

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 279
3 entitled “An act relating to the Uniform Trust Decanting Act” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

7 Sec. 1. 14A V.S.A. chapter 14 is added to read:

8 CHAPTER 14. UNIFORM TRUST DECANTING ACT

9 § 1401. SHORT TITLE

10 This chapter may be cited as the Uniform Trust Decanting Act.

11 § 1402. DEFINITIONS

12 As used in this chapter:

13 (1) “Appointive property” means the property or property interest
14 subject to a power of appointment.

15 (2) “Ascertainable standard” has the same meaning as in subdivision
16 103(2) of this title.

17 (3) “Authorized fiduciary” means:

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

21 (B) a special fiduciary appointed under section 1409 of this title; or

1 (C) a special-needs fiduciary under section 1413 of this title.

2 (4) “Beneficiary” has the same meaning as in subdivision 103(3) of this
3 title.

4 (5) “Charitable interest” means an interest in a trust that:

5 (A) is held by an identified charitable organization and makes the
6 organization a qualified beneficiary;

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

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

13 (6) “Charitable organization” means:

14 (A) a person, other than an individual, organized and operated
15 exclusively for charitable purposes; or

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

19 (7) “Charitable purpose” means the relief of poverty, the advancement
20 of education or religion, the promotion of health, a municipal or other

1 governmental purpose, or another purpose the achievement of which is
2 beneficial to the community.

3 (8) “Court” means the court in this State having jurisdiction in matters
4 relating to trusts.

5 (9) “Current beneficiary” means a beneficiary that on the date the
6 beneficiary’s qualification is determined is a distributee or permissible
7 distributee of trust income or principal. The term includes the holder of a
8 presently exercisable general power of appointment but does not include a
9 person that is a beneficiary only because the person holds any other power of
10 appointment.

11 (10) “Decanting power” or “the decanting power” means the power of
12 an authorized fiduciary under this chapter to distribute property of a first trust
13 to one or more second trusts or to modify the terms of the first trust.

14 (11) “Expanded distributive discretion” means a discretionary power of
15 distribution that is not limited to an ascertainable standard or a reasonably
16 definite standard.

17 (12) “First trust” means a trust over which an authorized fiduciary may
18 exercise the decanting power.

19 (13) “First-trust instrument” means the trust instrument for a first trust.

1 (14) “General power of appointment” means a power of appointment
2 exercisable in favor of a powerholder, the powerholder’s estate, a creditor of
3 the powerholder, or a creditor of the powerholder’s estate.

4 (15) “Jurisdiction,” with respect to a geographic area, includes a state or
5 country.

6 (16) “Person” has the same meaning as in section 103 of this title.

7 (17) “Power of appointment” means a power that enables a powerholder
8 acting in a nonfiduciary capacity to designate a recipient of an ownership
9 interest in or another power of appointment over the appointive property. The
10 term does not include a power of attorney.

11 (18) “Powerholder” means a person in which a donor creates a power of
12 appointment.

13 (19) “Presently exercisable power of appointment” means a power of
14 appointment exercisable by the powerholder at the relevant time. The term:

15 (A) includes a power of appointment exercisable only after the
16 occurrence of a specified event, the satisfaction of an ascertainable standard, or
17 the passage of a specified time only after:

18 (i) the occurrence of the specified event;

19 (ii) the satisfaction of the ascertainable standard; or

20 (iii) the passage of the specified time; and

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

3 (20) “Qualified beneficiary” has the same meaning as in section 103 of
4 this title.

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

9 (22) “Record” means information that is inscribed on a tangible medium
10 or that is stored in an electronic or other medium and is retrievable in
11 perceivable form.

12 (23) “Second trust” means:

13 (A) a first trust after modification under this chapter; or

14 (B) a trust to which a distribution of property from a first trust is or
15 may be made under this chapter.

16 (24) “Second-trust instrument” means the trust instrument for a second
17 trust.

18 (25) “Settlor” has the same meaning as in section 103 of this title.

19 (26) “Sign” means, with present intent to authenticate or adopt a record:

20 (A) to execute or adopt a tangible symbol; or

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

3 (27) “State” has the same meaning as in subdivision 103(17) of this title.

4 (28) “Terms of the trust” has the same meaning as in subdivision
5 103(18) of this title.

6 (29) “Trust instrument” has the same meaning as in subdivision 103(19)
7 of this title.

8 § 1403. SCOPE

9 (a) Except as otherwise provided in subsections (b) and (c) of this section,
10 this chapter applies to an express trust that is irrevocable or revocable by the
11 settlor only with the consent of the trustee or a person holding an adverse
12 interest.

13 (b) This chapter does not apply to a trust held solely for charitable
14 purposes.

15 (c) Subject to section 1415 of this title, a trust instrument may restrict or
16 prohibit exercise of the decanting power.

17 (d) This chapter does not limit the power of a trustee, powerholder, or other
18 person to distribute or appoint property in further trust or to modify a trust
19 under the trust instrument, law of this State other than this chapter, common
20 law, a court order, or a nonjudicial settlement agreement.

1 (e) This chapter does not affect the ability of a settlor to provide in a trust
2 instrument for the distribution of the trust property or appointment in further
3 trust of the trust property or for modification of the trust instrument.

4 § 1404. FIDUCIARY DUTY

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

8 (b) This chapter does not create or imply a duty to exercise the decanting
9 power or to inform beneficiaries about the applicability of this chapter.

10 (c) Except as otherwise provided in a first-trust instrument, for purposes of
11 this chapter and section 801 and subsection 802(a) of this title, the terms of the
12 first trust are deemed to include the decanting power.

13 § 1405. APPLICATION; GOVERNING LAW

14 This chapter applies to a trust created before, on, or after the effective date
15 of this act that:

16 (1) has its principal place of administration in this State, including a
17 trust whose principal place of administration has been changed to this State; or

18 (2) provides by its trust instrument that it is governed by the law of this
19 State or is governed by the law of this State for the purpose of:

1 (A) administration, including administration of a trust whose
2 governing law for purposes of administration has been changed to the law of
3 this State;

4 (B) construction of terms of the trust; or

5 (C) determining the meaning or effect of terms of the trust.

6 § 1406. REASONABLE RELIANCE

7 A trustee or other person who reasonably relies on the validity of a
8 distribution of part or all of the property of a trust to another trust, or a
9 modification of a trust, under this chapter, law of this State other than this
10 chapter, or the law of another jurisdiction is not liable to any person for any
11 action or failure to act as a result of the reliance.

12 § 1407. NOTICE; EXERCISE OF DECANTING POWER

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

15 (b) Except as otherwise provided in this chapter, an authorized fiduciary
16 may exercise the decanting power without the consent of any person and
17 without court approval.

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

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

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

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

4 (4) each person who currently has the right to remove or replace the
5 authorized fiduciary;

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

7 (6) each fiduciary of the second trust;

8 (7) the Attorney General, if subsection 1414(b) of this title applies; and

9 (8) each person acting as a trust director, as defined in section 1302 of
10 this title, of the first trust.

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

15 (e) A notice under subsection (c) of this section shall:

16 (1) specify the manner in which the authorized fiduciary intends to
17 exercise the decanting power;

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

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

20 (4) include a copy of all second-trust instruments.

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

4 (g) The receipt of notice, waiver of the notice period, or expiration of the
5 notice period does not affect the right of a person to file an application under
6 section 1409 of this title asserting that:

7 (1) an attempted exercise of the decanting power is ineffective because
8 it did not comply with this chapter or was an abuse of discretion or breach of
9 fiduciary duty; or

10 (2) section 1422 of this title applies to the exercise of the decanting
11 power.

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

16 § 1408. REPRESENTATION

17 (a) Notice to a person with authority to represent and bind another person
18 under a first trust instrument or the Vermont Trust Code has the same effect as
19 notice given directly to the person represented.

20 (b) Consent of or waiver by a person with authority to represent and bind
21 another person under a first-trust instrument or the Vermont Trust Code is

1 binding on the person represented unless the person represented objects to the
2 representation before the consent or waiver otherwise would become effective.

3 (c) A person with authority to represent and bind another person under a
4 first-trust instrument or the Vermont Trust Code may file an application under
5 section 1409 of this title on behalf of the person represented.

6 (d) A settlor shall not represent or bind a beneficiary under this chapter
7 unless the settlor represents a minor or unborn child under subdivision 303(6)
8 of this title.

9 § 1409. COURT INVOLVEMENT

10 (a) The court may, upon application of an authorized fiduciary, a person
11 entitled to notice under subsection 1407(c) of this title, a beneficiary, or, with
12 respect to a charitable interest, the Attorney General or another person with
13 standing to enforce the charitable interest:

14 (1) provide instructions to the authorized fiduciary regarding whether a
15 proposed exercise of the decanting power is permitted under this chapter and
16 consistent with the fiduciary duties of the authorized fiduciary;

17 (2) appoint a special fiduciary and authorize the special fiduciary to
18 determine whether the decanting power should be exercised under this chapter
19 and to exercise the decanting power;

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

1 (4) determine that a proposed or attempted exercise of the decanting
2 power is ineffective because:

3 (A) after applying section 1422 of this title, the proposed or
4 attempted exercise does not or did not comply with this chapter; or

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

7 (5) determine the extent to which section 1422 of this title applies to a
8 prior exercise of the decanting power;

9 (6) provide instructions to the trustee regarding the application of
10 section 1422 of this title to a prior exercise of the decanting power; or

11 (7) order other relief to carry out the purposes of this chapter.

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

13 (1) an increase in the fiduciary’s compensation under section 1416 of
14 this title; or

15 (2) a modification under section 1418 of this title of a provision granting
16 a person the right to remove or replace the fiduciary.

17 § 1410. FORMALITIES

18 An exercise of the decanting power shall be made in a record signed by an
19 authorized fiduciary. The signed record shall, directly or by reference to the
20 notice required by section 1407 of this title, identify the first trust and the

1 second trust or trusts and state the property of the first trust being distributed to
2 each second trust and the property, if any, that remains in the first trust.

3 § 1411. DECANTING POWER UNDER EXPANDED DISTRIBUTIVE
4 DISCRETION

5 (a) As used in this section:

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

11 (2) “Presumptive remainder beneficiary” means a qualified beneficiary
12 other than a current beneficiary.

13 (3) “Successor beneficiary” means a beneficiary that is not a qualified
14 beneficiary on the date the beneficiary’s qualification is determined. The term
15 does not include a person that is a beneficiary only because the person holds a
16 nongeneral power of appointment.

17 (4) “Vested interest” means:

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

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

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

7 (D) a presently exercisable general power of appointment; or

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

11 (b) Subject to subsection (c) of this section and section 1414 of this title, an
12 authorized fiduciary that has expanded distributive discretion over the principal
13 of a first trust for the benefit of one or more current beneficiaries may exercise
14 the decanting power over the principal of the first trust.

15 (c) Subject to section 1413 of this title, in an exercise of the decanting
16 power under this section, a second trust shall not:

17 (1) include as a current beneficiary a person who is not a current
18 beneficiary of the first trust, except as otherwise provided in subsection (d) of
19 this section;

20 (2) include as a presumptive remainder beneficiary or successor
21 beneficiary a person who is not a current beneficiary, presumptive remainder

1 beneficiary, or successor beneficiary of the first trust, except as otherwise
2 provided in subsection (d) of this section; or

3 (3) reduce or eliminate a vested interest.

4 (d) Subject to subdivision (c)(3) of this section and section 1414 of this
5 title, in an exercise of the decanting power under this section, a second trust
6 may be a trust created or administered under the law of any jurisdiction and
7 may:

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

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

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

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

18 (e) A power of appointment described in subdivisions (d)(1)–(4) of this
19 section may be general or nongeneral. The class of permissible appointees in
20 favor of which the power may be exercised may be broader than or different
21 from the beneficiaries of the first trust.

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

5 § 1412. DECANTING POWER UNDER LIMITED DISTRIBUTIVE
6 DISCRETION

7 (a) As used in this section, “limited distributive discretion” means a
8 discretionary power of distribution that is limited to an ascertainable standard
9 or a reasonably definite standard.

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

13 (c) Under this section and subject to section 1414 of this title, a second
14 trust may be created or administered under the law of any jurisdiction. Under
15 this section, the second trusts, in the aggregate, shall grant each beneficiary of
16 the first trust beneficial interests that are substantially similar to the beneficial
17 interests of the beneficiary in the first trust.

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

1 (1) the distribution is applied for the benefit of the beneficiary;

2 (2) the beneficiary is under a legal disability or the trustee reasonably
3 believes the beneficiary is incapacitated, and the distribution is made as
4 permitted under the Vermont Trust Code; or

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

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

11 § 1413. TRUST FOR BENEFICIARY WITH DISABILITY

12 (a) As used in this section:

13 (1) “Beneficiary with a disability” means a beneficiary of a first trust
14 who the special-needs fiduciary believes may qualify for governmental
15 benefits based on disability, whether or not the beneficiary currently receives
16 those benefits or is an individual who is subject to a guardianship or a
17 protective arrangement.

18 (2) “Best interests” of a beneficiary with a disability include, without
19 limitation, consideration of the financial impact to the family of the beneficiary
20 who has a disability.

1 (3) “Governmental benefits” means financial aid or services from a
2 state, federal, or other public agency.

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

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

8 (B) if no trustee or fiduciary has discretion under subdivision (A) of
9 this subdivision (4), a trustee or other fiduciary, other than a settlor, who has
10 discretion to distribute part or all of the income of the first trust to one or more
11 current beneficiaries; or

12 (C) if no trustee or fiduciary has discretion under subdivision (A)
13 or (B) of this subdivision (4), a trustee or other fiduciary, other than a settlor,
14 who is required to distribute part or all of the income or principal of the first
15 trust to one or more current beneficiaries.

16 (5) “Special-needs trust” means a trust the trustee believes would not be
17 considered a resource for purposes of determining whether a beneficiary with a
18 disability is eligible for governmental benefits.

19 (b) A special-needs fiduciary may exercise the decanting power under
20 section 1411 of this title over the principal of a first trust as if the fiduciary had

1 authority to distribute principal to a beneficiary with a disability subject to
2 expanded distributive discretion if:

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

5 (2) the special-needs fiduciary determines that exercise of the decanting
6 power will further the purposes of the first trust.

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

9 (1) Notwithstanding subdivision 1411(c)(2) of this title, the interest in
10 the second trust of a beneficiary with a disability may:

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

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

15 (2) Subdivision 1411(c)(3) of this title shall not apply to the interests of
16 the beneficiary with a disability.

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

1 § 1414. PROTECTION OF CHARITABLE INTEREST

2 (a) As used in this section:

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

7 (2) “Unconditional” means not subject to the occurrence of a specified
8 event that is not certain to occur, other than a requirement in a trust instrument
9 that a charitable organization be in existence or qualify under a particular
10 provision of the U.S. Internal Revenue Code of 1986 on the date of the
11 distribution, if the charitable organization meets the requirement on the date of
12 determination.

13 (b) If a first trust contains a determinable charitable interest, the Attorney
14 General shall have the rights of a qualified beneficiary and may represent and
15 bind the charitable interest.

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

18 (1) diminish the charitable interest;

19 (2) diminish the interest of an identified charitable organization that
20 holds the charitable interest;

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

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

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

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

9 (1) the Attorney General, after receiving notice under section 1407 of
10 this title, fails to object in a signed record delivered to the authorized fiduciary
11 within the notice period;

12 (2) the Attorney General consents in a signed record to the second trust
13 or trusts being administered under the law of another jurisdiction; or

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

15 (f) This chapter shall not limit the powers and duties of the Attorney
16 General under the law of this State other than as provided in this chapter.

17 § 1415. TRUST LIMITATION ON DECANTING

18 (a) An authorized fiduciary shall not exercise the decanting power to the
19 extent the first trust instrument expressly prohibits exercise of:

20 (1) the decanting power; or

1 (2) a power granted by State law to the authorized fiduciary to distribute
2 part or all of the principal of the trust to another trust or to modify the trust.

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

5 (1) the decanting power; or

6 (2) a power granted by State law to an authorized fiduciary to distribute
7 part or all of the principal of the trust to another trust or to modify the trust.

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

11 (d) Subject to subsections (a) and (b) of this section, an authorized
12 fiduciary may exercise the decanting power under this chapter even if the first-
13 trust instrument permits the authorized fiduciary or another person to modify
14 the first-trust instrument or to distribute part or all of the principal of
15 the first trust to another trust.

16 (e) If a first-trust instrument contains an express prohibition described in
17 subsection (a) of this section or an express restriction described in
18 subsection (b) of this section, the provision shall be included in the second
19 trust instrument.

1 § 1416. CHANGE IN COMPENSATION

2 (a) If a first-trust instrument specifies an authorized fiduciary’s
3 compensation, the fiduciary shall not exercise the decanting power to increase
4 the fiduciary’s compensation above the specified compensation unless:

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

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

8 (b) If a first-trust instrument does not specify an authorized fiduciary’s
9 compensation, the fiduciary shall not exercise the decanting power to increase
10 the fiduciary’s compensation above the compensation permitted by the
11 Vermont Trust Code unless:

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

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

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

1 § 1417. RELIEF FROM LIABILITY AND INDEMNIFICATION

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

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

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

11 (d) Subject to subsection (c) of this section, a second-trust instrument may
12 divide and reallocate fiduciary powers among fiduciaries, including one or
13 more trustees, distribution advisors, investment advisors, trust protectors, or
14 other persons, and relieve an authorized fiduciary from liability for an act or
15 failure to act of another fiduciary as permitted by the law of this State other
16 than this chapter.

17 § 1418. REMOVAL OR REPLACEMENT OF AUTHORIZED

18 FIDUCIARY

19 An authorized fiduciary shall not exercise the decanting power to modify a
20 provision in a first-trust instrument granting another person power to remove
21 or replace the fiduciary unless:

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

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

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

8 § 1419. TAX-RELATED LIMITATIONS

9 (a) As used in this section:

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

12 (2) “Internal Revenue Code” means the U.S. Internal Revenue Code of
13 1986.

14 (3) “Nongrantor trust” means a trust that is not a grantor trust.

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

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

1 (1) If a first trust contains property that qualified, or would have
2 qualified but for provisions of this chapter other than this section, for a marital
3 deduction for purposes of the gift or estate tax under the Internal Revenue
4 Code or a state gift, estate, or inheritance tax, the second trust instrument shall
5 not include or omit any term that, if included in or omitted from the trust
6 instrument for the trust to which the property was transferred, would have
7 prevented the transfer from qualifying for the deduction, or would have
8 reduced the amount of the deduction, under the same provisions of the Internal
9 Revenue Code or state law under which the transfer qualified.

10 (2) If the first trust contains property that qualified, or would have
11 qualified but for provisions of this chapter other than this section, for a
12 charitable deduction for purposes of the income, gift, or estate tax under the
13 Internal Revenue Code or a state income, gift, estate, or inheritance tax, the
14 second-trust instrument shall not include or omit any term that, if included in
15 or omitted from the trust instrument for the trust to which the property was
16 transferred, would have prevented the transfer from qualifying for the
17 deduction, or would have reduced the amount of the deduction, under the same
18 provisions of the Internal Revenue Code or state law under which the transfer
19 qualified.

20 (3) If the first trust contains property that qualified, or would have
21 qualified but for provisions of this chapter other than this section, for the

1 exclusion from the gift tax described in 26 U.S.C. § 2503(b), the second-trust
2 instrument shall not include or omit a term that, if included in or omitted from
3 the trust instrument for the trust to which the property was transferred, would
4 have prevented the transfer from qualifying under 26 U.S.C. § 2503(b). If the
5 first trust contains property that qualified, or would have qualified but for
6 provisions of this chapter other than this section, for the exclusion from the gift
7 tax described in 26 U.S.C. § 2503(b) by application of 26 U.S.C. § 2503(c), the
8 second-trust instrument shall not include or omit a term that, if included or
9 omitted from the trust instrument for the trust to which the property was
10 transferred, would have prevented the transfer from qualifying under 26 U.S.C.
11 § 2503(c).

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

1 term that prevents the second trust from qualifying as a qualified subchapter-S
2 trust.

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

10 (6) If the first trust is directly or indirectly the beneficiary of qualified
11 benefits property, the second-trust instrument shall not include or omit any
12 term that, if included in or omitted from the first-trust instrument, would have
13 increased the minimum distributions required with respect to the qualified
14 benefits property under 26 U.S.C. § 401(a)(9) and any applicable regulations,
15 or any similar requirements that refer to 26 U.S.C. § 401(a)(9) or any
16 applicable regulations. If an attempted exercise of the decanting power
17 violates this subsection, the trustee is deemed to have held the qualified
18 benefits property and any reinvested distributions of the property as a separate
19 share from the date of the exercise of the power, and section 1422 of this title
20 shall apply to the separate share.

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

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

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

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

17 (9) Subject to subdivision (4) of this subsection:

18 (A) except as otherwise provided in subdivision (7) of this
19 subsection (b), the second trust may be a nongrantor trust, even if the first trust
20 is a grantor trust; and

1 (B) except as otherwise provided in subdivision (10) of this
2 subsection (b), the second trust may be a grantor trust, even if the first trust is a
3 nongrantor trust.

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

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

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

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

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

18 § 1420. DURATION OF SECOND TRUST

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

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

5 § 1421. NEED TO DISTRIBUTE NOT REQUIRED

6 An authorized fiduciary may exercise the decanting power whether or not
7 under the first trust’s discretionary distribution standard the fiduciary would
8 have made or could have been compelled to make a discretionary distribution
9 of principal at the time of the exercise.

10 § 1422. SAVINGS PROVISION

11 (a) If exercise of the decanting power would be effective under this chapter
12 except that the second-trust instrument in part does not comply with this
13 chapter, the exercise of the power is effective and the following rules apply
14 with respect to the principal of the second trust attributable to the exercise of
15 the power:

16 (1) a provision in the second-trust instrument that is not permitted under
17 this chapter is void to the extent necessary to comply with this chapter; and

18 (2) a provision required by this chapter to be in the second-trust
19 instrument that is not contained in the instrument is deemed to be included in
20 the instrument to the extent necessary to comply with this chapter.

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

4 § 1423. TRUST FOR CARE OF ANIMAL

5 (a) As used in this section:

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

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

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

15 (c) A protector for an animal has the rights under this chapter of a qualified
16 beneficiary.

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

1 § 1424. TERMS OF SECOND TRUST

2 A reference in the Vermont Trust Code to a trust instrument or terms of the
3 trust includes a second-trust instrument and the terms of the second trust.

4 § 1425. SETTLOR

5 (a) For purposes of the law of this State other than this chapter and subject
6 to subsection (b) of this section, a settlor of a first trust is deemed to be the
7 settlor of the second trust with respect to the portion of the principal of the first
8 trust subject to the exercise of the decanting power.

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

12 § 1426. LATER-DISCOVERED PROPERTY

13 (a) Except as otherwise provided in subsection (c) of this section, if
14 exercise of the decanting power was intended to distribute all the principal of
15 the first trust to one or more second trusts, later discovered property belonging
16 to the first trust and property paid to or acquired by the first trust after the
17 exercise of the power is part of the trust estate of the second trust or trusts.

18 (b) Except as otherwise provided in subsection (c) of this section, if
19 exercise of the decanting power was intended to distribute less than all the
20 principal of the first trust to one or more second trusts, later-discovered

1 property belonging to the first trust or property paid to or acquired by the first
2 trust after exercise of the power remains part of the trust estate of the first trust.

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

7 § 1427. OBLIGATIONS

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

11 § 1428. UNIFORMITY OF APPLICATION AND CONSTRUCTION

12 In applying and construing this Uniform Act, consideration shall be given to
13 the need to promote uniformity of the law with respect to its subject matter
14 among states that enact it.

15 § 1429. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

16 NATIONAL COMMERCE ACT

17 This chapter modifies, limits, or supersedes the Electronic Signatures in
18 Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not
19 modify, limit, or supersede subsection 101(c) of that act, 15 U.S.C. § 7001(c),
20 or authorize electronic delivery of any of the notices described in subsection
21 103(b) of that act, 15 U.S.C. § 7003(b).

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2024.

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7 (Committee vote: _____)

8

9

Representative _____

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FOR THE COMMITTEE