

HOUSE BILL No. 2172

By Committee on Judiciary

1-25

1 AN ACT concerning trusts; enacting the uniform trust decanting act;
2 relating to the power of an authorized fiduciary to distribute property of
3 a first trust to one or more second trusts or to modify the terms of the
4 first trust.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. Sections 1 through 30, and amendments thereto, shall be
8 known and may be cited as the uniform trust decanting act.

9 Sec. 2. As used in the uniform trust decanting act:

10 (a) "Appointive property" means the property or property interest
11 subject to a power of appointment.

12 (b) "Ascertainable standard" means a standard relating to an
13 individual's health, education, support or maintenance within the meaning
14 of 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1) and any applicable
15 regulations.

16 (c) "Authorized fiduciary" means a:

17 (1) Trustee or other fiduciary, other than a settlor, that has discretion
18 to distribute or direct a trustee to distribute part or all of the principal of
19 the first trust to one or more current beneficiaries;

20 (2) special fiduciary appointed under section 9, and amendments
21 thereto; or

22 (3) special-needs fiduciary under section 13, and amendments thereto.

23 (d) "Beneficiary" means a person that:

24 (1) Has a present or future, vested or contingent, beneficial interest in
25 a trust;

26 (2) holds a power of appointment over trust property; or

27 (3) is an identified charitable organization that will or may receive
28 distributions under the terms of the trust.

29 (e) "Charitable interest" means an interest in a trust that:

30 (1) Is held by an identified charitable organization and makes the
31 organization a qualified beneficiary;

32 (2) benefits only charitable organizations and, if the interest were
33 held by an identified charitable organization, would make the organization
34 a qualified beneficiary; or

35 (3) is held solely for charitable purposes and, if the interest were held
36 by an identified charitable organization, would make the organization a

1 qualified beneficiary.

2 (f) "Charitable organization" means a:

3 (1) Person, other than an individual, organized and operated
4 exclusively for charitable purposes; or

5 (2) government or governmental subdivision, agency or
6 instrumentality, to the extent it holds funds exclusively for a charitable
7 purpose.

8 (g) "Charitable purpose" means the relief of poverty, the advancement
9 of education or religion, the promotion of health, a municipal or other
10 governmental purpose or another purpose the achievement of which is
11 beneficial to the community.

12 (h) "Court" means the district court.

13 (i) "Current beneficiary" means a beneficiary that, on the date the
14 beneficiary's qualification is determined, is a distributee or permissible
15 distributee of trust income or principal. The term includes the holder of a
16 presently exercisable general power of appointment but does not include a
17 person that is a beneficiary only because the person holds any other power
18 of appointment.

19 (j) "Decanting power" or "the decanting power" means the power of
20 an authorized fiduciary under the uniform trust decanting act to distribute
21 property of a first trust to one or more second trusts or to modify the terms
22 of the first trust.

23 (k) "Expanded distributive discretion" means a discretionary power of
24 distribution that is not limited to an ascertainable standard or a reasonably
25 definite standard.

26 (l) "First trust" means a trust over which an authorized fiduciary may
27 exercise the decanting power.

28 (m) "First-trust instrument" means the trust instrument for a first
29 trust.

30 (n) "General power of appointment" means a power of appointment
31 exercisable in favor of a powerholder, the powerholder's estate, a creditor
32 of the powerholder or a creditor of the powerholder's estate.

33 (o) "Jurisdiction," with respect to a geographic area, includes a state
34 or country.

35 (p) "Person" means an individual, estate, business or nonprofit entity,
36 public corporation, government or governmental subdivision, agency or
37 instrumentality or other legal entity.

38 (q) "Power of appointment" means a power that enables a
39 powerholder acting in a nonfiduciary capacity to designate a recipient of
40 an ownership interest in or another power of appointment over the
41 appointive property. The term does not include a power of attorney.

42 (r) "Powerholder" means a person in which a donor creates a power
43 of appointment.

1 (s) "Presently exercisable power of appointment" means a power of
2 appointment exercisable by the powerholder at the relevant time. The
3 term:

4 (1) Includes a power of appointment exercisable only after the
5 occurrence of a specified event, the satisfaction of an ascertainable
6 standard or the passage of a specified time only after the:

7 (A) Occurrence of the specified event;

8 (B) satisfaction of the ascertainable standard; or

9 (C) passage of the specified time; and

10 (2) does not include a power exercisable only at the powerholder's
11 death.

12 (t) "Qualified beneficiary" means a beneficiary that, on the date the
13 beneficiary's qualification is determined:

14 (1) Is a distributee or permissible distributee of trust income or
15 principal;

16 (2) would be a distributee or permissible distributee of trust income
17 or principal if the interests of the distributees described in paragraph (1)
18 terminated on that date without causing the trust to terminate; or

19 (3) would be a distributee or permissible distributee of trust income
20 or principal if the trust terminated on that date.

21 (u) "Reasonably definite standard" means a clearly measurable
22 standard under which a holder of a power of distribution is legally
23 accountable within the meaning of 26 U.S.C. § 674(b)(5)(A) and any
24 applicable regulations.

25 (v) "Record" means information that is inscribed on a tangible
26 medium or that is stored in an electronic or other medium and is
27 retrievable in perceivable form.

28 (w) "Second trust" means a:

29 (1) First trust after modification under the uniform trust decanting act;
30 or

31 (2) trust to which a distribution of property from a first trust is or may
32 be made under the uniform trust decanting act.

33 (x) "Second-trust instrument" means the trust instrument for a second
34 trust.

35 (y) "Settlor," except as otherwise provided in section 25, and
36 amendments thereto, means a person, including a testator, that creates or
37 contributes property to a trust. If more than one person creates or
38 contributes property to a trust, each person is a "settlor" of the portion of
39 the trust property attributable to the person's contribution except to the
40 extent another person has power to revoke or withdraw that portion.

41 (z) "Sign" means, with present intent to authenticate or adopt a
42 record:

43 (1) To execute or adopt a tangible symbol; or

1 (2) to attach to or logically associate with the record an electronic
2 symbol, sound or process.

3 (aa) "State" means a state of the United States, the District of
4 Columbia, Puerto Rico, the United States Virgin Islands or any territory or
5 insular possession subject to the jurisdiction of the United States.

6 (bb) "Terms of the trust" means:

7 (1) Except as otherwise provided in paragraph (2), the manifestation
8 of the settlor's intent regarding a trust's provisions as:

9 (A) Expressed in the trust instrument; or

10 (B) established by other evidence that would be admissible in a
11 judicial proceeding;

12 (2) the trust's provisions as established, determined or amended by a:

13 (A) Trustee or other person in accordance with applicable law;

14 (B) court order; or

15 (C) nonjudicial settlement agreement under K.S.A. 58a-111, and
16 amendments thereto.

17 (cc) "Trust instrument" means a record executed by the settlor to
18 create a trust or by any person to create a second trust that contains some
19 or all of the terms of the trust, including any amendments.

20 Sec. 3. (a) Except as otherwise provided in subsections (b) and (c),
21 the uniform trust decanting act applies to an express trust that is
22 irrevocable or revocable by the settlor only with the consent of the trustee
23 or a person holding an adverse interest.

24 (b) The uniform trust decanting act does not apply to a trust held
25 solely for charitable purposes.

26 (c) Subject to section 15, and amendments thereto, a trust instrument
27 may restrict or prohibit exercise of the decanting power.

28 (d) The uniform trust decanting act does not limit the power of a
29 trustee, powerholder or other person to distribute or appoint property in
30 further trust or to modify a trust under the trust instrument, law of this state
31 other than the act, common law, a court order or a nonjudicial settlement
32 agreement.

33 (e) The uniform trust decanting act does not affect the ability of a
34 settlor to provide in a trust instrument for the distribution of the trust
35 property or appointment in further trust of the trust property or for
36 modification of the trust instrument.

37 Sec. 4. (a) In exercising the decanting power, an authorized fiduciary
38 shall act in accordance with its fiduciary duties, including the duty to act in
39 accordance with the purposes of the first trust.

40 (b) The uniform trust decanting act does not create or imply a duty to
41 exercise the decanting power or to inform beneficiaries about the
42 applicability of the act.

43 (c) Except as otherwise provided in a first-trust instrument, for

1 purposes of the uniform trust decanting act and K.S.A. 58a-801 and 58a-
2 802(a), and amendments thereto, the terms of the first trust are deemed to
3 include the decanting power.

4 Sec. 5. The uniform trust decanting act applies to a trust created
5 before, on, or after July 1, 2023, that:

6 (a) Has its principal place of administration in this state, including a
7 trust whose principal place of administration has been changed to this
8 state; or

9 (b) provides by its trust instrument that it is governed by the law of
10 this state or is governed by the law of this state for the purpose of:

11 (1) Administration, including administration of a trust whose
12 governing law for purposes of administration has been changed to the law
13 of this state;

14 (2) construction of terms of the trust; or

15 (3) determining the meaning or effect of terms of the trust.

16 Sec. 6. A trustee or other person that reasonably relies on the validity
17 of a distribution of part or all of the property of a trust to another trust, or a
18 modification of a trust, under the uniform trust decanting act, law of this
19 state other than the act or the law of another jurisdiction is not liable to any
20 person for any action or failure to act as a result of the reliance.

21 Sec. 7. (a) In this section, a notice period begins on the day notice is
22 given under subsection (c) and ends 59 days after the day notice is given.

23 (b) Except as otherwise provided in the uniform trust decanting act,
24 an authorized fiduciary may exercise the decanting power without the
25 consent of any person and without court approval.

26 (c) Except as otherwise provided in subsection (f), an authorized
27 fiduciary shall give notice in a record of the intended exercise of the
28 decanting power not later than 60 days before the exercise to:

29 (1) Each settlor of the first trust, if living or then in existence;

30 (2) each qualified beneficiary of the first trust;

31 (3) each holder of a presently exercisable power of appointment over
32 any part or all of the first trust;

33 (4) each person that currently has the right to remove or replace the
34 authorized fiduciary;

35 (5) each other fiduciary of the first trust;

36 (6) each fiduciary of the second trust;

37 (7) each person acting as an advisor or protector of the first trust; and

38 (8) the attorney general, if section 14(b), and amendments thereto,
39 applies.

40 (d) An authorized fiduciary is not required to give notice under
41 subsection (c) to a person that is not known to the fiduciary or is known to
42 the fiduciary but cannot be located by the fiduciary after reasonable
43 diligence.

1 (e) A notice under subsection (c) shall:

2 (1) Specify the manner in which the authorized fiduciary intends to
 3 exercise the decanting power, which shall include a statement as to the
 4 authorized fiduciary's reason for the proposed decanting and an
 5 explanation as to the differences between the first trust and the second trust
 6 or trusts;

7 (2) specify the proposed effective date for exercise of the power;

8 (3) include a copy of the first-trust instrument;

9 (4) include a copy of all second-trust instruments;

10 (5) include a statement indicating the capacity in which the intended
 11 recipient is being given notice; and

12 (6) include a statement that any application under section 9, and
 13 amendments thereto, shall be filed within six months from the day notice
 14 is given.

15 (f) The decanting power may be exercised before expiration of the
 16 notice period under subsection (a) if all persons entitled to receive notice
 17 waive the period in a signed record.

18 (g) The receipt of notice, waiver of the notice period or expiration of
 19 the notice period does not affect the right of a person to file an application
 20 under section 9, and amendments thereto, except as provided in that
 21 section.

22 (h) An exercise of the decanting power is not ineffective because of
 23 the failure to give notice to one or more persons under subsection (c) if the
 24 authorized fiduciary acted with reasonable care to comply with subsection
 25 (c).

26 Sec. 8. (a) Notice to a person with authority to represent and bind
 27 another person under a first-trust instrument or the Kansas uniform trust
 28 code, K.S.A. 58a-101 et seq., and amendments thereto, has the same effect
 29 as notice given directly to the person represented.

30 (b) Consent of or waiver by a person with authority to represent and
 31 bind another person under a first-trust instrument or the Kansas uniform
 32 trust code, K.S.A. 58a-101 et seq., and amendments thereto, is binding on
 33 the person represented unless the person represented objects to the
 34 representation before the consent or waiver otherwise would become
 35 effective.

36 (c) A person with authority to represent and bind another person
 37 under a first-trust instrument or the Kansas uniform trust code, K.S.A. 58a-
 38 101 et seq., and amendments thereto, may file an application under section
 39 9, and amendments thereto, on behalf of the person represented.

40 (d) A settlor shall not represent or bind a beneficiary under the
 41 uniform trust decanting act.

42 Sec. 9. (a) On application of an authorized fiduciary, a person entitled
 43 to notice under section 7(c), and amendments thereto, a beneficiary, or

1 with respect to a charitable interest, the attorney general or other person
2 that has standing to enforce the charitable interest, the court may:

3 (1) Provide instructions to the authorized fiduciary regarding whether
4 a proposed exercise of the decanting power is permitted under the uniform
5 trust decanting act and consistent with the fiduciary duties of the
6 authorized fiduciary;

7 (2) appoint a special fiduciary and authorize the special fiduciary to
8 determine whether the decanting power should be exercised under the
9 uniform trust decanting act and to exercise the decanting power;

10 (3) approve an exercise of the decanting power;

11 (4) subject to the limitation set forth in subsection (c), determine that
12 a proposed or attempted exercise of the decanting power is ineffective
13 because:

14 (A) After applying section 22, and amendments thereto, the proposed
15 or attempted exercise does not or did not comply with the uniform trust
16 decanting act; or

17 (B) the proposed or attempted exercise would be or was an abuse of
18 the fiduciary's discretion or a breach of fiduciary duty;

19 (5) determine the extent to which section 22, and amendments
20 thereto, applies to a prior exercise of the decanting power;

21 (6) provide instructions to the trustee regarding the application of
22 section 22, and amendments thereto, to a prior exercise of the decanting
23 power; or

24 (7) order other relief to carry out the purposes of the uniform trust
25 decanting act.

26 (b) On application of an authorized fiduciary, the court may approve:

27 (1) An increase in the fiduciary's compensation under section 16, and
28 amendments thereto; or

29 (2) a modification under section 18, and amendments thereto, of a
30 provision granting a person the right to remove or replace the fiduciary.

31 (c) A proceeding under subsection (a)(4) shall not be commenced by
32 a person entitled to notice under section 7(c), and amendments thereto, or
33 by a beneficiary unless such proceeding is commenced within six months
34 from the day notice is given under section 7(a), and amendments thereto.
35 Failure to receive notice shall not extend the time by which such
36 proceeding must be commenced if the authorized fiduciary acted with
37 reasonable diligence to comply with the requirements of section 7(c), and
38 amendments thereto.

39 (d) In a judicial proceeding involving the decanting of a trust, the
40 court, as justice and equity may require, may award costs and expenses,
41 including reasonable attorney fees, to any party, to be paid by another
42 party or from the trust that is the subject of the controversy.

43 Sec. 10. An exercise of the decanting power shall be made in a record

1 signed by an authorized fiduciary. The signed record shall, directly or by
2 reference to the notice required by section 7, and amendments thereto,
3 identify the first trust and the second trust or trusts and state the property
4 of the first trust being distributed to each second trust and the property, if
5 any, that remains in the first trust.

6 Sec. 11. (a) As used in this section:

7 (1) "Noncontingent right" means a right that is not subject to the
8 exercise of discretion or the occurrence of a specified event that is not
9 certain to occur. The term does not include a right held by a beneficiary if
10 any person has discretion to distribute property subject to the right to any
11 person other than the beneficiary or the beneficiary's estate.

12 (2) "Presumptive remainder beneficiary" means a qualified
13 beneficiary other than a current beneficiary.

14 (3) "Successor beneficiary" means a beneficiary that is not a qualified
15 beneficiary on the date the beneficiary's qualification is determined.
16 "Successor beneficiary" does not include a person that is a beneficiary
17 only because the person holds a nongeneral power of appointment.

18 (4) "Vested interest" means a:

19 (A) Right to a mandatory distribution that is a noncontingent right as
20 of the date of the exercise of the decanting power;

21 (B) current and noncontingent right, annually or more frequently, to a
22 mandatory distribution of income, a specified dollar amount, or a
23 percentage of value of some or all of the trust property;

24 (C) current and noncontingent right, annually or more frequently, to
25 withdraw income, a specified dollar amount, or a percentage of value of
26 some or all of the trust property;

27 (D) presently exercisable general power of appointment; or

28 (E) right to receive an ascertainable part of the trust property on the
29 trust's termination that is not subject to the exercise of discretion or to the
30 occurrence of a specified event that is not certain to occur.

31 (b) Subject to subsection (c) and section 14, and amendments thereto,
32 an authorized fiduciary that has expanded distributive discretion over the
33 principal of a first trust for the benefit of one or more current beneficiaries
34 may exercise the decanting power over the principal of the first trust.

35 (c) Subject to section 13, and amendments thereto, in an exercise of
36 the decanting power under this section, a second trust shall not:

37 (1) Include as a current beneficiary a person that is not a current
38 beneficiary of the first trust, except as otherwise provided in subsection
39 (d);

40 (2) include as a presumptive remainder beneficiary or successor
41 beneficiary a person that is not a current beneficiary, presumptive
42 remainder beneficiary or successor beneficiary of the first trust, except as
43 otherwise provided in subsection (d); or

1 (3) reduce or eliminate a vested interest.

2 (d) Subject to subsection (c)(3) and section 14, and amendments
3 thereto, in an exercise of the decanting power under this section, a second
4 trust may be a trust created or administered under the law of any
5 jurisdiction and may:

6 (1) Retain a power of appointment granted in the first trust;

7 (2) omit a power of appointment granted in the first trust, other than a
8 presently exercisable general power of appointment;

9 (3) create or modify a power of appointment if the powerholder is a
10 current beneficiary of the first trust and the authorized fiduciary has
11 expanded distributive discretion to distribute principal to the beneficiary;
12 and

13 (4) create or modify a power of appointment if the powerholder is a
14 presumptive remainder beneficiary or successor beneficiary of the first
15 trust, but the exercise of the power may take effect only after the
16 powerholder becomes, or would have become if then living, a current
17 beneficiary.

18 (e) A power of appointment described in subsection (d) may be
19 general or nongeneral. The class of permissible appointees in favor of
20 which the power may be exercised may be broader than or different from
21 the beneficiaries of the first trust.

22 (f) If an authorized fiduciary has expanded distributive discretion
23 over part but not all of the principal of a first trust, the fiduciary may
24 exercise the decanting power under this section over that part of the
25 principal over which the authorized fiduciary has expanded distributive
26 discretion.

27 Sec. 12. (a) As used in this section, "limited distributive discretion"
28 means a discretionary power of distribution that is limited to an
29 ascertainable standard or a reasonably definite standard.

30 (b) An authorized fiduciary that has limited distributive discretion
31 over the principal of the first trust for benefit of one or more current
32 beneficiaries may exercise the decanting power over the principal of the
33 first trust.

34 (c) Under this section and subject to section 14, and amendments
35 thereto, a second trust may be created or administered under the law of any
36 jurisdiction. Under this section, the second trusts, in the aggregate, shall
37 grant each beneficiary of the first trust beneficial interests that are
38 substantially similar to the beneficial interests of the beneficiary in the first
39 trust.

40 (d) A power to make a distribution under a second trust for the benefit
41 of a beneficiary who is an individual is substantially similar to a power
42 under the first trust to make a distribution directly to the beneficiary. A
43 distribution is for the benefit of a beneficiary if the:

1 (1) Distribution is applied for the benefit of the beneficiary;
2 (2) beneficiary is under a legal disability or the trustee reasonably
3 believes the beneficiary is incapacitated, and the distribution is made as
4 permitted under the Kansas uniform trust code, K.S.A. 58a-101 et seq.,
5 and amendments thereto; or

6 (3) distribution is made as permitted under the terms of the first-trust
7 instrument and the second-trust instrument for the benefit of the
8 beneficiary.

9 (e) If an authorized fiduciary has limited distributive discretion over
10 part but not all of the principal of a first trust, the fiduciary may exercise
11 the decanting power under this section over that part of the principal over
12 which the authorized fiduciary has limited distributive discretion.

13 Sec. 13. (a) As used in this section:

14 (1) "Beneficiary with a disability" means a beneficiary of a first trust
15 who the special-needs fiduciary reasonably believes may qualify for
16 governmental benefits based on disability, whether or not the beneficiary
17 currently receives those benefits or is an individual who has been
18 adjudicated as incapacitated.

19 (2) "Governmental benefits" means financial aid or services from a
20 state, federal or other public agency.

21 (3) "Special-needs fiduciary" means, with respect to a trust that has a
22 beneficiary with a disability:

23 (A) A trustee or other fiduciary, other than a settlor, that has
24 discretion to distribute part or all of the principal of a first trust to one or
25 more current beneficiaries;

26 (B) if no trustee or fiduciary has discretion under subparagraph (A), a
27 trustee or other fiduciary, other than a settlor, that has discretion to
28 distribute part or all of the income of the first trust to one or more current
29 beneficiaries; or

30 (C) if no trustee or fiduciary has discretion under subparagraphs (A)
31 and (B), a trustee or other fiduciary, other than a settlor, that is required to
32 distribute part or all of the income or principal of the first trust to one or
33 more current beneficiaries.

34 (4) "Special-needs trust" means a trust the trustee believes would not
35 be considered a resource for purposes of determining whether a
36 beneficiary with a disability is eligible for governmental benefits.

37 (b) A special-needs fiduciary may exercise the decanting power under
38 section 11, and amendments thereto, over the principal of a first trust as if
39 the fiduciary had authority to distribute principal to a beneficiary with a
40 disability subject to expanded distributive discretion if:

41 (1) A second trust is a special-needs trust that benefits the beneficiary
42 with a disability; and

43 (2) the special-needs fiduciary determines that exercise of the

1 decanting power will not be inconsistent with a material purpose of the
2 first trust.

3 (c) In an exercise of the decanting power under this section, the
4 following rules apply:

5 (1) Notwithstanding section 11(c)(2), and amendments thereto, the
6 interest in the second trust of a beneficiary with a disability may:

7 (A) Be a pooled trust as defined by medicaid law for the benefit of
8 the beneficiary with a disability under 42 U.S.C. § 1396p(d)(4)(C); or

9 (B) contain payback provisions complying with reimbursement
10 requirements of medicaid law under 42 U.S.C. § 1396p(d)(4)(A).

11 (2) Section 11(c)(3), and amendments thereto, does not apply to the
12 interests of the beneficiary with a disability.

13 (3) Except as affected by any change to the interests of the
14 beneficiary with a disability, the second trust, or if there are two or more
15 second trusts, the second trusts in the aggregate, shall grant each other
16 beneficiary of the first trust beneficial interests in the second trusts that are
17 substantially similar to the beneficiary's beneficial interests in the first
18 trust.

19 Sec. 14. (a) As used in this section:

20 (1) "Determinable charitable interest" means a charitable interest that
21 is a right to a mandatory distribution currently, periodically, on the
22 occurrence of a specified event or after the passage of a specified time and
23 is unconditional or will be held solely for charitable purposes.

24 (2) "Unconditional" means not subject to the occurrence of a
25 specified event that is not certain to occur, other than a requirement in a
26 trust instrument that a charitable organization be in existence or qualify
27 under a particular provision of the United States internal revenue code of
28 1986 on the date of the distribution, if the charitable organization meets
29 the requirement on the date of determination.

30 (b) If a first trust contains a determinable charitable interest, the
31 attorney general has the rights of a qualified beneficiary and may represent
32 and bind the charitable interest.

33 (c) If a first trust contains a charitable interest, the second trust or
34 trusts shall not:

35 (1) Diminish the charitable interest;

36 (2) diminish the interest of an identified charitable organization that
37 holds the charitable interest;

38 (3) alter any charitable purpose stated in the first-trust instrument; or

39 (4) alter any condition or restriction related to the charitable interest.

40 (d) If there are two or more second trusts, the second trusts shall be
41 treated as one trust for purposes of determining whether the exercise of the
42 decanting power diminishes the charitable interest or diminishes the
43 interest of an identified charitable organization for purposes of subsection

1 (c).

2 (e) If a first trust contains a determinable charitable interest, the
3 second trust or trusts that include a charitable interest pursuant to
4 subsection (c) shall be administered under the law of this state unless the:

5 (1) Attorney general, after receiving notice under section 7, and
6 amendments thereto, fails to object in a signed record delivered to the
7 authorized fiduciary within the notice period;

8 (2) attorney general consents in a signed record to the second trust or
9 trusts being administered under the law of another jurisdiction; or

10 (3) court approves the exercise of the decanting power.

11 (f) The uniform trust decanting act does not limit the powers and
12 duties of the attorney general under law of this state other than the act.

13 Sec. 15. (a) An authorized fiduciary shall not exercise the decanting
14 power to the extent the first-trust instrument expressly prohibits exercise
15 of:

16 (1) The decanting power; or

17 (2) a power granted by state law to the fiduciary to distribute part or
18 all of the principal of the trust to another trust or to modify the trust.

19 (b) Exercise of the decanting power is subject to any restriction in the
20 first-trust instrument that expressly applies to exercise of:

21 (1) The decanting power; or

22 (2) a power granted by state law to a fiduciary to distribute part or all
23 of the principal of the trust to another trust or to modify the trust.

24 (c) A general prohibition of the amendment or revocation of a first
25 trust, a spendthrift clause or a clause restraining the voluntary or
26 involuntary transfer of a beneficiary's interest does not preclude exercise
27 of the decanting power.

28 (d) Subject to subsections (a) and (b), an authorized fiduciary may
29 exercise the decanting power under the uniform trust decanting act even if
30 the first-trust instrument permits the authorized fiduciary or another person
31 to modify the first-trust instrument or to distribute part or all of the
32 principal of the first trust to another trust.

33 (e) To the extent the creation of a second-trust instrument is
34 permitted, if a first-trust instrument contains an express prohibition
35 described in subsection (a) or an express restriction described in
36 subsection (b), the provision shall be included in the second-trust
37 instrument.

38 Sec. 16. (a) If a first-trust instrument specifies an authorized
39 fiduciary's compensation, the fiduciary shall not exercise the decanting
40 power to increase the fiduciary's compensation above the specified
41 compensation unless:

42 (1) All qualified beneficiaries of the second trust consent to the
43 increase in a signed record; or

1 (2) the increase is approved by the court.

2 (b) If a first-trust instrument does not specify an authorized
3 fiduciary's compensation, the fiduciary shall not exercise the decanting
4 power to increase the fiduciary's compensation above the compensation
5 permitted by the Kansas uniform trust code, K.S.A. 58a-101 et seq., and
6 amendments thereto, unless:

7 (1) All qualified beneficiaries of the second trust consent to the
8 increase in a signed record; or

9 (2) the increase is approved by the court.

10 (c) A change in an authorized fiduciary's compensation that is
11 incidental to other changes made by the exercise of the decanting power is
12 not an increase in the fiduciary's compensation for purposes of subsections
13 (a) and (b).

14 Sec. 17. (a) Except as otherwise provided in this section, a second-
15 trust instrument shall not relieve an authorized fiduciary from liability for
16 breach of trust to a greater extent than the first-trust instrument.

17 (b) A second-trust instrument may provide for indemnification of an
18 authorized fiduciary of the first trust or another person acting in a fiduciary
19 capacity under the first trust for any liability or claim that would have been
20 payable from the first trust if the decanting power had not been exercised.

21 (c) A second-trust instrument shall not reduce fiduciary liability in the
22 aggregate.

23 (d) Subject to subsection (c), a second-trust instrument may divide
24 and reallocate fiduciary powers among fiduciaries, including one or more
25 trustees, distribution advisors, investment advisors, trust protectors or
26 other persons, and relieve a fiduciary from liability for an act or failure to
27 act of another fiduciary as permitted by law of this state other than the
28 uniform trust decanting act.

29 Sec. 18. An authorized fiduciary shall not exercise the decanting
30 power to modify a provision in a first-trust instrument granting another
31 person power to remove or replace the fiduciary unless the:

32 (a) Person holding the power consents to the modification in a signed
33 record and the modification applies only to the person;

34 (b) person holding the power and the qualified beneficiaries of the
35 second trust consent to the modification in a signed record and the
36 modification grants a substantially similar power to another person; or

37 (c) court approves the modification and the modification grants a
38 substantially similar power to another person.

39 Sec. 19. (a) As used in this section:

40 (1) "Grantor trust" means a trust as to which a settlor of a first trust is
41 considered the owner under 26 U.S.C. §§ 671 through 677 or 26 U.S.C. §
42 679.

43 (2) "Internal revenue code" means the United States internal revenue

1 code of 1986.

2 (3) "Nongrantor trust" means a trust that is not a grantor trust.

3 (4) "Qualified benefits property" means property subject to the
4 minimum distribution requirements of 26 U.S.C. § 401(a)(9), and any
5 applicable regulations, or to any similar requirements that refer to 26
6 U.S.C. § 401(a)(9) or the regulations.

7 (b) An exercise of the decanting power is subject to the following
8 limitations:

9 (1) If a first trust contains property that qualified, or would have
10 qualified but for provisions of the uniform trust decanting act other than
11 this section, for a marital deduction for purposes of the gift or estate tax
12 under the internal revenue code or a state gift, estate or inheritance tax, the
13 second-trust instrument shall not include or omit any term that, if included
14 in or omitted from the trust instrument for the trust to which the property
15 was transferred, would have prevented the transfer from qualifying for the
16 deduction, or would have reduced the amount of the deduction, under the
17 same provisions of the internal revenue code or state law under which the
18 transfer qualified.

19 (2) If the first trust contains property that qualified, or would have
20 qualified but for provisions of the uniform trust decanting act other than
21 this section, for a charitable deduction for purposes of the income, gift or
22 estate tax under the internal revenue code or a state income, gift, estate or
23 inheritance tax, the second-trust instrument shall not include or omit any
24 term that, if included in or omitted from the trust instrument for the trust to
25 which the property was transferred, would have prevented the transfer
26 from qualifying for the deduction, or would have reduced the amount of
27 the deduction, under the same provisions of the internal revenue code or
28 state law under which the transfer qualified.

29 (3) If the first trust contains property that qualified, or would have
30 qualified but for provisions of the uniform trust decanting act other than
31 this section, for the exclusion from the gift tax described in 26 U.S.C. §
32 2503(b), the second-trust instrument shall not include or omit a term that,
33 if included in or omitted from the trust instrument for the trust to which the
34 property was transferred, would have prevented the transfer from
35 qualifying under 26 U.S.C. § 2503(b). If the first trust contains property
36 that qualified, or would have qualified but for provisions of the uniform
37 trust decanting act other than this section, for the exclusion from the gift
38 tax described in 26 U.S.C. § 2503(b) by application of 26 U.S.C. §
39 2503(c), the second-trust instrument shall not include or omit a term that,
40 if included or omitted from the trust instrument for the trust to which the
41 property was transferred, would have prevented the transfer from
42 qualifying under 26 U.S.C. § 2503(c).

43 (4) If the property of the first trust includes shares of stock in an S

1 corporation as defined in 26 U.S.C. § 1361 and the first trust is, or but for
2 provisions of the uniform trust decanting act other than this section would
3 be, a permitted shareholder under any provision of 26 U.S.C. § 1361, an
4 authorized fiduciary may exercise the power with respect to part or all of
5 the S-corporation stock only if any second trust receiving the stock is a
6 permitted shareholder under 26 U.S.C. § 1361(c)(2). If the property of the
7 first trust includes shares of stock in an S corporation and the first trust is,
8 or but for provisions of the uniform trust decanting act other than this
9 section would be, a qualified subchapter-S trust within the meaning of 26
10 U.S.C. § 1361(d), the second-trust instrument shall not include or omit a
11 term that prevents the second trust from qualifying as a qualified
12 subchapter-S trust.

13 (5) If the first trust contains property that qualified, or would have
14 qualified but for provisions of the uniform trust decanting act other than
15 this section, for a zero inclusion ratio for purposes of the generation-
16 skipping transfer tax under 26 U.S.C. § 2642(c), the second-trust
17 instrument shall not include or omit a term that, if included in or omitted
18 from the first-trust instrument, would have prevented the transfer to the
19 first trust from qualifying for a zero inclusion ratio under 26 U.S.C. §
20 2642(c).

21 (6) If the first trust is directly or indirectly the beneficiary of qualified
22 benefits property, the second-trust instrument shall not include or omit any
23 term that, if included in or omitted from the first-trust instrument, would
24 have increased the minimum distributions required with respect to the
25 qualified benefits property under 26 U.S.C. § 401(a)(9) and any applicable
26 regulations, or any similar requirements that refer to 26 U.S.C. § 401(a)(9)
27 or the regulations. If an attempted exercise of the decanting power violates
28 the preceding sentence, the trustee is deemed to have held the qualified
29 benefits property and any reinvested distributions of the property as a
30 separate share from the date of the exercise of the power and section 22,
31 and amendments thereto, applies to the separate share.

32 (7) If the first trust qualifies as a grantor trust because of the
33 application of 26 U.S.C. § 672(f)(2)(A), the second trust shall not include
34 or omit a term that, if included in or omitted from the first-trust instrument,
35 would have prevented the first trust from qualifying under 26 U.S.C. §
36 672(f)(2)(A).

37 (8) As used in this paragraph, "tax benefit" means a federal or state
38 tax deduction, exemption, exclusion, or other benefit not otherwise listed
39 in this section, except for a benefit arising from being a grantor trust.
40 Subject to paragraph (9), a second-trust instrument shall not include or
41 omit a term that, if included in or omitted from the first-trust instrument,
42 would have prevented qualification for a tax benefit if the:

43 (A) First-trust instrument expressly indicates an intent to qualify for

1 the benefit or the first-trust instrument clearly is designed to enable the
2 first trust to qualify for the benefit; and

3 (B) transfer of property held by the first trust or the first trust
4 qualified, or but for provisions of the uniform trust decanting act other
5 than this section, would have qualified for the tax benefit.

6 (9) Subject to paragraph (4):

7 (A) Except as otherwise provided in paragraph (7), the second trust
8 may be a nongrantor trust, even if the first trust is a grantor trust; and

9 (B) except as otherwise provided in paragraph (10), the second trust
10 may be a grantor trust, even if the first trust is a nongrantor trust.

11 (10) An authorized fiduciary shall not exercise the decanting power if
12 a settlor objects in a signed record delivered to the fiduciary within the
13 notice period and:

14 (A) The first trust and a second trust are both grantor trusts, in whole
15 or in part, the first trust grants the settlor or another person the power to
16 cause the first trust to cease to be a grantor trust, and the second trust does
17 not grant an equivalent power to the settlor or other person; or

18 (B) the first trust is a nongrantor trust and a second trust is a grantor
19 trust, in whole or in part, with respect to the settlor, unless the:

20 (i) Settlor has the power at all times to cause the second trust to cease
21 to be a grantor trust; or

22 (ii) first-trust instrument contains a provision granting the settlor or
23 another person a power that would cause the first trust to cease to be a
24 grantor trust and the second-trust instrument contains the same provision.

25 Sec. 20. (a) Subject to subsection (b), a second trust may have a
26 duration that is the same as or different from the duration of the first trust.

27 (b) To the extent that property of a second trust is attributable to
28 property of the first trust, the property of the second trust is subject to any
29 rules governing maximum perpetuity, accumulation or suspension of the
30 power of alienation that apply to property of the first trust.

31 Sec. 21. An authorized fiduciary may exercise the decanting power
32 whether or not under the first trust's discretionary distribution standard the
33 fiduciary would have made or could have been compelled to make a
34 discretionary distribution of principal at the time of the exercise.

35 Sec. 22. (a) If exercise of the decanting power would be effective
36 under the uniform trust decanting act except that the second-trust
37 instrument in part does not comply with the act, the exercise of the power
38 is effective and the following rules apply with respect to the principal of
39 the second trust attributable to the exercise of the power:

40 (1) A provision in the second-trust instrument that is not permitted
41 under the act is void to the extent necessary to comply with this act.

42 (2) A provision required by the act to be in the second-trust
43 instrument that is not contained in the instrument is deemed to be included

1 in the instrument to the extent necessary to comply with the act.

2 (b) If a trustee or other fiduciary of a second trust determines that
3 subsection (a) applies to a prior exercise of the decanting power, the
4 fiduciary shall take corrective action consistent with the fiduciary's duties.

5 Sec. 23. (a) As used in this section:

6 (1) "Animal trust" means a trust or an interest in a trust created to
7 provide for the care of one or more animals.

8 (2) "Protector" means a person appointed in an animal trust to enforce
9 the trust on behalf of the animal or, if no such person is appointed in the
10 trust, a person appointed by the court for that purpose.

11 (b) The decanting power may be exercised over an animal trust that
12 has a protector to the extent the trust could be decanted under the uniform
13 trust decanting act if each animal that benefits from the trust were an
14 individual, if the protector consents in a signed record to the exercise of
15 the power.

16 (c) A protector for an animal has the rights under the uniform trust
17 decanting act of a qualified beneficiary.

18 (d) Notwithstanding any other provision of the uniform trust
19 decanting act, if a first trust is an animal trust, in an exercise of the
20 decanting power, the second trust shall provide that trust property may be
21 applied only to its intended purpose for the period the first trust benefited
22 the animal.

23 Sec. 24. A reference in the Kansas uniform trust code, K.S.A. 58a-
24 101 et seq., and amendments thereto, to a trust instrument or terms of the
25 trust includes a second-trust instrument and the terms of the second trust.

26 Sec. 25. (a) For purposes of law of this state other than the uniform
27 trust decanting act and subject to subsection (b), a settlor of a first trust is
28 deemed to be the settlor of the second trust with respect to the portion of
29 the principal of the first trust subject to the exercise of the decanting
30 power.

31 (b) In determining settlor intent with respect to a second trust, the
32 intent of a settlor of the first trust, a settlor of the second trust and the
33 authorized fiduciary may be considered.

34 Sec. 26. (a) Except as otherwise provided in subsection (c), if
35 exercise of the decanting power was intended to distribute all the principal
36 of the first trust to one or more second trusts, later-discovered property
37 belonging to the first trust and property paid to or acquired by the first
38 trust after the exercise of the power is part of the trust estate of the second
39 trust or trusts.

40 (b) Except as otherwise provided in subsection (c), if exercise of the
41 decanting power was intended to distribute less than all the principal of the
42 first trust to one or more second trusts, later-discovered property belonging
43 to the first trust or property paid to or acquired by the first trust after

1 exercise of the power remains part of the trust estate of the first trust.

2 (c) An authorized fiduciary may provide in an exercise of the
3 decanting power or by the terms of a second trust for disposition of later-
4 discovered property belonging to the first trust or property paid to or
5 acquired by the first trust after exercise of the power.

6 Sec. 27. A debt, liability or other obligation enforceable against
7 property of a first trust is enforceable to the same extent against the
8 property when held by the second trust after exercise of the decanting
9 power.

10 Sec. 28. In applying and construing this uniform act, consideration
11 shall be given to the need to promote uniformity of the law with respect to
12 its subject matter among states that enact it.

13 Sec. 29. The uniform trust decanting act modifies, limits or
14 supersedes the electronic signatures in global and national commerce act,
15 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede section
16 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of
17 any of the notices described in section 103(b) of that act, 15 U.S.C. §
18 7003(b).

19 Sec. 30. If any provision of the uniform trust decanting act or its
20 application to any person or circumstance is held invalid, the invalidity
21 does not affect other provisions or applications of the act that can be given
22 effect without the invalid provision or application, and to this end the
23 provisions of the act are severable.

24 Sec. 31. This act shall take effect and be in force from and after its
25 publication in the statute book.