

BACK STORY

ECONOMIC DIVERSIFICATION, NEVADA STYLE

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In 1999, investment consultant and assemblyman David Goldwater sponsored Assembly Bill (AB) 469, the original language of Nevada Revised Statutes (NRS) 166.170, that limited creditors' claims against a spendthrift trust. He modeled his proposed law after Alaska and South Dakota's statutes.

Goldwater urged the Assembly Judiciary Committee members to vote for passage, because the law would protect the corpus of a trust from any irresponsible action of a beneficiary. He also suggested that the legislation would attract wealthy individuals wanting to protect their assets to Nevada. He believed that millionaires were setting up their trusts off shore; so, with this new law in place, wealthy people would move to Nevada and set up their spendthrift trusts here. The state would benefit because it would receive additional income from the federal estate "pick-up" tax on these new residents' estates and not have to increase taxes on Nevadans.

After the Assembly Judiciary Committee passed the bill, the Senate Judiciary Committee adopted an amendment suggested by the Nevada Bankers Association. Goldwater recommended the assembly concur with the Senate's version of the bill. The assembly agreed and Governor Bob Miller signed AB 469 into law on May 26, 1999.

In 2007, non-union plumbing contractor and senator John Lee introduced Senate Bill (SB) 420 to amend NRS 166.170. The then-Eighth Judicial District Court Probation commissioner Don Ashworth testified in favor of SB 420 to bring the law more into compliance with the Uniform Probate Code. The new law required creditors to record any deed they were relying upon to make a claim against a spendthrift trust.

In 2009, communications consultant and Senator Valerie Wiener successfully introduced an omnibus probate and trust bill: SB 287. Among other things, the bill amended the spendthrift section to limit creditors from bringing a lawsuit in order to recover property, unless they could prove the transfer of property was fraudulently made.



In the Assembly Judiciary Committee, Wiener testified she introduced the bill for Mark Solomon, chair of the Legislative Subcommittee, Probate and Trust Law Section of the State Bar of Nevada. He testified in front of the committee that, since the law had been originally passed, the judiciary had set down a few precedents; so, the law needed to be tweaked. Matt Gray, also from the bar section, testified that the law would help make the

state friendlier to those creating trust businesses. Neither Solomon nor Gray mentioned the section on spendthrift trusts.

In 2011, Senator Wiener and lawyer and assemblyman Richard "Tick" Segerblom introduced SB 221, another omnibus bill on estates. They testified that they had worked with the State Bar of Nevada's Legislative Subcommittee on the Probate and Trust Law Section for 18 months to clarify the law. In the Senate Judiciary Committee, the only comment on the spendthrift trust section was that the proposed law made it clear that the interest income was exempt from judgment from a creditor. SB 221 also limited the settlor's powers to those expressed in the trust instrument, established the burden of proof on spendthrift trust disputes and made several other changes to the law.

NRS 166.170 was crafted to protect the assets of a spendthrift trust and, in so doing, it would also attract wealthy people to Nevada. At first, these new residents' estates generated more revenue for the state from the federal "pick up" estate tax. The federal tax law changed in 2001, eliminating the "pick up" tax. Today, the advantage of NRS 166.170 is that it allows residents and non-residents to use Nevada trusts for asset protection, while also creating work opportunities for local trust companies and attorneys. ■



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