14 with respect to that trust as a beneficiary, trustee, trust protector, agent, adviser
15 or any other right, power or benefit, except to the extent the terms of the trust
16 agreement specifically indicate that any such rights, powers or benefits exist even
17 if the party is no longer the spouse or domestic partner of the settlor; and

18 (2) The settlor may exercise unilaterally all of the powers reserved or
19 rights given in the original trust agreement to either settlor or to the settlors
20 acting jointly.

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

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

23 166.015 1. Unless the writing declares to the contrary, expressly, this
24 chapter governs the construction, operation and enforcement, in this State, of all
25 spendthrift trusts created in or outside this State if:

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

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

29 (c) The declared domicile of the creator of a spendthrift trust affecting personal
30 property is in this State; or

31 (d) At least one trustee qualified under subsection 2 has powers that include
32 maintaining records and preparing income tax returns for the trust, and all or part of
33 the administration of the trust is performed in this State.

34 2. If the settlor is a beneficiary of the trust ~~1-att~~:

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

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

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

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

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

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

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

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

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

48 (b) At any time ~~if a settlor is subject to a family support order as defined in~~
49 the trustee is required to give notice of a distribution to a settlor pursuant to
50 subsection 8 of section 1.2 of this act:

51 (1) The following persons must not act as a distribution trustee or a
52 distribution adviser:

1 ***(I) The settlor;***

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

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

5 ***(IV) An employee of the settlor;***

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

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

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

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

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

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

21 **Sec. 2.** (Deleted by amendment.)

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

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

25 2. A transfer of property to a self-settled spendthrift trust, as defined in
26 section ~~1.2~~ **1.16** of this act, made on or after October 1, 2013.

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