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Nevada Trust Community Rallies To Fight Stealth Attack on Asset Protection

June 9, 2013



By [admin](#), Contributor

Legislative push to let family courts pierce the state's uniquely impervious trusts got local attorneys circling the defensive wagons. But with the threat averted and Nevada's competitive edge secure, a few are weighing the cost.

It was all hands on deck in Nevada over the last few months as local trust advisors throughout the state tabled press calls to concentrate on a do-or-die project that nobody expected on the calendar at all.



At the time, they said they couldn't talk about it. Now it turns out that they were working overtime to make sure a bill introduced without fanfare back in mid-March didn't inadvertently wreck one of their main advantages in the increasingly competitive world of asset protection trusts.

After years of the Nevada state assembly doing what it could to nurture the local trust industry, the pendulum had somehow swung and the once-solid promise that the state would shield their clients even from the family court was in urgent need of shoring up.

"When I first read the proposed legislation, my initial thought was that it must have been sponsored by one of our competitor first-tier jurisdictions. It was so anti-Nevada," says Las Vegas attorney Steve Oshins.

The bullet and how they dodged it

Nevada Assembly Bill 378 was introduced with good intentions — protecting the interests of local women and children — but as amendments accumulated, it became clear that the bedrock of the state's asset protection doctrine was in danger of eroding.

Nevada is famously the only top-tier asset protection jurisdiction that refuses to assign any class of creditor special privileges when it comes to piercing a properly constructed and seasoned trust.

Spouses and non-custodial children are not exempt. If they didn't have an outstanding alimony or child support order in hand by the time the trust was seasoned, the assets are safe.

But by the time AB 378 passed a vote in the lower state house 39-0, the bill had acquired new language that opened up Nevada trusts to future claims from spouses, domestic partners and children.

Since unbeatable protection for generations to come is one of the main planks on which Nevada trusts compete for out-of-state assets, the prospect of reverting to equal footing with states like Delaware sent a chill through the local community.

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And as word spread, a lot of attorneys, accountants, bankers, trust officers, investment managers and bookkeepers throughout the state mobilized to protect their edge and let lawmakers know just how much state revenue was at stake.

“Officials publically stated that said they had rarely seen such a large response from a variety of professionals,” says Greg Crawford, who co-manages Reno-based Alliance Trust.

“It definitely had an impact.”

Crawford says one of the key exhibits that impressed state senators was a paper from Northwestern University law professor Max Schanzenbach, familiar to Trust Advisor readers for his studies of the economic impact of trust-friendly statutes in states like Delaware.

Schanzenbach has estimated that a full 2% of Delaware’s GDP – at least \$600 million a year – derives from out-of-state trusts and the “substantial” administrative cash flow they generate.

Given Nevada’s efforts to diversify its still-recovering economy away from mining and tourism, the unintended cost of establishing the moral superiority of blood over estate planning evidently seemed to be too high.

In conversation after conversation, Republican officials come up as the industry’s biggest allies against the bill’s overt family agenda.

Sources who declined to be named singled out Mark Hutchison and Greg Brower as especially eager to educate themselves and their colleagues, while Democratic Secretary of State Ross Miller’s awareness of the economic impact of sitting on the sidelines raised a few eyebrows.

The long-term heavy lifting begins

With the bill now essentially dead in committee, the people who helped kill it are now moving past damage control to focus on ensuring that nothing like this happens again.

Several of the key players declined to have their names associated with the story at all, seeing the entire question of family values versus asset protection as unfortunate.

Others don’t want to make lasting enemies on either side.

“I know my colleagues were mindful of the importance of protecting spouses and children,” says Las Vegas attorney Matthew Saltzman.

“But we did not believe that amending Nevada’s asset protection laws in the manner proposed was an effective way to address those issues.”

Since Saltzman believes the state’s existing trust code already makes it clearly impossible for a rogue spouse or parent to renege on existing alimony or support obligations, he says the bill would have done more harm than good.

Steve Oshins agrees that establishing a family creditor exception would have pushed his native Nevada down the list of attractive asset protection jurisdictions.

“Had it passed as originally drafted, AB 378 would have dropped Nevada from No. 1 to No. 2 in the DAPT rankings,” he notes.

Nobody in the industry wanted that to happen, so they put aside their differences and worked together against a common threat to their common interest.

And having dodged the bullet once, they’re all going to be a lot more careful to work with lawmakers to make sure everyone remains aware how much money

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By Jennifer Kelly, Contributor

February 24, 2017

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