

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

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 establishing the Massachusetts Uniform Trust Decanting Act.

PETITION OF:

NAME:

Barry R. Finegold

DISTRICT/ADDRESS:

Second Essex and Middlesex

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 977 OF 2023-2024.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act establishing 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:

1 SECTION 1. Section 103 of article 1 of chapter 203E of the General Laws, as appearing
2 in the 2022 Official Edition, is hereby amended by striking out the definition of “Qualified
3 beneficiary” and inserting in place thereof the following definition:-

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

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

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

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

12 SECTION 2. Said section 103 of said article 1 of said chapter 203E, as so appearing, is
13 hereby further amended by striking out the definition of “Terms of a trust” and inserting in place
14 thereof the following definition:-

15 “Terms of a trust”:

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

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

22 SECTION 3. Section 110 of said Article 1 of said chapter 203E, as so appearing, is
23 hereby further amended by striking out subsection (b) and inserting in place thereof the
24 following subsection:-

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

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

30 (ii) would be a distributee or permissible distributee of trust income or principal upon the
31 termination of the interests of other distributees or permissible distributees then receiving or
32 eligible to receive distributions; or

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

35 SECTION 4. Said Chapter 203E of the General Laws is hereby further amended by
36 inserting after Article 8 the following article:-

37 ARTICLE 9. Massachusetts Uniform Trust Decanting Act

38 Section 901. Short title

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

41 Section 902. Definitions

42 As used in this article the following words shall have the following meanings unless the
43 context clearly requires otherwise:-

44 “Appointive property”, a property or property interest subject to a power of appointment.

45 “Authorized fiduciary”:

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

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

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

51 “Beneficiary”, includes an identified charitable organization that will or may receive
52 distributions under the terms of the trust.

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

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

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

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

61 “Current beneficiary”:

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

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

65 “Decanting power”, the power of an authorized fiduciary under this article to distribute
66 property of a first trust to 1 or more second trusts or to modify the terms of the first trust.

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

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

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

72 “General power of appointment”, a power of appointment exercisable in favor of a
73 powerholder, the powerholder’s estate, a creditor of the powerholder or a creditor of the
74 powerholder’s estate.

75 “Power of appointment”, a power, other than a power of attorney, that enables a
76 powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in
77 or another power of appointment over the appointive property.

78 “Powerholder”, a person in whom a donor creates a power of appointment.

79 “Presently exercisable power of appointment”, a power of appointment exercisable by the
80 powerholder at the relevant time; provided, however, that a presently exercisable power of
81 appointment:

82 (i) shall include a power of appointment exercisable only after the occurrence of a
83 specified event, the satisfaction of an ascertainable standard or the passage of a specified time
84 only after: (A) the occurrence of the specified event; (B) the satisfaction of the ascertainable
85 standard; or (C) the passage of the specified time; and

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

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

90 “Record”, information that is inscribed on a tangible medium or that is stored in an
91 electronic or other medium and is retrievable in perceivable form.

92 “Second trust”:

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

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

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

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

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

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

101 Section 903. Scope

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

105 (b) This article shall not apply to a trust held solely for charitable purposes described in
106 subsection (a) of section 405.

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

109 (d) This article shall not limit the power of a trustee, powerholder or other person to
110 distribute or appoint property in further trust or to modify a trust under the trust instrument, law
111 of the commonwealth other than this article, common law, a court order or a non-judicial
112 settlement agreement.

113 (e) This article shall not affect the ability of a settlor to provide in a trust instrument for
114 the distribution of the trust property or appointment in further trust of the trust property or for
115 modification of the trust instrument.

116 Section 904. Fiduciary duty

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

120 (b) This article shall not be construed to create or imply a duty to exercise the decanting
121 power or to inform beneficiaries about the applicability of this article.

122 (c) Except as otherwise provided in a first-trust instrument, for purposes of this article
123 and sections 801 and 802(a) of article 8, the terms of the first trust shall be deemed to include the
124 decanting power.

125 Section 905. Application; governing law

126 This article shall apply to a trust created before, on or after the effective date of this
127 article which has its principal place of administration in the commonwealth.

128 Section 906. Reasonable reliance

129 A trustee or other person that reasonably relies on the validity of a distribution of part or
130 all of the property of a trust to another trust, or a modification of a trust, under this article, law of
131 the commonwealth other than this article or the law of another jurisdiction is not liable to any
132 person for any action or failure to act as a result of the reliance.

133 Section 907. Notice; exercise of decanting power

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

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

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

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

142 (ii) each qualified beneficiary of the first trust;

143 (iii) each holder of a presently exercisable power of appointment over any part or all of
144 the first trust;

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

- 146 (v) each other fiduciary of the first trust;
- 147 (vi) each fiduciary of the second trust; and
- 148 (vii) the attorney general, if subsection (b) of section 914 applies.

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

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

153 (i) specify the manner in which the authorized fiduciary intends to exercise the decanting
154 power;

155 (ii) specify the proposed effective date for exercise of the power;

156 (iii) include a copy of the first-trust instrument; and

157 (iv) include a copy of all second-trust instruments.

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

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

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

164 (ii) section 922 applies to the exercise of the decanting power.

165 (h) An exercise of the decanting power shall not be deemed ineffective because of the
166 failure to give notice to 1 or more persons under subsection (c) if the authorized fiduciary acted
167 with reasonable care to comply with subsection (c).

168 Section 908. [Reserved]

169 Section 909. Court involvement

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

173 (i) provide instructions to the authorized fiduciary regarding whether a proposed exercise
174 of the decanting power is permitted under this article and consistent with the fiduciary duties of
175 the authorized fiduciary;

176 (ii) appoint a special fiduciary and authorize the special fiduciary to determine whether
177 the decanting power should be exercised under this article and to exercise the decanting power;

178 (iii) approve an exercise of the decanting power;

179 (iv) determine that a proposed or attempted exercise of the decanting power is ineffective
180 because:

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

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

185 (v) determine the extent to which section 922 applies to a prior exercise of the decanting
186 power;

187 (vi) provide instructions to the trustee regarding the application of section 922 to a prior
188 exercise of the decanting power; or

189 (vii) order other relief to carry out the purposes of this article.

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

191 (i) an increase in the fiduciary's compensation under section 916;

192 (ii) a modification of fiduciary liability under section 917; or

193 (iii) a modification under section 918 of a provision granting a person the right to remove
194 or replace the fiduciary.

195 Section 910. Formalities

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

200 Section 911. Decanting power under expanded distributive discretion

201 (a) For purposes of this section, the following terms shall have the following meanings
202 unless the context clearly requires otherwise:

203 “Noncontingent right”, a right that is not subject to the exercise of discretion or the
204 occurrence of a specified event that is not certain to occur; provided, however, that the term
205 “noncontingent right” shall not include a right held by a beneficiary if any person has discretion
206 to distribute property subject to the right to any person other than the beneficiary or the
207 beneficiary’s estate.

208 “Presumptive remainder beneficiary”, a qualified beneficiary other than a current
209 beneficiary.

210 “Successor beneficiary”, a beneficiary who is not a qualified beneficiary on the date the
211 beneficiary’s qualification is determined.

212 “Vested interest”:

213 (i) a right to a mandatory distribution that is a noncontingent right as of the date of the
214 exercise of the decanting power;

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

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

220 (iv) a presently exercisable general power of appointment; or

221 (v) a right to receive an ascertainable part of the trust property on the trust’s termination
222 which is not subject to the exercise of discretion or to the occurrence of a specified event that is
223 not certain to occur.

224 (b) Subject to subsection (c) and section 914, an authorized fiduciary who has expanded
225 distributive discretion over the principal of a first trust for the benefit of 1 or more current
226 beneficiaries may exercise the decanting power over the principal of the first trust.

227 (c) Subject to section 913, in an exercise of the decanting power under this section, a
228 second trust shall not:

229 (i) include as a current beneficiary a person who is not a current beneficiary of the first
230 trust or include as a current beneficiary with respect to trust principal a person who is a current
231 beneficiary of the first trust only with respect to trust income, except as otherwise provided in
232 subsection (d);

233 (ii) include as a presumptive remainder beneficiary or successor beneficiary a person who
234 is not a current beneficiary, presumptive remainder beneficiary or successor beneficiary of the
235 first trust, except as otherwise provided in subsection (d); or

236 (iii) reduce or eliminate a vested interest.

237 (d) Subject to clause (iii) of subsection (c) and section 914, in an exercise of the
238 decanting power under this section, a second trust may be a trust created or administered under
239 the law of any jurisdiction and may:

240 (i) retain a power of appointment granted in the first trust;

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

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

246 (iv) create or modify a power of appointment if the powerholder is a presumptive
247 remainder beneficiary or successor beneficiary of the first trust; provided, however, that the
248 exercise of the power may take effect only after the powerholder becomes, or would have
249 become if then living, a current beneficiary.

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

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

257 Section 912. Decanting power under limited distributive discretion

258 (a) In this section, “limited distributive discretion” shall mean a discretionary power of
259 distribution that is limited to an ascertainable standard or a reasonably definite standard.

260 (b) An authorized fiduciary who has limited distributive discretion over the principal of
261 the first trust for the benefit of 1 or more current beneficiaries may exercise the decanting power
262 over the principal of the first trust.

263 (c) Under this section and subject to section 914, a second trust may be created or
264 administered under the law of any jurisdiction. Under this section, the second trusts, in the
265 aggregate, shall grant each beneficiary of the first trust beneficial interests which are
266 substantially similar to the beneficial interests of the beneficiary in the first trust.

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

270 (i) the distribution is applied for the benefit of the beneficiary;

271 (ii) the beneficiary is under a legal disability or the trustee reasonably believes the
272 beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

273 (iii) the distribution is made as permitted under the terms of the first-trust instrument and
274 the second-trust instrument for the benefit of the beneficiary.

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

279 Section 913. Trust for beneficiary with disability

280 For the purposes of this section, the following terms shall have the following meanings
281 unless the context clearly requires otherwise:

282 “Beneficiary with a disability”, a beneficiary of a first trust who the special-needs
283 fiduciary believes may qualify for governmental benefits based on disability, whether or not the

284 beneficiary currently receives those benefits or is an individual who has been adjudicated
285 incompetent.

286 “Governmental benefits”, financial aid or services from a state, federal or other public
287 agency.

288 “Special-needs fiduciary”, with respect to a trust that has a beneficiary with a disability:

289 (i) a trustee or other fiduciary, other than a settlor, who has discretion to distribute part or
290 all of the principal of a first trust to 1 or more current beneficiaries;

291 (ii) if no trustee or fiduciary has discretion under clause (i), a trustee or other fiduciary,
292 other than a settlor, who has discretion to distribute part or all of the income of the first trust to 1
293 or more current beneficiaries; or

294 (iii) if no trustee or fiduciary has discretion under clause (i) or (ii), a trustee or other
295 fiduciary, other than a settlor, who is required to distribute part or all of the income or principal
296 of the first trust to one or more current beneficiaries.

297 “Special-needs trust”, a trust which the trustee believes would not be considered a
298 resource for purposes of determining whether a beneficiary with a disability is eligible for any
299 governmental benefit.

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

303 (i) a second trust is a special-needs trust that benefits the beneficiary with a disability;
304 and

305 (ii) the special-needs fiduciary determines that exercise of the decanting power will
306 further the purposes of the first trust.

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

309 (1) Notwithstanding clause (ii) of subsection (c) of section 911, the interest in the second
310 trust of a beneficiary with a disability may:

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

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

315 (2) Clause (iii) of subsection (c) of section 911 shall not apply to the interests of the
316 beneficiary with a disability.

317 (3) Except as affected by any change to the interests of the beneficiary with a disability,
318 the second trust, or if there are 2 or more second trusts, the second trusts in the aggregate shall
319 grant each other beneficiary of the first trust beneficial interests in the second trusts which are
320 substantially similar to the beneficiary's beneficial interests in the first trust.

321 Section 914. Protection of charitable interest

322 (a) For the purposes of this section, the following terms shall have the following
323 meanings unless the context clearly requires otherwise:

324 “Determinable charitable interest”, a charitable interest that is a right to a mandatory
325 distribution currently, periodically, on the occurrence of a specified event or after the passage of
326 a specified time and which is unconditional or will be held solely for charitable purposes
327 described in subsection (a) of section 405.

328 (2) “Unconditional”, not subject to the occurrence of a specified event that is not certain
329 to occur, other than a requirement in a trust instrument that a charitable organization be in
330 existence or qualify under a particular provision of the Internal Revenue Code of the United
331 States on the date of the distribution, if the charitable organization meets the requirement on the
332 date of determination.

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

335 (c) This article shall not be construed to limit the powers or duties of the attorney general
336 under law of the commonwealth other than this article.

337 Section 915. Trust limitation on decanting

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

340 (i) the decanting power; or

341 (ii) a power granted by state law to the fiduciary to distribute part or all of the principal of
342 the trust to another trust or to modify the trust.

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

345 (i) the decanting power; or

346 (ii) a power granted by state law to a fiduciary to distribute part or all of the principal of
347 the trust to another trust or to modify the trust.

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

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

355 (e) If a first-trust instrument contains an express prohibition described in subsection (a) or
356 an express restriction described in subsection (b), the provision shall be included in the second-
357 trust instrument.

358 Section 916. Change in compensation

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

362 (i) all qualified beneficiaries of the second trust consent to the increase in a signed record;
363 or

364 (ii) the increase is approved by the court.

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

368 (i) all qualified beneficiaries of the second trust consent to the increase in a signed record;

369 or

370 (ii) the increase is approved by the court.

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

374 Section 917. Relief from liability and indemnification

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

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

382 (c) Except as approved by the court, a second-trust instrument shall not reduce fiduciary
383 liability in the aggregate.

384 (d) Subject to subsection (c), a second-trust instrument may divide and reallocate
385 fiduciary powers among fiduciaries, including 1 or more trustees, distribution advisors,

386 investment advisors, trust protectors or other persons and relieve a fiduciary from liability for an
387 act or failure to act of another fiduciary as permitted by law of the commonwealth other than this
388 article.

389 Section 918. Removal or replacement of authorized fiduciary

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

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

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

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

399 Section 919. Tax-related limitations

400 (a) For the purposes of this section, the following terms shall have the following
401 meanings unless the context clearly requires otherwise:

402 “Grantor trust”, a trust to which a settlor of a first trust is considered the owner under
403 sections 671 through 677, inclusive, or section 679 of the Internal Revenue Code.

404 “Internal Revenue Code”, the Internal Revenue Code of the United States as amended
405 and as then in effect; provided, however, that references to a specific provision of the Internal
406 Revenue Code shall include a successor provision of the same general effect.

407 “Nongrantor trust”, a trust that is not a grantor trust.

408 “Qualified benefits property”, property subject to the minimum distribution requirements
409 of section 401(a)(9) of the Internal Revenue Code and any applicable regulations, or to any
410 similar requirements that refer thereto.

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

412 (1) If a first trust contains property that qualified, or would have qualified but for
413 provisions of this article other than this section, for a marital deduction for purposes of the gift or
414 estate tax under the Internal Revenue Code or a state gift, estate or inheritance tax, the second-
415 trust instrument shall not include or omit any term that, if included in or omitted from the trust
416 instrument for the trust to which the property was transferred, would have prevented the transfer
417 from qualifying for the deduction or would have reduced the amount of the deduction under the
418 same provisions of the Internal Revenue Code or state law under which the transfer qualified.

419 (2) If the first trust contains property that qualified, or would have qualified but for
420 provisions of this article other than this section, for a charitable deduction for purposes of the
421 income, gift or estate tax under the Internal Revenue Code or a state income, gift, estate or
422 inheritance tax, the second-trust instrument shall not include or omit any term that, if included in
423 or omitted from the trust instrument for the trust to which the property was transferred, would
424 have prevented the transfer from qualifying for the deduction or would have reduced the amount

425 of the deduction under the same provisions of the Internal Revenue Code or state law under
426 which the transfer qualified.

427 (3) If the first trust contains property that qualified, or would have qualified but for
428 provisions of this article other than this section, for the exclusion from the gift tax described in
429 section 2503(b) of the Internal Revenue Code, the second-trust instrument shall not include or
430 omit a term that, if included in or omitted from the trust instrument for the trust to which the
431 property was transferred, would have prevented the transfer from qualifying under such section.
432 If the first trust contains property that qualified, or would have qualified but for provisions of this
433 article other than this section, for the exclusion from the gift tax described in section 2503(b) of
434 the Internal Revenue Code by application of section 2503(c) of the Internal Revenue Code, the
435 second-trust instrument shall not include or omit a term that, if included or omitted from the trust
436 instrument for the trust to which the property was transferred, would have prevented the transfer
437 from qualifying under section 2503(c) of the Internal Revenue Code.

438 (4) If the property of the first trust includes shares of stock in an S corporation, as defined
439 in section 1361 of the Internal Revenue Code and the first trust is, or but for provisions of this
440 article other than this section would be, a permitted shareholder under any provision of section
441 1361 of the Internal Revenue Code, an authorized fiduciary may exercise the power with respect
442 to part or all of the S corporation stock only if any second trust receiving the stock is a permitted
443 shareholder under section 1361(c)(2) of the Internal Revenue Code. If the property of the first
444 trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this
445 article other than this section would be, a qualified subchapter S trust within the meaning of
446 section 1361(d) of the Internal Revenue Code, the second-trust instrument shall not include or
447 omit a term that prevents the second trust from qualifying as a qualified subchapter S trust.

448 (5) If the first trust contains property that qualified, or would have qualified but for
449 provisions of this article other than this section, for a 0 inclusion ratio for purposes of the
450 generation-skipping transfer tax under section 2642(c) of the Internal Revenue Code, the second-
451 trust instrument shall not include or omit a term that, if included in or omitted from the first-trust
452 instrument, would have prevented the transfer to the first trust from qualifying for a 0 inclusion
453 ratio under such section.

454 (6) If the first trust is directly or indirectly the beneficiary of qualified benefits property,
455 the second-trust instrument shall not include or omit any term that, if included in or omitted from
456 the first-trust instrument, would have increased the minimum distributions required with respect
457 to the qualified benefits property under section 401(a)(9) of the Internal Revenue Code and any
458 applicable regulations or any similar requirements that refer thereto. If an attempted exercise of
459 the decanting power violates the preceding sentence, the trustee shall be deemed to have held the
460 qualified benefits property and any reinvested distributions of the property as a separate share
461 from the date of the exercise of the power and section 922 shall apply to the separate share.

462 (7) If the first trust qualifies as a grantor trust because of the application of section
463 672(f)(2)(A) of the Internal Revenue Code, the second trust shall not include or omit a term that,
464 if included in or omitted from the first-trust instrument, would have prevented the first trust from
465 qualifying under such section.

466 (8) In this paragraph, “tax benefit” shall mean a federal or state tax deduction, exemption,
467 exclusion or other benefit not otherwise listed in this section, except for a benefit arising from
468 being a grantor trust. Subject to paragraph (9), a second-trust instrument shall not include or omit

469 a term that, if included in or omitted from the first-trust instrument, would have prevented
470 qualification for a tax benefit if:

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

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

475 (9) Subject to paragraph (4):

476 (i) except as otherwise provided in paragraph (7), the second trust may be a nongrantor
477 trust, even if the first trust is a grantor trust; and

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

479 Section 920. Duration of second trust

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

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

485 Section 921. Need to distribute not required

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

489 Section 922. Saving provision

490 (a) If exercise of the decanting power would be effective under this article except that the
491 second-trust instrument in part does not comply with this article, the exercise of the power shall
492 be effective and the following rules shall apply with respect to the principal of the second trust
493 attributable to the exercise of the power:

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

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

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

502 Section 923. Trust for care of an animal

503 (a) For purposes of this section, the following terms shall have the following meanings
504 unless the context clearly requires otherwise:

505 "Animal trust", a trust or an interest in a trust described in section 408.

506 "Protector", the person who may enforce the intended use of the principal or income of
507 an animal trust under subsection (f) of section 408.

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

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

514 Section 924. Terms of second trust

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

517 Section 925. Settlor

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

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

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

524 (a) Except as otherwise provided in subsection (c), if exercise of the decanting power was
525 intended to distribute all the principal of the first trust to 1 or more second trusts, later-
526 discovered property belonging to the first trust and property paid to or acquired by the first trust
527 after the exercise of the power shall be part of the trust estate of the second trust or trusts.

528 (b) Except as otherwise provided in subsection (c), if exercise of the decanting power was
529 intended to distribute less than all of the principal of the first trust to 1 or more second trusts,
530 later-discovered property belonging to the first trust or property paid to or acquired by the first
531 trust after exercise of the power shall remain part of the trust estate of the first trust.

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

535 Section 927. Obligations

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

539 SECTION 5. This act shall take effect on January 1, 2026.