

HOUSE BILL No. 2172

AN ACT concerning trusts; enacting the uniform trust decanting act; relating to the power of an authorized fiduciary to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust; authorizing modification of a noncharitable irrevocable trust to provide that the rule against perpetuities is inapplicable; providing that the Kansas uniform statutory rule against perpetuities is inapplicable to trusts under certain circumstances; modifying the definition of resident trust in the Kansas income tax act; amending K.S.A. 59-3404 and K.S.A. 2022 Supp. 58a-411 and 79-32,109 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

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

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

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

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

(c) "Authorized fiduciary" means a:

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

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

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

(d) "Beneficiary" means a person that:

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

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

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

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

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

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

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

(f) "Charitable organization" means a:

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

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

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

(h) "Court" means the district court.

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

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

(k) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or

a reasonably definite standard.

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

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

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

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

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

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

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

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

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

- (A) Occurrence of the specified event;
- (B) satisfaction of the ascertainable standard; or
- (C) passage of the specified time; and

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

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

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

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

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

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

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

(w) "Second trust" means a:

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

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

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

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

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

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

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

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

(bb) "Terms of the trust" means:

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

(A) Expressed in the trust instrument; or

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

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

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

(B) court order; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) construction of terms of the trust; or

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

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

a result of the reliance.

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

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

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

- (1) Each settlor of the first trust, if living or then in existence;
 - (2) each qualified beneficiary of the first trust;
 - (3) each holder of a presently exercisable power of appointment over any part or all of the first trust;
 - (4) each person that currently has the right to remove or replace the authorized fiduciary;
 - (5) each other fiduciary of the first trust;
 - (6) each fiduciary of the second trust;
 - (7) each person acting as an advisor or protector of the first trust;
- and
- (8) the attorney general, if section 14(b), and amendments thereto, applies.

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

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

- (1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power, which shall include a statement as to the authorized fiduciary's reason for the proposed decanting and an explanation as to the differences between the first trust and the second trust or trusts;
- (2) specify the proposed effective date for exercise of the power;
- (3) include a copy of the first-trust instrument;
- (4) include a copy of all second-trust instruments;
- (5) include a statement indicating the capacity in which the intended recipient is being given notice; and
- (6) include a statement that any application under section 9, and amendments thereto, shall be filed within six months from the day notice is given.

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

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

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

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

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

(c) A person with authority to represent and bind another person under a first-trust instrument or the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto, may file an application under

section 9, and amendments thereto, on behalf of the person represented.

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

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

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

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

(3) approve an exercise of the decanting power;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Successor beneficiary" means a beneficiary that is not a

qualified beneficiary on the date the beneficiary's qualification is determined. "Successor beneficiary" does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) "Vested interest" means a:

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

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

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

(D) presently exercisable general power of appointment; or

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

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

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

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

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

(3) reduce or eliminate a vested interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) contain payback provisions complying with reimbursement

requirements of medicaid law under 42 U.S.C. § 1396p(d)(4)(A).

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

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

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

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

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

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

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

- (1) Diminish the charitable interest;
 - (2) diminish the interest of an identified charitable organization that holds the charitable interest;
 - (3) alter any charitable purpose stated in the first-trust instrument;
- or
- (4) alter any condition or restriction related to the charitable interest.

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

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

- (1) Attorney general, after receiving notice under section 7, and amendments thereto, fails to object in a signed record delivered to the authorized fiduciary within the notice period;
- (2) attorney general consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or
- (3) court approves the exercise of the decanting power.

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

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

- (1) The decanting power; or
- (2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

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

- (1) The decanting power; or
- (2) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

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

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

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

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

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

(2) the increase is approved by the court.

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

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

(2) the increase is approved by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument shall not include

or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. § 401(a)(9) and any applicable regulations, or any similar requirements that refer to 26 U.S.C. § 401(a)(9) or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and section 22, and amendments thereto, applies to the separate share.

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

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

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

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

(9) Subject to paragraph (4):

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

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

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

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

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

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

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

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

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

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

New Sec. 22. (a) If exercise of the decanting power would be effective under the uniform trust decanting act except that the second-

trust instrument in part does not comply with the act, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Sec. 28. In applying and construing this uniform act,

consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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

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

Sec. 31. K.S.A. 2022 Supp. 58a-411 is hereby amended to read as follows: 58a-411. (a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an attorney in fact under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. This subsection does not apply to irrevocable trusts created before, or to revocable trusts that became irrevocable before, January 1, 2003.

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

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

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

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

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

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

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

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

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

(i)-a Premarital or postmarital agreement;;

(ii)-a separation or divorce settlement;;

(iii)-a spouse's election;;

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

(v)-a contract to make or not to revoke a will or trust;;

(vi)-a contract to exercise or not to exercise a power of appointment;;

(vii)-a transfer in satisfaction of a duty of support; or

(viii)-a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

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

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

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

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

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

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

(a) (1) Any term used in this act shall have the same meaning as when used in a comparable context in the federal internal revenue code. Any reference in this act to the "federal internal revenue code" shall mean the provisions of the federal internal revenue code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the taxable year.

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

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

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

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

(1) Is administered in this state ~~and that~~;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 35. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House,
and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.