

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; **authorizing modification of a noncharitable irrevocable**
5 **trust to provide that the rule against perpetuities is inapplicable;**
6 **providing that the Kansas uniform statutory rule against perpetuities**
7 **is inapplicable to trusts under certain circumstances; modifying the**
8 **definition of resident trust in the Kansas income tax act; amending**
9 **K.S.A. 59-3404 and K.S.A. 2022 Supp. 58a-411 and 79-32,109 and**
10 **repealing the existing sections.**

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 *New* Section 1. Sections 1 through 30, and amendments thereto, shall
14 be known and may be cited as the uniform trust decanting act.

15 *New* Sec. 2. As used in the uniform trust decanting act:

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

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

22 (c) "Authorized fiduciary" means a:

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

26 (2) special fiduciary appointed under section 9, and amendments
27 thereto; or

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

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

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

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

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

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

36 (1) Is held by an identified charitable organization and makes the

1 organization a qualified beneficiary;

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

5 (3) is held solely for charitable purposes and, if the interest were held
6 by an identified charitable organization, would make the organization a
7 qualified beneficiary.

8 (f) "Charitable organization" means a:

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

11 (2) government or governmental subdivision, agency or
12 instrumentality, to the extent it holds funds exclusively for a charitable
13 purpose.

14 (g) "Charitable purpose" means the relief of poverty, the advancement
15 of education or religion, the promotion of health, a municipal or other
16 governmental purpose or another purpose the achievement of which is
17 beneficial to the community.

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

19 (i) "Current beneficiary" means a beneficiary that, on the date the
20 beneficiary's qualification is determined, is a distributee or permissible
21 distributee of trust income or principal. The term includes the holder of a
22 presently exercisable general power of appointment but does not include a
23 person that is a beneficiary only because the person holds any other power
24 of appointment.

25 (j) "Decanting power" or "the decanting power" means the power of
26 an authorized fiduciary under the uniform trust decanting act to distribute
27 property of a first trust to one or more second trusts or to modify the terms
28 of the first trust.

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

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

34 (m) "First-trust instrument" means the trust instrument for a first
35 trust.

36 (n) "General power of appointment" means a power of appointment
37 exercisable in favor of a powerholder, the powerholder's estate, a creditor
38 of the powerholder or a creditor of the powerholder's estate.

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

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

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

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

7 (s) "Presently exercisable power of appointment" means a power of
8 appointment exercisable by the powerholder at the relevant time. The
9 term:

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

13 (A) Occurrence of the specified event;

14 (B) satisfaction of the ascertainable standard; or

15 (C) passage of the specified time; and

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

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

20 (1) Is a distributee or permissible distributee of trust income or
21 principal;

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

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

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

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

34 (w) "Second trust" means a:

35 (1) First trust after modification under the uniform trust decanting act;
36 or

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

39 (x) "Second-trust instrument" means the trust instrument for a second
40 trust.

41 (y) "Settlor," except as otherwise provided in section 25, and
42 amendments thereto, means a person, including a testator, that creates or
43 contributes property to a trust. If more than one person creates or

1 contributes property to a trust, each person is a "settlor" of the portion of
2 the trust property attributable to the person's contribution except to the
3 extent another person has power to revoke or withdraw that portion.

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

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

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

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

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

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

15 (A) Expressed in the trust instrument; or

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

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

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

20 (B) court order; or

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

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

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

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

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

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

39 (e) The uniform trust decanting act does not affect the ability of a
40 settlor to provide in a trust instrument for the distribution of the trust
41 property or appointment in further trust of the trust property or for
42 modification of the trust instrument.

43 **New Sec. 4.** (a) In exercising the decanting power, an authorized

1 fiduciary shall act in accordance with its fiduciary duties, including the
2 duty to act in accordance with the purposes of the first trust.

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

6 (c) Except as otherwise provided in a first-trust instrument, for
7 purposes of the uniform trust decanting act and K.S.A. 58a-801 and 58a-
8 802(a), and amendments thereto, the terms of the first trust are deemed to
9 include the decanting power.

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

12 (a) Has its principal place of administration in this state, including a
13 trust whose principal place of administration has been changed to this
14 state; or

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

17 (1) Administration, including administration of a trust whose
18 governing law for purposes of administration has been changed to the law
19 of this state;

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

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

22 *New* Sec. 6. A trustee or other person that reasonably relies on the
23 validity of a distribution of part or all of the property of a trust to another
24 trust, or a modification of a trust, under the uniform trust decanting act,
25 law of this state other than the act or the law of another jurisdiction is not
26 liable to any person for any action or failure to act as a result of the
27 reliance.

28 *New* Sec. 7. (a) In this section, a notice period begins on the day
29 notice is given under subsection (c) and ends 59 days after the day notice
30 is given.

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

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

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

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

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

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

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

- 1 (6) each fiduciary of the second trust;
2 (7) each person acting as an advisor or protector of the first trust; and
3 (8) the attorney general, if section 14(b), and amendments thereto,
4 applies.

5 (d) An authorized fiduciary is not required to give notice under
6 subsection (c) to a person that is not known to the fiduciary or is known to
7 the fiduciary but cannot be located by the fiduciary after reasonable
8 diligence.

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

10 (1) Specify the manner in which the authorized fiduciary intends to
11 exercise the decanting power, which shall include a statement as to the
12 authorized fiduciary's reason for the proposed decanting and an
13 explanation as to the differences between the first trust and the second trust
14 or trusts;

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

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

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

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

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

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

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

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

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

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

1 (c) A person with authority to represent and bind another person
2 under a first-trust instrument or the Kansas uniform trust code, K.S.A. 58a-
3 101 et seq., and amendments thereto, may file an application under section
4 9, and amendments thereto, on behalf of the person represented.

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

7 *New* Sec. 9. (a) On application of an authorized fiduciary, a person
8 entitled to notice under section 7(c), and amendments thereto, a
9 beneficiary, or with respect to a charitable interest, the attorney general or
10 other person that has standing to enforce the charitable interest, the court
11 may:

12 (1) Provide instructions to the authorized fiduciary regarding whether
13 a proposed exercise of the decanting power is permitted under the uniform
14 trust decanting act and consistent with the fiduciary duties of the
15 authorized fiduciary;

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

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

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

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

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

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

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

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

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

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

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

40 (c) A proceeding under subsection (a)(4) shall not be commenced by
41 a person entitled to notice under section 7(c), and amendments thereto, or
42 by a beneficiary unless such proceeding is commenced within six months
43 from the day notice is given under section 7(a), and amendments thereto.

1 Failure to receive notice shall not extend the time by which such
2 proceeding must be commenced if the authorized fiduciary acted with
3 reasonable diligence to comply with the requirements of section 7(c), and
4 amendments thereto.

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

9 *New* Sec. 10. An exercise of the decanting power shall be made in a
10 record signed by an authorized fiduciary. The signed record shall, directly
11 or by reference to the notice required by section 7, and amendments
12 thereto, identify the first trust and the second trust or trusts and state the
13 property of the first trust being distributed to each second trust and the
14 property, if any, that remains in the first trust.

15 *New* Sec. 11. (a) As used in this section:

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

21 (2) "Presumptive remainder beneficiary" means a qualified
22 beneficiary other than a current beneficiary.

23 (3) "Successor beneficiary" means a beneficiary that is not a qualified
24 beneficiary on the date the beneficiary's qualification is determined.
25 "Successor beneficiary" does not include a person that is a beneficiary
26 only because the person holds a nongeneral power of appointment.

27 (4) "Vested interest" means a:

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

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

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

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

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

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

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

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

6 (2) include as a presumptive remainder beneficiary or successor
7 beneficiary a person that is not a current beneficiary, presumptive
8 remainder beneficiary or successor beneficiary of the first trust, except as
9 otherwise provided in subsection (d); or

10 (3) reduce or eliminate a vested interest.

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

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

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

18 (3) create or modify a power of appointment if the powerholder is a
19 current beneficiary of the first trust and the authorized fiduciary has
20 expanded distributive discretion to distribute principal to the beneficiary;
21 and

22 (4) create or modify a power of appointment if the powerholder is a
23 presumptive remainder beneficiary or successor beneficiary of the first
24 trust, but the exercise of the power may take effect only after the
25 powerholder becomes, or would have become if then living, a current
26 beneficiary.

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

31 (f) If an authorized fiduciary has expanded distributive discretion
32 over part but not all of the principal of a first trust, the fiduciary may
33 exercise the decanting power under this section over that part of the
34 principal over which the authorized fiduciary has expanded distributive
35 discretion.

36 *New* Sec. 12. (a) As used in this section, "limited distributive
37 discretion" means a discretionary power of distribution that is limited to an
38 ascertainable standard or a reasonably definite standard.

39 (b) An authorized fiduciary that has limited distributive discretion
40 over the principal of the first trust for benefit of one or more current
41 beneficiaries may exercise the decanting power over the principal of the
42 first trust.

43 (c) Under this section and subject to section 14, and amendments

1 thereto, a second trust may be created or administered under the law of any
2 jurisdiction. Under this section, the second trusts, in the aggregate, shall
3 grant each beneficiary of the first trust beneficial interests that are
4 substantially similar to the beneficial interests of the beneficiary in the first
5 trust.

6 (d) A power to make a distribution under a second trust for the benefit
7 of a beneficiary who is an individual is substantially similar to a power
8 under the first trust to make a distribution directly to the beneficiary. A
9 distribution is for the benefit of a beneficiary if the:

10 (1) Distribution is applied for the benefit of the beneficiary;

11 (2) beneficiary is under a legal disability or the trustee reasonably
12 believes the beneficiary is incapacitated, and the distribution is made as
13 permitted under the Kansas uniform trust code, K.S.A. 58a-101 et seq.,
14 and amendments thereto; or

15 (3) distribution is made as permitted under the terms of the first-trust
16 instrument and the second-trust instrument for the benefit of the
17 beneficiary.

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

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

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

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

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

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

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

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

43 (4) "Special-needs trust" means a trust the trustee believes would not

1 be considered a resource for purposes of determining whether a
2 beneficiary with a disability is eligible for governmental benefits.

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

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

9 (2) the special-needs fiduciary determines that exercise of the
10 decanting power will not be inconsistent with a material purpose of the
11 first trust.

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

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

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

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

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

22 (3) Except as affected by any change to the interests of the
23 beneficiary with a disability, the second trust, or if there are two or more
24 second trusts, the second trusts in the aggregate, shall grant each other
25 beneficiary of the first trust beneficial interests in the second trusts that are
26 substantially similar to the beneficiary's beneficial interests in the first
27 trust.

28 *New* Sec. 14. (a) As used in this section:

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

33 (2) "Unconditional" means not subject to the occurrence of a
34 specified event that is not certain to occur, other than a requirement in a
35 trust instrument that a charitable organization be in existence or qualify
36 under a particular provision of the United States internal revenue code of
37 1986 on the date of the distribution, if the charitable organization meets
38 the requirement on the date of determination.

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

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

- 1 (1) Diminish the charitable interest;
- 2 (2) diminish the interest of an identified charitable organization that
3 holds the charitable interest;
- 4 (3) alter any charitable purpose stated in the first-trust instrument; or
- 5 (4) alter any condition or restriction related to the charitable interest.
- 6 (d) If there are two or more second trusts, the second trusts shall be
7 treated as one trust for purposes of determining whether the exercise of the
8 decanting power diminishes the charitable interest or diminishes the
9 interest of an identified charitable organization for purposes of subsection
10 (c).
- 11 (e) If a first trust contains a determinable charitable interest, the
12 second trust or trusts that include a charitable interest pursuant to
13 subsection (c) shall be administered under the law of this state unless the:
 - 14 (1) Attorney general, after receiving notice under section 7, and
15 amendments thereto, fails to object in a signed record delivered to the
16 authorized fiduciary within the notice period;
 - 17 (2) attorney general consents in a signed record to the second trust or
18 trusts being administered under the law of another jurisdiction; or
 - 19 (3) court approves the exercise of the decanting power.
- 20 (f) The uniform trust decanting act does not limit the powers and
21 duties of the attorney general under law of this state other than the act.
- 22 *New* Sec. 15. (a) An authorized fiduciary shall not exercise the
23 decanting power to the extent the first-trust instrument expressly prohibits
24 exercise of:
 - 25 (1) The decanting power; or
 - 26 (2) a power granted by state law to the fiduciary to distribute part or
27 all of the principal of the trust to another trust or to modify the trust.
- 28 (b) Exercise of the decanting power is subject to any restriction in the
29 first-trust instrument that expressly applies to exercise of:
 - 30 (1) The decanting power; or
 - 31 (2) a power granted by state law to a fiduciary to distribute part or all
32 of the principal of the trust to another trust or to modify the trust.
- 33 (c) A general prohibition of the amendment or revocation of a first
34 trust, a spendthrift clause or a clause restraining the voluntary or
35 involuntary transfer of a beneficiary's interest does not preclude exercise
36 of the decanting power.
- 37 (d) Subject to subsections (a) and (b), an authorized fiduciary may
38 exercise the decanting power under the uniform trust decanting act even if
39 the first-trust instrument permits the authorized fiduciary or another person
40 to modify the first-trust instrument or to distribute part or all of the
41 principal of the first trust to another trust.
- 42 (e) To the extent the creation of a second-trust instrument is
43 permitted, if a first-trust instrument contains an express prohibition

1 described in subsection (a) or an express restriction described in
2 subsection (b), the provision shall be included in the second-trust
3 instrument.

4 **New Sec. 16.** (a) If a first-trust instrument specifies an authorized
5 fiduciary's compensation, the fiduciary shall not exercise the decanting
6 power to increase the fiduciary's compensation above the specified
7 compensation unless:

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

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

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

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

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

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

23 **New Sec. 17.** (a) Except as otherwise provided in this section, a
24 second-trust instrument shall not relieve an authorized fiduciary from
25 liability for breach of trust to a greater extent than the first-trust
26 instrument.

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

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

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

39 **New Sec. 18.** An authorized fiduciary shall not exercise the decanting
40 power to modify a provision in a first-trust instrument granting another
41 person power to remove or replace the fiduciary unless the:

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

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

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

6 *New* Sec. 19. (a) As used in this section:

7 (1) "Grantor trust" means a trust as to which a settlor of a first trust is
8 considered the owner under 26 U.S.C. §§ 671 through 677 or 26 U.S.C. §
9 679.

10 (2) "Internal revenue code" means the United States internal revenue
11 code of 1986.

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

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

17 (b) An exercise of the decanting power is subject to the following
18 limitations:

19 (1) If a 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 marital deduction for purposes of the gift or estate tax
22 under the internal revenue code or a state gift, estate or inheritance tax, the
23 second-trust instrument shall not include or omit any term that, if included
24 in or omitted from the trust instrument for the trust to which the property
25 was transferred, would have prevented the transfer from qualifying for the
26 deduction, or would have reduced the amount of the deduction, under the
27 same provisions of the internal revenue code or state law under which the
28 transfer qualified.

29 (2) 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 a charitable deduction for purposes of the income, gift or
32 estate tax under the internal revenue code or a state income, gift, estate or
33 inheritance tax, the second-trust instrument shall not include or omit any
34 term that, if included in or omitted from the trust instrument for the trust to
35 which the property was transferred, would have prevented the transfer
36 from qualifying for the deduction, or would have reduced the amount of
37 the deduction, under the same provisions of the internal revenue code or
38 state law under which the transfer qualified.

39 (3) If the first trust contains property that qualified, or would have
40 qualified but for provisions of the uniform trust decanting act other than
41 this section, for the exclusion from the gift tax described in 26 U.S.C. §
42 2503(b), the second-trust instrument shall not include or omit a term that,
43 if included in or omitted from the trust instrument for the trust to which the

1 property was transferred, would have prevented the transfer from
2 qualifying under 26 U.S.C. § 2503(b). If the first trust contains property
3 that qualified, or would have qualified but for provisions of the uniform
4 trust decanting act other than this section, for the exclusion from the gift
5 tax described in 26 U.S.C. § 2503(b) by application of 26 U.S.C. §
6 2503(c), the second-trust instrument shall not include or omit a term that,
7 if included or omitted from the trust instrument for the trust to which the
8 property was transferred, would have prevented the transfer from
9 qualifying under 26 U.S.C. § 2503(c).

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

23 (5) If the first trust contains property that qualified, or would have
24 qualified but for provisions of the uniform trust decanting act other than
25 this section, for a zero inclusion ratio for purposes of the generation-
26 skipping transfer tax under 26 U.S.C. § 2642(c), the second-trust
27 instrument shall not include or omit a term that, if included in or omitted
28 from the first-trust instrument, would have prevented the transfer to the
29 first trust from qualifying for a zero inclusion ratio under 26 U.S.C. §
30 2642(c).

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

42 (7) If the first trust qualifies as a grantor trust because of the
43 application of 26 U.S.C. § 672(f)(2)(A), the second trust shall not include

1 or omit a term that, if included in or omitted from the first-trust instrument,
2 would have prevented the first trust from qualifying under 26 U.S.C. §
3 672(f)(2)(A).

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

10 (A) First-trust instrument expressly indicates an intent to qualify for
11 the benefit or the first-trust instrument clearly is designed to enable the
12 first trust to qualify for the benefit; and

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

16 (9) Subject to paragraph (4):

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

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

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

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

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

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

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

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

37 (b) To the extent that property of a second trust is attributable to
38 property of the first trust, the property of the second trust is subject to any
39 rules governing maximum perpetuity, accumulation or suspension of the
40 power of alienation that apply to property of the first trust.

41 *New Sec. 21.* An authorized fiduciary may exercise the decanting
42 power whether or not under the first trust's discretionary distribution
43 standard the fiduciary would have made or could have been compelled to

1 make a discretionary distribution of principal at the time of the exercise.

2 **New Sec. 22.** (a) If exercise of the decanting power would be
3 effective under the uniform trust decanting act except that the second-trust
4 instrument in part does not comply with the act, the exercise of the power
5 is effective and the following rules apply with respect to the principal of
6 the second trust attributable to the exercise of the power:

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

9 (2) A provision required by the act to be in the second-trust
10 instrument that is not contained in the instrument is deemed to be included
11 in the instrument to the extent necessary to comply with the act.

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

15 **New Sec. 23.** (a) As used in this section:

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

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

21 (b) The decanting power may be exercised over an animal trust that
22 has a protector to the extent the trust could be decanted under the uniform
23 trust decanting act if each animal that benefits from the trust were an
24 individual, if the protector consents in a signed record to the exercise of
25 the power.

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

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

33 **New Sec. 24.** A reference in the Kansas uniform trust code, K.S.A.
34 58a-101 et seq., and amendments thereto, to a trust instrument or terms of
35 the trust includes a second-trust instrument and the terms of the second
36 trust.

37 **New Sec. 25.** (a) For purposes of law of this state other than the
38 uniform trust decanting act and subject to subsection (b), a settlor of a first
39 trust is deemed to be the settlor of the second trust with respect to the
40 portion of the principal of the first trust subject to the exercise of the
41 decanting power.

42 (b) In determining settlor intent with respect to a second trust, the
43 intent of a settlor of the first trust, a settlor of the second trust and the

1 authorized fiduciary may be considered.

2 **New Sec. 26.** (a) Except as otherwise provided in subsection (c), if
3 exercise of the decanting power was intended to distribute all the principal
4 of the first trust to one or more second trusts, later-discovered property
5 belonging to the first trust and property paid to or acquired by the first
6 trust after the exercise of the power is part of the trust estate of the second
7 trust or trusts.

8 (b) Except as otherwise provided in subsection (c), if exercise of the
9 decanting power was intended to distribute less than all the principal of the
10 first trust to one or more second trusts, later-discovered property belonging
11 to the first trust or property paid to or acquired by the first trust after
12 exercise of the power remains part of the trust estate of the first trust.

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

17 **New Sec. 27.** A debt, liability or other obligation enforceable against
18 property of a first trust is enforceable to the same extent against the
19 property when held by the second trust after exercise of the decanting
20 power.

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

24 **New Sec. 29.** The uniform trust decanting act modifies, limits or
25 supersedes the electronic signatures in global and national commerce act,
26 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede section
27 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of
28 any of the notices described in section 103(b) of that act, 15 U.S.C. §
29 7003(b).

30 **New Sec. 30.** If any provision of the uniform trust decanting act or its
31 application to any person or circumstance is held invalid, the invalidity
32 does not affect other provisions or applications of the act that can be given
33 effect without the invalid provision or application, and to this end the
34 provisions of the act are severable.

35 **Sec. 31.** *K.S.A. 2022 Supp. 58a-411 is hereby amended to read as*
36 *follows: 58a-411. (a) A noncharitable irrevocable trust may be modified*
37 *or terminated upon consent of the settlor and all qualified beneficiaries,*
38 *even if the modification or termination is inconsistent with a material*
39 *purpose of the trust. A settlor's power to consent to a trust's modification*
40 *or termination may be exercised by an attorney in fact under a power of*
41 *attorney only to the extent expressly authorized by the power of attorney*
42 *or the terms of the trust; by the settlor's conservator with the approval of*
43 *the court supervising the conservatorship if an agent is not so*

1 *authorized; or by the settlor's guardian with the approval of the court*
2 *supervising the guardianship if an agent is not so authorized and a*
3 *conservator has not been appointed. This subsection does not apply to*
4 *irrevocable trusts created before, or to revocable trusts that became*
5 *irrevocable before, January 1, 2003.*

6 *(b) A noncharitable irrevocable trust may be terminated upon*
7 *consent of all of the qualified beneficiaries if the court concludes that*
8 *continuance of the trust is not necessary to achieve any material purpose*
9 *of the trust. A noncharitable irrevocable trust may be modified upon*
10 *consent of all of the qualified beneficiaries if the court concludes that*
11 *modification is not inconsistent with a material purpose of the trust.*

12 *(c) (1) A spendthrift provision in the terms of the trust is not*
13 *presumed to constitute a material purpose of the trust.*

14 *(2) Application of the rule against perpetuities is not presumed to*
15 *constitute a material purpose of the trust.*

16 *(d) Upon termination of a trust under subsection (a) or (b), the*
17 *trustee shall distribute the trust property as agreed by the qualified*
18 *beneficiaries.*

19 *(e) If not all of the qualified beneficiaries consent to a proposed*
20 *modification or termination of the trust under subsection (a) or (b), the*
21 *modification or termination may be approved by the court if the court is*
22 *satisfied that:*

23 *(1) If all of the qualified beneficiaries had consented, the trust*
24 *could have been modified or terminated under this section; and*

25 *(2) the interests of a qualified beneficiary who does not consent will*
26 *be adequately protected.*

27 *Sec. 32. K.S.A. 59-3404 is hereby amended to read as follows: 59-*
28 *3404. K.S.A. 59-3401, and amendments thereto, the statutory rule against*
29 *perpetuities, does not apply to:*

30 *(1) A nonvested property interest or a power of appointment arising*
31 *out of a nondonative transfer, except a nonvested property interest or a*
32 *power of appointment arising out of a:*

33 *(i) ~~a~~ Premarital or postmarital agreement;;*

34 *(ii) ~~a~~ separation or divorce settlement;;*

35 *(iii) ~~a~~ spouse's election;;*

36 *(iv) ~~a~~ similar arrangement arising out of a prospective, existing or*
37 *previous marital relationship between the parties;;*

38 *(v) ~~a~~ contract to make or not to revoke a will or trust;;*

39 *(vi) ~~a~~ contract to exercise or not to exercise a power of*
40 *appointment;;*

41 *(vii) ~~a~~ transfer in satisfaction of a duty of support; or*

42 *(viii) ~~a~~ reciprocal transfer;*

43 *(2) a fiduciary's power relating to the administration or*

1 *management of assets, including the power of a fiduciary to sell, lease or*
2 *mortgage property, and the power of a fiduciary to determine principal*
3 *and income;*

4 *(3) a power to appoint a fiduciary;*

5 *(4) a discretionary power of a trustee to distribute principal before*
6 *termination of a trust to a beneficiary having an indefeasibly vested*
7 *interest in the income and principal;*

8 *(5) a nonvested property interest held by a charity, government or*
9 *governmental agency or subdivision, if the nonvested property interest is*
10 *preceded by an interest held by another charity, government or*
11 *governmental agency or subdivision;*

12 *(6) a nonvested property interest in or a power of appointment with*
13 *respect to a trust or other property arrangement forming part of a*
14 *pension, profit-sharing, stock bonus, health, disability, death benefit,*
15 *income deferral or other current or deferred benefit plan for one or*
16 *more employees, independent contractors or the beneficiaries or*
17 *spouses, to which contributions are made for the purpose of distributing*
18 *to or for the benefit of the participants or their beneficiaries or spouses*
19 *the property, income or principal in the trust or other property*
20 *arrangement, except a nonvested property interest or a power of*
21 *appointment that is created by an election of a participant or a*
22 *beneficiary or spouse;*~~or~~

23 *(7) a property interest, power of appointment or arrangement that*
24 *was not subject to the common-law rule against perpetuities or is*
25 *excluded by another statute of this state; or*

26 *(8) a trust in which the governing instrument states that the rule*
27 *against perpetuities does not apply to the trust and under which the trustee*
28 *or other person to whom the power is properly granted or delegated has*
29 *power under the governing instrument, any applicable statute or the*
30 *common law to sell, lease or mortgage property for any period of time*
31 *beyond the period which would otherwise be required for an interest*
32 *created under the governing instrument to vest. This subsection shall*
33 *apply to all trusts created by will or inter vivos agreement executed or*
34 *amended on or after July 1, 2023, and to all trusts created by exercise of*
35 *power of appointment granted under instruments executed or amended on*
36 *or after July 1, 2023.*

37 **Sec. 33. K.S.A. 2022 Supp. 79-32,109 is hereby amended to read as**
38 **follows: 79-32,109. As used in this act, unless the context otherwise**
39 **requires:**

40 **(a) (1) Any term used in this act shall have the same meaning as**
41 **when used in a comparable context in the federal internal revenue code.**
42 **Any reference in this act to the "federal internal revenue code" shall**
43 **mean the provisions of the federal internal revenue code of 1986, and**

1 *amendments thereto, and other provisions of the laws of the United*
2 *States relating to federal income taxes, as the same may be or become*
3 *effective at any time, or from time to time, for the taxable year.*

4 *(2) Any reference in this act to a federal form or schedule, or to a*
5 *line number on a federal form or schedule, shall be to such form,*
6 *schedule and line number as they existed for tax year 2011 and as*
7 *revised thereafter by the internal revenue service. Any such reference*
8 *shall include comparable federal forms, schedules, and line numbers*
9 *used by non-United States residents when filing their federal income tax*
10 *return with the internal revenue service.*

11 *(b) "Resident individual" means a natural person who is domiciled*
12 *in this state. A natural person who spends in the aggregate more than six*
13 *months of the taxable year within this state shall be presumed to be a*
14 *resident for purposes of this act in absence of proof to the contrary. A*
15 *nonresident individual means an individual other than a resident*
16 *individual.*

17 *(c) "Resident estate" means the estate of a deceased person whose*
18 *domicile was in this state at the time of such person's death.*
19 *"Nonresident estate" means an estate other than a resident estate.*

20 *(d) "Resident trust" means a trust that:*

21 *(1) Is administered in this state and that;*

22 *(2) was created by or consists of property owned by a person*
23 *domiciled in this state on the date the trust or portion of the trust became*
24 *irrevocable; and*

25 *(3) has at least one income beneficiary who, on the last day of the*
26 *taxable year, was a resident of this state.*

27 *(e) (1) "Resident partner" means a partner who is a resident*
28 *individual, a resident estate, or a resident trust.*

29 *(2) "Nonresident partner" means a partner other than a resident*
30 *partner.*

31 *(f) (1) "Resident beneficiary" means a beneficiary of an estate or*
32 *trust which beneficiary is a resident individual, a resident estate, or a*
33 *resident trust.*

34 *(2) "Nonresident beneficiary" means a beneficiary other than a*
35 *resident beneficiary.*

36 *(g) "Director" means the director of taxation.*

37 *(h) (1) "Modified Kansas source income" means that part of a*
38 *nonresident individual's Kansas adjusted gross income as set forth in*
39 *K.S.A. 79-32,117, and amendments thereto, derived from sources in*
40 *Kansas. Items of income including unemployment compensation, gain,*
41 *loss or deduction reflected in Kansas adjusted gross income shall be*
42 *considered derived from sources in Kansas to the extent that they are*
43 *attributable to:*

1 (A) *The ownership of any interest in real or tangible personal*
2 *property in this state;*

3 (B) *a business, trade, profession or occupation carried on in this*
4 *state;*

5 (C) *a business, trade, profession or occupation carried on partly*
6 *within and partly without this state as determined by the uniform*
7 *division of income for tax purposes act as set forth in K.S.A. 79-3271*
8 *through 79-3293, and amendments thereto;*

9 (D) *the distributive share of partnership income, gain, loss and*
10 *deduction determined under this section as if the partnership were a*
11 *nonresident individual;*

12 (E) *the share of estate or trust income, gain, loss and deduction*
13 *determined under K.S.A. 79-32,137, and amendments thereto;*

14 (F) *prizes won from lottery games conducted by the Kansas lottery;*

15 (G) *any winnings from parimutuel wagering derived from the*
16 *conduct of parimutuel activities within this state; or*

17 (H) *income from intangible personal property, including annuities,*
18 *dividends, interest, and gains from the disposition of intangible personal*
19 *property to the extent that such income is from property employed in a*
20 *trade, business, profession or occupation carried on in Kansas. A*
21 *nonresident, other than a dealer holding property primarily for sale to*
22 *customers in the ordinary course of such dealer's trade or business,*
23 *shall not be deemed to carry on a business, trade, profession or*
24 *occupation in Kansas solely by reason of the purchase and sale of*
25 *property for such nonresident's own account.*

26 (2) *"Modified Kansas source income" does not include:*

27 (A) *Compensation paid by the United States for service in the*
28 *armed forces of the United States, performed during an induction period*
29 *by an individual not domiciled in this state; or*

30 (B) *such individual's share of distributed or undistributed taxable*
31 *income or net operating loss of a corporation which is an electing small*
32 *business corporation unless an agreement is filed as provided in K.S.A.*
33 *79-32,139, and amendments thereto, in which event, the "modified*
34 *Kansas source income" of such nonresident individual shall include*
35 *such individual's share of such corporation's distributed and*
36 *undistributed taxable income or net operating loss as such share is*
37 *determined under the internal revenue code only to the extent, however,*
38 *that such income, gain or loss is at the corporate level, derived from*
39 *sources within Kansas.*

40 Sec. 34. *K.S.A. 59-3404 and K.S.A. 2022 Supp. 58a-411 and 79-*
41 *32,109 are hereby repealed.*

42 Sec. ~~31~~ 35. *This act shall take effect and be in force from and after*
43 *its publication in the statute book.*