SENATE DOCKET, NO. 1707 FILED ON: 1/18/2019

SENATE . . . . . No. 896

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the Massachusetts Uniform Trust Decanting Act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia Stone Creem	*First Middlesex and Norfolk*

SENATE DOCKET, NO. 1707 FILED ON: 1/18/2019

SENATE . . . . . No. 896

By Ms. Creem, a petition (accompanied by bill, Senate, No. 896) of Cynthia Stone Creem for legislation relative to the Massachusetts Uniform Trust Decanting Act. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the Massachusetts Uniform Trust Decanting Act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Article 1 of Chapter 203E of the General Laws is hereby amended by striking out Section 103, as so appearing, and inserting in place thereof the following section:-

Section 103. Definitions.

In this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Action", with respect to an act of a trustee, includes a failure to act.

"Ascertainable standard", a standard relating to an individual's health, education, support or maintenance.

"Beneficiary", a person who has a present or future beneficial interest in a trust, vested or contingent.

11 “Charitable trust”, a trust, or portion of a trust, created for a charitable purpose described
12 in subsection (a) of section 405.

13 “Environmental law”, a federal, state or local law, rule, regulation or ordinance relating
14 to protection of the environment.

15 “Interests of the beneficiaries”, the beneficial interests provided in the terms of the trust.

16 “Jurisdiction”, a geographic area, including a state or country.

17 “Person”, an individual, corporation, business trust, estate, trust, partnership, limited
18 liability company, association, joint venture, government, governmental subdivision, agency or
19 instrumentality, public corporation or any other legal or commercial entity.

20 “Property”, anything that may be the subject of ownership, whether real, personal, legal,
21 equitable or any interest therein.

22 “Qualified beneficiary”, a beneficiary who, on the date the beneficiary’s qualification is
23 determined:

24 (i) is a distributee or permissible distributee of trust income or principal;

25 (ii) would be a distributee or permissible distributee of trust income or principal if the
26 interests of the distributees described in clause (i) terminated on that date without causing the
27 trust to terminate; or

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

30 “Revocable”, a trust that is revocable by the settlor without the consent of the trustee or a
31 person holding an adverse interest.

32 “Settlor”, a person, including a testator, who creates or contributes property to a trust. If
33 more than one person creates or contributes property to a trust, each person is a settlor of the
34 portion of the trust property attributable to that person’s contribution except to the extent another
35 person has the power to revoke or withdraw that portion.

36 “Spendthrift provision”, a term of a trust which restrains transfer of a beneficiary’s
37 interest.

38 “State”, a state of the United States, the District of Columbia, Puerto Rico, the United
39 States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
40 United States, including an Indian tribe or band recognized by federal law or formally
41 acknowledged by a state.

42 “Terms of a trust”:

43 (i) except as otherwise provided in clause (ii), the manifestation of the settlor’s intent
44 regarding a trust’s provisions as expressed in the trust instrument or established by other
45 evidence that would be admissible in a judicial proceeding; or

46 (ii) the trust’s provisions as established, determined, or amended by a trustee or other
47 person in accordance with applicable law, a court order, or a non-judicial settlement agreement
48 under section 111.

49 “Trust instrument”, an instrument that contains terms of the trust, including any
50 amendments thereto.

51 “Trustee”, an original, additional or successor trustee or a co-trustee.

52 SECTION 2. Said Article 1 of Chapter 203E of the General Laws is hereby further
53 amended by striking out section 110, as so appearing, and inserting in place thereof the following
54 section:-

55 Section 110. Others treated as qualified beneficiaries

56 (a) Whenever notice to qualified beneficiaries of a trust is required under this chapter, the
57 trustee shall also give notice to any other beneficiary who has sent the trustee a request for
58 notice.

59 (b) A charitable organization expressly designated to receive distributions under the
60 terms of a charitable trust shall have the rights of a qualified beneficiary under this chapter if, on
61 the date the charitable organization’s qualification is being determined, the charitable
62 organization:

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

64 (2) would be a distributee or permissible distributee of trust income or principal upon the
65 termination of the interests of other distributees or permissible distributees then receiving or
66 eligible to receive distributions; or

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

69 (c) A person appointed to enforce a trust created for the care of an animal or other non-
70 charitable purpose, as provided in sections 408 and 409, shall have the rights of a qualified
71 beneficiary under this chapter.

72 SECTION 3. Said Chapter 203E of the General Laws is hereby further amended by
73 inserting after Article 8 the following article:-

74 ARTICLE 9

75 MASSACHUSETTS UNIFORM TRUST DECANTING ACT

76 Section 901. Short title

77 This article shall be known and may be cited as the Massachusetts Uniform Trust
78 Decanting Act.

79 Section 902. Definitions

80 In this article the following words shall, unless the context clearly requires otherwise,
81 have the following meanings:-

82 "Appointive property", the property or property interest subject to a power of
83 appointment.

84 "Authorized fiduciary":

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

88 (ii) a special fiduciary appointed under section 909; or

89 (iii) a special-needs fiduciary under section 913.

90 “Beneficiary”, for purposes of this article, includes an identified charitable organization
91 that will or may receive distributions under the terms of the trust.

92 “Charitable interest”, an interest in a trust which:

93 (i) is held by an identified charitable organization and makes the organization a qualified
94 beneficiary;

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

97 (iii) is held solely for charitable purposes described in subsection (a) of section 405 and,
98 if the interest were held by an identified charitable organization, would make the organization a
99 qualified beneficiary.

100 “Current beneficiary”:

101 (i) a beneficiary who, on the date the beneficiary’s qualification is determined, is a
102 distributee or permissible distributee of trust income or principal; or

103 (ii) a holder of a presently exercisable general power of appointment.

104 “Decanting power”, the power of an authorized fiduciary under this article to distribute
105 property of a first trust to one or more second trusts or to modify the terms of the first trust.

106 “Expanded distributive discretion”, a discretionary power of distribution that is not
107 limited to an ascertainable standard or a reasonably definite standard.

108 “First trust”, a trust over which an authorized fiduciary may exercise the decanting
109 power.

110 “First-trust instrument”, the trust instrument for a first trust.

111 “General power of appointment”, a power of appointment exercisable in favor of a
112 powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the
113 powerholder’s estate.

114 “Power of appointment”, a power (other than a power of attorney) that enables a
115 powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in
116 or another power of appointment over the appointive property.

117 “Powerholder”, a person in which a donor creates a power of appointment.

118 “Presently exercisable power of appointment”, a power of appointment exercisable by the
119 powerholder at the relevant time. The term:

120 (i) includes a power of appointment exercisable only after the occurrence of a specified
121 event, the satisfaction of an ascertainable standard, or the passage of a specified time only after
122 (a) the occurrence of the specified event, (b) the satisfaction of the ascertainable standard, or (c)
123 the passage of the specified time; and

124 (ii) does not include a power exercisable only at the powerholder’s death.

125 “Reasonably definite standard” means a clearly measurable standard under which a
126 holder of a power of distribution is legally accountable within the meaning of subsection
127 (b)(5)(A) of section 674 of the Internal Revenue Code and any applicable regulations.

128 “Record” means information that is inscribed on a tangible medium or that is stored in an
129 electronic or other medium and is retrievable in perceivable form.

130 “Second trust”:

131 (i) a first trust after modification under this article; or

132 (ii) a trust to which a distribution of property from a first trust is or may be made under
133 this article.

134 “Second-trust instrument”, the trust instrument for a second trust.

135 “Sign” means, with present intent to authenticate or adopt a record:

136 (i) to execute or adopt a tangible symbol; or

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

139 Section 903. Scope

140 (a) Except as otherwise provided in subsections (b) and (c), this article applies to an
141 express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or
142 a person holding an adverse interest.

143 (b) This article does not apply to a trust held solely for charitable purposes described in
144 subsection (a) of section 405.

145 (c) Subject to section 915, a trust instrument may restrict or prohibit exercise of the
146 decanting power.

147 (d) This article does not limit the power of a trustee, powerholder, or other person to
148 distribute or appoint property in further trust or to modify a trust under the trust instrument, law

149 of the commonwealth other than this article, common law, a court order, or a non-judicial
150 settlement agreement.

151 (e) This article does not affect the ability of a settlor to provide in a trust instrument for
152 the distribution of the trust property or appointment in further trust of the trust property or for
153 modification of the trust instrument.

154 Section 904. Fiduciary duty

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

158 (b) This article does not create or imply a duty to exercise the decanting power or to
159 inform beneficiaries about the applicability of this article.

160 (c) Except as otherwise provided in a first-trust instrument, for purposes of this article
161 and sections 801 and 802(a), the terms of the first trust are deemed to include the decanting
162 power.

163 Section 905. Application; governing law

164 This article applies to a trust created before, on, or after the effective date of this article
165 which has its principal place of administration in the commonwealth.

166 Section 906. Reasonable reliance

167 A trustee or other person that reasonably relies on the validity of a distribution of part or
168 all of the property of a trust to another trust, or a modification of a trust, under this article, law of

169 the commonwealth other than this article, or the law of another jurisdiction is not liable to any
170 person for any action or failure to act as a result of the reliance.

171 Section 907. Notice; exercise of decanting power

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

174 (b) Except as otherwise provided in this article, an authorized fiduciary may exercise the
175 decanting power without the consent of any person and without court approval.

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

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

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

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

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

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

185 (6) each fiduciary of the second trust; and

186 (7) the attorney general, if subsection (b) of section 914 applies.

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

190 (e) A notice under subsection (c) must:

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

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

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

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

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

198 (g) The receipt of notice, waiver of the notice period, or expiration of the notice period
199 does not affect the right of a person to file an application under section 909 asserting that:

200 (1) an attempted exercise of the decanting power is ineffective because it did not comply
201 with this article or was an abuse of discretion or breach of fiduciary duty; or

202 (2) section 922 applies to the exercise of the decanting power.

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

206 Section 908. [Reserved]

207 Section 909. Court involvement

208 (a) On application of an authorized fiduciary, a person entitled to notice under subsection
209 (c) of section 907, a beneficiary, or with respect to a charitable interest the attorney general or
210 other person that has standing to enforce the charitable interest, the court may:

211 (1) provide instructions to the authorized fiduciary regarding whether a proposed exercise
212 of the decanting power is permitted under this article and consistent with the fiduciary duties of
213 the authorized fiduciary;

214 (2) appoint a special fiduciary and authorize the special fiduciary to determine whether
215 the decanting power should be exercised under this article and to exercise the decanting power;

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

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

219 (A) after applying section 922, the proposed or attempted exercise does not or did not
220 comply with this article; or

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

223 (5) determine the extent to which section 922 applies to a prior exercise of the decanting
224 power;

225 (6) provide instructions to the trustee regarding the application of section 922 to a prior
226 exercise of the decanting power; or

227 (7) order other relief to carry out the purposes of this article.

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

229 (1) an increase in the fiduciary's compensation under section 916;

230 (2) a modification of fiduciary liability under section 917; or

231 (3) a modification under section 918 of a provision granting a person the right to remove
232 or replace the fiduciary.

233 Section 910. Formalities

234 An exercise of the decanting power must be made in a record signed by an authorized
235 fiduciary. The signed record must, directly or by reference to the notice required by section 917,
236 identify the first trust and the second trust or trusts and state the property of the first trust being
237 distributed to each second trust and the property, if any, that remains in the first trust.

238 Section 911. Decanting power under expanded distributive discretion

239 (a) In this section:

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

244 (2) “Presumptive remainder beneficiary” means a qualified beneficiary other than a
245 current beneficiary.

246 (3) “Successor beneficiary” means a beneficiary who is not a qualified beneficiary on the
247 date the beneficiary’s qualification is determined.

248 (4) “Vested interest” means:

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

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

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

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

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

260 (b) Subject to subsection (c) and section 914, an authorized fiduciary who has expanded
261 distributive discretion over the principal of a first trust for the benefit of one or more current
262 beneficiaries may exercise the decanting power over the principal of the first trust.

263 (c) Subject to section 913, in an exercise of the decanting power under this section, a
264 second trust may not:

265 (1) include as a current beneficiary a person who is not a current beneficiary of the first
266 trust or include as a current beneficiary with respect to trust principal a person who is a current
267 beneficiary of the first trust only with respect to trust income, except as otherwise provided in
268 subsection (d);

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

272 (3) reduce or eliminate a vested interest.

273 (d) Subject to subsection (c)(3) and section 914, in an exercise of the decanting power
274 under this section, a second trust may be a trust created or administered under the law of any
275 jurisdiction and may:

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

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

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

282 (4) create or modify a power of appointment if the powerholder is a presumptive
283 remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power

284 may take effect only after the powerholder becomes, or would have become if then living, a
285 current beneficiary.

286 (e) A power of appointment described in subsection (d)(1) through (4) may be general or
287 nongeneral. The class of permissible appointees in favor of which the power may be exercised
288 may be broader than or different from the beneficiaries of the first trust.

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

293 Section 912. Decanting power under limited distributive discretion

294 (a) In this section, "limited distributive discretion" means a discretionary power of
295 distribution that is limited to an ascertainable standard or a reasonably definite standard.

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

299 (c) Under this section and subject to section 914, a second trust may be created or
300 administered under the law of any jurisdiction. Under this section, the second trusts, in the
301 aggregate, must grant each beneficiary of the first trust beneficial interests which are
302 substantially similar to the beneficial interests of the beneficiary in the first trust.

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

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

307 (2) the beneficiary is under a legal disability or the trustee reasonably believes the
308 beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

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

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

314 Section 913. Trust for beneficiary with disability

315 (a) In this section:

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

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

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

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

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

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

332 (4) “Special-needs trust” means a trust the trustee believes would not be considered a
333 resource for purposes of determining whether a beneficiary with a disability is eligible for any
334 governmental benefit.

335 (b) A special-needs fiduciary may exercise the decanting power under section 911 over
336 the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary
337 with a disability subject to expanded distributive discretion if:

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

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

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

343 (1) Notwithstanding subsection (c)(2) of section 911, the interest in the second trust of a
344 beneficiary with a disability may:

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

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

349 (2) Subsection (c)(3) of section 911 does not apply to the interests of the beneficiary with
350 a disability.

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

355 Section 914. Protection of charitable interest

356 (a) In this section:

357 (1) "Determinable charitable interest" means a charitable interest that is a right to a
358 mandatory distribution currently, periodically, on the occurrence of a specified event, or after the
359 passage of a specified time and which is unconditional or will be held solely for charitable
360 purposes described in subsection (a) of section 405.

361 (2) "Unconditional" means not subject to the occurrence of a specified event that is not
362 certain to occur, other than a requirement in a trust instrument that a charitable organization be in
363 existence or qualify under a particular provision of the Internal Revenue Code of the United

364 States on the date of the distribution, if the charitable organization meets the requirement on the
365 date of determination.

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

368 (c) This article does not limit the powers and duties of the attorney general under law of
369 the commonwealth other than this article.

370 Section 915. Trust limitation on decanting

371 (a) An authorized fiduciary may not exercise the decanting power to the extent the first-
372 trust instrument expressly prohibits exercise of:

373 (1) the decanting power; or

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

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

378 (1) the decanting power; or

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

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

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

388 (e) If a first-trust instrument contains an express prohibition described in subsection (a) or
389 an express restriction described in subsection (b), the provision must be included in the second-
390 trust instrument.

391 Section 916. Change in compensation

392 (a) If a first-trust instrument specifies an authorized fiduciary's compensation, the
393 fiduciary may not exercise the decanting power to increase the fiduciary's compensation above
394 the specified compensation unless:

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

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

398 (b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the
399 fiduciary may not exercise the decanting power to increase the fiduciary's compensation above
400 the compensation permitted by this chapter unless:

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

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

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

407 Section 917. Relief from liability and indemnification

408 (a) Except as otherwise provided in this section or approved by the court, a second-trust
409 instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater
410 extent than the first-trust instrument.

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

415 (c) Except as approved by the court, a second-trust instrument may not reduce fiduciary
416 liability in the aggregate.

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

422 Section 918. Removal or replacement of authorized fiduciary

423 An authorized fiduciary may not exercise the decanting power to modify a provision in a
424 first-trust instrument granting another person power to remove or replace the fiduciary unless:

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

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

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

432 Section 919. Tax-related limitations

433 (a) In this section:

434 (1) "Grantor trust" means a trust as to which a settlor of a first trust is considered the
435 owner under sections 671 through 677 or section 679 of the Internal Revenue Code.

436 (2) "Internal Revenue Code" means the Internal Revenue Code of the United States as
437 amended and as then in effect, and references to a specific provision of the Internal Revenue
438 Code are intended to include a successor provision of the same general effect.

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

440 (4) "Qualified benefits property" means property subject to the minimum distribution
441 requirements of section 401(a)(9) of the Internal Revenue Code, and any applicable regulations,
442 or to any similar requirements that refer thereto.

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

444 (1) If a first trust contains property that qualified, or would have qualified but for
445 provisions of this article other than this section, for a marital deduction for purposes of the gift or
446 estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-
447 trust instrument must not include or omit any term that, if included in or omitted from the trust
448 instrument for the trust to which the property was transferred, would have prevented the transfer
449 from qualifying for the deduction, or would have reduced the amount of the deduction, under the
450 same provisions of the Internal Revenue Code or state law under which the transfer qualified.

451 (2) If the first trust contains property that qualified, or would have qualified but for
452 provisions of this article other than this section, for a charitable deduction for purposes of the
453 income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or
454 inheritance tax, the second-trust instrument must not include or omit any term that, if included in
455 or omitted from the trust instrument for the trust to which the property was transferred, would
456 have prevented the transfer from qualifying for the deduction, or would have reduced the amount
457 of the deduction, under the same provisions of the Internal Revenue Code or state law under
458 which the transfer qualified.

459 (3) If the first trust contains property that qualified, or would have qualified but for
460 provisions of this article other than this section, for the exclusion from the gift tax described in
461 section 2503(b) of the Internal Revenue Code, the second-trust instrument must not include or
462 omit a term that, if included in or omitted from the trust instrument for the trust to which the
463 property was transferred, would have prevented the transfer from qualifying under such section.
464 If the first trust contains property that qualified, or would have qualified but for provisions of this
465 article other than this section, for the exclusion from the gift tax described in section 2503(b) of
466 the Internal Revenue Code by application of section 2503(c) of the Internal Revenue Code, the

467 second-trust instrument must not include or omit a term that, if included or omitted from the trust
468 instrument for the trust to which the property was transferred, would have prevented the transfer
469 from qualifying under section 2503(c) of the Internal Revenue Code.

470 (4) If the property of the first trust includes shares of stock in an S corporation, as defined
471 in section 1361 of the Internal Revenue Code and the first trust is, or but for provisions of this
472 article other than this section would be, a permitted shareholder under any provision of section
473 1361 of the Internal Revenue Code, an authorized fiduciary may exercise the power with respect
474 to part or all of the S corporation stock only if any second trust receiving the stock is a permitted
475 shareholder under section 1361(c)(2) of the Internal Revenue Code. If the property of the first
476 trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this
477 article other than this section would be, a qualified subchapter S trust within the meaning of
478 section 1361(d) of the Internal Revenue Code, the second-trust instrument must not include or
479 omit a term that prevents the second trust from qualifying as a qualified subchapter S trust.

480 (5) If the first trust contains property that qualified, or would have qualified but for
481 provisions of this article other than this section, for a zero inclusion ratio for purposes of the
482 generation-skipping transfer tax under section 2642(c) of the Internal Revenue Code, the second-
483 trust instrument must not include or omit a term that, if included in or omitted from the first-trust
484 instrument, would have prevented the transfer to the first trust from qualifying for a zero
485 inclusion ratio under such section.

486 (6) If the first trust is directly or indirectly the beneficiary of qualified benefits property,
487 the second-trust instrument may not include or omit any term that, if included in or omitted from
488 the first-trust instrument, would have increased the minimum distributions required with respect

489 to the qualified benefits property under section 401(a)(9) of the Internal Revenue Code and any
490 applicable regulations, or any similar requirements that refer thereto. If an attempted exercise of
491 the decanting power violates the preceding sentence, the trustee is deemed to have held the
492 qualified benefits property and any reinvested distributions of the property as a separate share
493 from the date of the exercise of the power and section 922 applies to the separate share.

494 (7) If the first trust qualifies as a grantor trust because of the application of section
495 672(f)(2)(A) of the Internal Revenue Code, the second trust may not include or omit a term that,
496 if included in or omitted from the first-trust instrument, would have prevented the first trust from
497 qualifying under such section.

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

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

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

507 (9) Subject to subsection (4):

508 (A) except as otherwise provided in subsection (7), the second trust may be a nongrantor
509 trust, even if the first trust is a grantor trust; and

510 (B) the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

511 Section 920. Duration of second trust

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

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

517 Section 921. Need to distribute not required

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

521 Section 922. Saving provision

522 (a) If exercise of the decanting power would be effective under this article except that the
523 second-trust instrument in part does not comply with this article, the exercise of the power is
524 effective and the following rules apply with respect to the principal of the second trust
525 attributable to the exercise of the power:

526 (1) A provision in the second-trust instrument which is not permitted under this article is
527 void to the extent necessary to comply with this article.

528 (2) A provision required by this article to be in the second-trust instrument which is not
529 contained in the instrument is deemed to be included in the instrument to the extent necessary to
530 comply with this article.

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

534 Section 923. Trust for care of an animal

535 (a) In this section:

536 (1) "Animal trust" means a trust or an interest in a trust described in section 408.

537 (2) "Protector" means the person who may enforce the intended use of the principal or
538 income of an animal trust under subsection (f) of section 408.

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

542 (c) Notwithstanding any other provision of this article, if a first trust is an animal trust, in
543 an exercise of the decanting power, the second trust must provide that trust property may be
544 applied only to its intended purpose for the period the first trust benefitted the animal.

545 Section 924. Terms of second trust

546 A reference in this chapter to a trust instrument or terms of the trust includes a second-
547 trust instrument and the terms of the second trust.

548 Section 925. Settlor

549 (a) For purposes of law of the commonwealth other than this article and subject to
550 subsection (b), a settlor of a first trust is deemed to be the settlor of the second trust with respect
551 to the portion of the principal of the first trust subject to the exercise of the decanting power.

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

554 Section 926. Later-discovered and later-acquired property

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

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

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

566 Section 927. Obligations

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

570 SECTION 4. This act shall take effect on January 1, 2020.