

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
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**MEMORANDUM**

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 13, 2023

Subject: Bill Brief on HB 2172

House Bill 2172 enacts the uniform trust decanting act.

Section 1 names the act, and Section 2 provides the definitions to be used throughout the act. “Decanting power” means the power of an authorized fiduciary under the act to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust. Section 3 describes the applicability of the act and addresses the types of trust the act applies to and does not apply to.

Section 4 requires an authorized fiduciary to act in accordance with fiduciary duties. The act does not create or imply a duty to exercise the decanting power or inform beneficiaries about the act. The terms of the first trust are deemed to include the decanting power except as provided in the instrument.

Section 5 applies the act to a trust created before, on, or after July 1, 2023, that (1) has its principal place of administration in this state or (2) provides that it is governed by the law of this state for the purpose of administration, construction of terms or determining the meaning or effect of the terms of the trust.

Section 6 provides that a person who reasonably relies on the validity of a distribution to another trust or a modification of a trust under the act is not liable to any person for any action or failure to act as a result of the reliance.

Section 7 provides the notice requirements for decanting. An authorized fiduciary may exercise the decanting power without the consent of any person and without court approval. The fiduciary shall give notice of intent to exercise the decanting power to certain individuals not later than 60 days before the exercise. The fiduciary is not required to give notice to a person who is not known to the fiduciary or cannot be located after reasonable diligence. Subsection (e) provides

the contents required in the notice. People may waive the notice requirements in a signed record. An exercise of decanting power is not ineffective because of the failure to give notice if the fiduciary acted with reasonable care to provide notice.

Section 8 provides that notice to a person with authority to represent another person has the same effect as notice. Consent of or waiver by a person with authority to represent and bind another person is binding on the person represented unless the person represented objects to the representation before the consent or waiver would become effective. A person with authority to represent and bind another person may file an application under Section 9. A settlor shall not represent or bind a beneficiary under the act.

Section 9 describes the authority of the court with respect to decanting. The actions listed in the section may be taken by the court on application of an authorized fiduciary, a person entitled to notice, a beneficiary or, for a charitable interest, the attorney general or another person with standing to enforce the charitable interest.

Section 10 requires that an exercise of the decanting power shall be made in a record signed by an authorized fiduciary. The record shall identify the first trust and second trust or trusts and state the property being distributed to each second trust or remaining in the first trust.

Section 11 delineates the decanting power when the authorized fiduciary has expanded distributive discretion over the principal of a first trust and Section 12 delineates the decanting power when the authorized fiduciary has limited distributive discretion.

Section 13 contains rules to facilitate decanting into a special-needs trust for a beneficiary with a disability. The act allows a trust to be decanted to modify the interest of the beneficiary with a disability, even if the trustee does not have expanded distributive discretion. When a trust has a beneficiary with a disability, it allows the trust to be restructured into a special-needs trust.

Section 14 provides rules to prevent diminishing a charitable interest. If the first trust contains a determinable charitable interest, the attorney general has the rights of a qualified beneficiary and may represent the trust. This section provides limitations for the second trust or trusts when the first trust contains a charitable interest.

Section 15 provides limitations on exercising the decanting power. A first-trust instrument may restrict the decanting power.

Section 16 provides that a fiduciary shall not exercise the decanting power to increase their compensation unless certain criteria are met. If the first-trust instrument does not specify a fiduciary's compensation, the decanting power cannot be exercised to increase compensation above the compensation permitted by the Kansas uniform trust code unless certain criteria are met.

Section 17 restricts use of the decanting power to increase the authorized fiduciary's protection from liability.

Section 18 restricts use of the decanting power to modify a provision granting another person power to remove or replace the fiduciary unless certain criteria are met.

Section 19 imposes limitations on the decanting power that might be necessary to avoid disqualifying a trust for a particular tax benefit. Section 20 addresses limits on the duration of a second trust.

Section 21 provides that an authorized fiduciary may exercise the decanting power even if the first trust's discretionary distribution standard would not have allowed the fiduciary to make a discretionary distribution at the time of exercise.

Section 22 provides that if the exercise of the decanting power would be effective under the act except that the second-trust instrument does not comply with the act, the exercise of power is effective, and it provides rules for exercising that power.

Section 23 provides that the decanting power may be exercised over an animal trust that has a protector to the extent that the trust could be decanted under the act if each animal that benefits were an individual, if the protector consents in a signed record to the exercise of power. A protector for an animal has the rights of a beneficiary. If the first trust is an animal trust, 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.

Section 24 provides that a reference in the trust code to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust. Section 25 provides that 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.

Section 26 provides general rules for the disposition of later-discovered property. 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.

Section 27 provides that 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.

Section 28 provides that consideration shall be given to uniformity in applying the act. Section 29 provides that the act modifies certain parts of the electronic signatures in global and national commerce act. Section 30 provides that it is the intent of the legislature that the provisions of the act are severable.