



Senate

General Assembly

File No. 503

February Session, 2024

Substitute Senate Bill No. 272

Senate, April 16, 2024

The Committee on Judiciary reported through SEN. WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING ADOPTION OF THE CONNECTICUT
UNIFORM TRUST DECANTING ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2025*) The provisions of this
2 section and sections 2 to 30, inclusive, of this act may be cited as the
3 "Connecticut Uniform Trust Decanting Act".

4 Sec. 2. (NEW) (*Effective January 1, 2025*) As used in this section and
5 sections 3 to 30, inclusive, of this act:

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

8 (2) "Ascertainable standard" has the same meaning as provided in
9 section 45a-499c of the general statutes.

10 (3) "Authorized fiduciary" means: (A) A trustee or other fiduciary,
11 other than a settlor or a beneficiary, that has discretion to distribute or
12 direct a trustee to distribute part or all of the principal of the first trust

13 to one or more current beneficiaries; (B) a special fiduciary appointed
14 under section 9 of this act; or (C) a special-needs fiduciary described
15 under section 13 of this act.

16 (4) "Beneficiary" means a person that: (A) Is a "beneficiary" as defined
17 in section 45a-499c of the general statutes; or (B) is an identified
18 charitable organization that will or may receive distributions under the
19 terms of the trust.

20 (5) "Charitable interest" means an interest in a trust that: (A) Is held
21 by an identified charitable organization and makes the organization a
22 qualified beneficiary; (B) benefits only charitable organizations and, if
23 the interest were held by an identified charitable organization, would
24 make the organization a qualified beneficiary; or (C) is held solely for
25 charitable purposes and, if the interest were held by an identified
26 charitable organization, would make the organization a qualified
27 beneficiary.

28 (6) "Charitable organization" means: (A) A person, other than an
29 individual, organized and operated exclusively for charitable purposes;
30 or (B) a government or governmental subdivision, agency or
31 instrumentality, to the extent it holds funds exclusively for a charitable
32 purpose.

33 (7) "Charitable purpose" means the relief of poverty, the
34 advancement of education or religion, the promotion of health, a
35 municipal or other governmental purpose or another purpose the
36 achievement of which is beneficial to the community and consistent
37 with the provisions of sections 45a-499z, 45a-514 and 47-2 of the general
38 statutes.

39 (8) "Court" has the same meaning as provided in section 45a-499c of
40 the general statutes.

41 (9) "Current beneficiary" has the same meaning as provided in section
42 45a-499c of the general statutes. "Current beneficiary" includes the
43 holder of a presently exercisable general power of appointment but does

44 not include a person that is a beneficiary only because the person holds
45 any other power of appointment.

46 (10) "Decanting power" means the power of an authorized fiduciary
47 under this section and sections 3 to 30, inclusive, of this act, to distribute
48 property of a first trust to one or more second trusts or to modify the
49 terms of the first trust.

50 (11) "Expanded distributive discretion" means a discretionary power
51 of distribution that is not limited to an ascertainable standard or a
52 reasonably definite standard.

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

55 (13) "First-trust instrument" means the trust instrument for a first
56 trust.

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

60 (15) "Jurisdiction" has the same meaning as provided in section 45a-
61 499c of the general statutes.

62 (16) "Noncontingent right" means a right that is not subject to the
63 exercise of discretion or the occurrence of a specified event that is not
64 certain to occur. "Noncontingent right" does not include a right held by
65 a beneficiary if any person has discretion to distribute property subject
66 to the right to any person other than the beneficiary or the beneficiary's
67 estate.

68 (17) "Person" has the same meaning as provided in section 45a-499c
69 of the general statutes.

70 (18) "Power of appointment" means a power that enables a
71 powerholder acting in a nonfiduciary capacity to designate a recipient
72 of an ownership interest in or another power of appointment over the

73 appointive property. "Power of appointment" does not include a power
74 of attorney.

75 (19) "Powerholder" means a person in which a donor creates a power
76 of appointment.

77 (20) "Presently exercisable power of appointment" means a power of
78 appointment exercisable by the powerholder at the relevant time.
79 "Presently exercisable power of appointment": (A) Includes a power of
80 appointment exercisable only after the occurrence of a specified event,
81 the satisfaction of an ascertainable standard or the passage of a specified
82 time only after the: (i) Occurrence of the specified event; (ii) satisfaction
83 of the ascertainable standard; or (iii) passage of the specified time; and
84 (B) does not include a power exercisable only at the powerholder's
85 death.

86 (21) "Qualified beneficiary" has the same meaning as provided in
87 section 45a-499c of the general statutes.

88 (22) "Presumptive remainder beneficiary" means a qualified
89 beneficiary other than a current beneficiary.

90 (23) "Reasonably definite standard" means a clearly measurable
91 standard under which a holder of a power of distribution is legally
92 accountable within the meaning of Section 674(b)(5)(A) of the Internal
93 Revenue Code of 1986, or any subsequent corresponding internal
94 revenue code of the United States, as amended from time to time, and
95 the regulations thereunder.

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

99 (25) "Second trust" means: (A) A first trust after modification under
100 this section and sections 3 to 30, inclusive, of this act; or (B) a trust to
101 which a distribution of property from a first trust is or may be made
102 under this section and sections 3 to 30, inclusive, of this act.

103 (26) "Second-trust instrument" means the trust instrument for a
104 second trust.

105 (27) "Settlor" has the same meaning as provided in section 45a-499c
106 of the general statutes, except as otherwise provided in section 25 of this
107 act.

108 (28) "Sign" means, with present intent to authenticate or adopt a
109 record: (A) To execute or adopt a tangible symbol; or (B) to attach to or
110 logically associate with the record an electronic symbol, sound or
111 process.

112 (29) "State" has the same meaning as provided in section 45a-499c of
113 the general statutes.

114 (30) "Successor beneficiary" means a beneficiary that is not a qualified
115 beneficiary on the date the beneficiary's qualification is determined.
116 "Successor beneficiary" does not include a person that is a beneficiary
117 only because the person holds a nongeneral power of appointment.

118 (31) "Terms of the trust" has the same meaning as provided in section
119 45a-499c of the general statutes.

120 (32) "Testamentary trust" has the same meaning as provided in
121 section 45a- 499c of the general statutes.

122 (33) "Trust director" has the same meaning as provided in section 45a-
123 499c of the general statutes.

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

127 (35) "Vested interest" means a: (A) Right to a mandatory distribution
128 that is a noncontingent right as of the date of the exercise of the
129 decanting power; (B) current and noncontingent right, annually or more
130 frequently, to a mandatory distribution of income, a specified dollar
131 amount or a percentage of value of some or all of the trust property; (C)

132 current and noncontingent right, annually or more frequently, to
133 withdraw income, a specified dollar amount or a percentage of value of
134 some or all of the trust property; (D) presently exercisable general power
135 of appointment; or (E) right to receive an ascertainable part of the trust
136 property on the trust's termination that is not subject to the exercise of
137 discretion or to the occurrence of a specified event that is not certain to
138 occur.

139 Sec. 3. (NEW) (*Effective January 1, 2025*) (a) Except as provided in
140 subsections (b) to (e), inclusive, of this section, sections 1 to 30, inclusive,
141 of this act apply to an express trust that is irrevocable, whether
142 testamentary or inter vivos, or revocable by the settlor only with the
143 consent of the trustee or a person holding an adverse interest.

144 (b) Sections 1 to 30, inclusive, of this act do not apply to a trust held
145 solely for charitable purposes.

146 (c) Sections 1 to 30, inclusive, of this act do not apply to statutory
147 trusts created pursuant to chapter 615 of the general statutes.

148 (d) Subject to the provisions of section 15 of this act, a trust instrument
149 may restrict or prohibit exercise of the decanting power.

150 (e) No provision of sections 1 to 30, inclusive, of this act, as such
151 provision may be applied to a trust established pursuant to and in
152 compliance with 42 USC 1396p(d)(4), as amended from time to time,
153 shall be interpreted in a manner that is inconsistent with, or that
154 contravenes, the provisions of federal law, nor shall any court having
155 jurisdiction over any such trust issue an order, judgment, decree or
156 ruling, that is inconsistent with, or that contravenes, the provisions of
157 federal law.

158 (f) Sections 1 to 30, inclusive, of this act do not limit the power of a
159 trustee, powerholder or other person to distribute or appoint property
160 in further trust or to modify a trust under the trust instrument, law of
161 this state other than sections 1 to 30, inclusive, of this act, common law,
162 a court order or a nonjudicial settlement agreement under section 45a-

163 499k of the general statutes.

164 (g) Sections 1 to 30, inclusive, of this act do not affect the ability of a
165 settlor to provide in a trust instrument for the distribution of the trust
166 property or appointment in further trust of the trust property or for
167 modification of the trust instrument.

168 Sec. 4. (NEW) (*Effective January 1, 2025*) (a) In exercising the decanting
169 power, an authorized fiduciary shall act in accordance with its fiduciary
170 duties, including the duty to act in accordance with the purposes of the
171 first trust.

172 (b) Sections 1 to 30, inclusive, of this act do not create or imply a duty
173 to exercise the decanting power or to inform beneficiaries about the
174 applicability of the provisions of the Connecticut Uniform Trust
175 Decanting Act.

176 (c) Except as provided in a first-trust instrument, for purposes of
177 sections 1 to 30, inclusive, of this act and section 45a-499aaa of the
178 general statutes and subsection (a) of section 45a-499bbb of the general
179 statutes, the terms of the first trust are deemed to include the decanting
180 power.

181 Sec. 5. (NEW) (*Effective January 1, 2025*) Sections 1 to 30, inclusive, of
182 this act apply to any trust whether established before, on or after
183 January 1, 2025, that: (1) Has its principal place of administration in this
184 state, including a trust whose principal place of administration has been
185 changed to this state; or (2) provides by its trust instrument that it is
186 governed by the law of this state or is governed by the law of this state
187 for the purpose of: (A) Administration, including administration of a
188 trust whose governing law for purposes of administration has been
189 changed to the law of this state; (B) construction of terms of the trust; or
190 (C) determining the meaning or effect of terms of the trust.

191 Sec. 6. (NEW) (*Effective January 1, 2025*) A trustee or other person that
192 reasonably relies on the validity of a distribution of part or all of the
193 property of a trust to another trust, or a modification of a trust, under

194 sections 1 to 30, inclusive, of this act, law of this state other than sections
195 1 to 30, inclusive, of this act or the law of another jurisdiction is not liable
196 to any person for any action or failure to act as a result of the reliance.

197 Sec. 7. (NEW) (*Effective January 1, 2025*) (a) Except as provided in
198 sections 1 to 30, inclusive, of this act, an authorized fiduciary may
199 exercise the decanting power without the consent of any person and
200 without court approval.

201 (b) Except as provided in subsection (d) of this section, an authorized
202 fiduciary shall give notice in a record of the intended exercise of the
203 decanting power not later than sixty days before the exercise to: (1) Each
204 settlor of the first trust, if living or then in existence; (2) each qualified
205 beneficiary of the first trust; (3) each holder of a presently exercisable
206 power of appointment over any part or all of the first trust; (4) each
207 person that currently has the right to remove or replace the authorized
208 fiduciary; (5) each other fiduciary of the first trust; (6) each fiduciary of
209 the second trust; (7) the Attorney General, if a first trust contains a
210 determinable charitable interest, as defined in section 14 of this act; and
211 (8) the Attorney General and the Department of Social Services if a first
212 trust is a trust established pursuant to and in compliance with 42 USC
213 1396p(d)(4)(A) or (C).

214 (c) A notice under subsection (b) of this section shall: (1) Specify the
215 manner in which the authorized fiduciary intends to exercise the
216 decanting power; (2) specify the proposed effective date for exercise of
217 the power; (3) include a copy of the first-trust instrument; and (4)
218 include a copy of all second-trust instruments.

219 (d) The decanting power may be exercised before the expiration of
220 the period of sixty days from the giving of notice under subsection (b)
221 of this section if all persons entitled to receive notice waive the period
222 in a signed record.

223 (e) The receipt of notice, waiver of the notice period or expiration of
224 the notice period does not affect the right of a person to file a petition
225 under section 9 of this act asserting that: (1) An attempted exercise of the

226 decanting power is ineffective because it did not comply with sections 1
227 to 30, inclusive, of this act or was an abuse of discretion or breach of
228 fiduciary duty; or (2) section 22 of this act applies to the exercise of the
229 decanting power.

230 (f) An exercise of the decanting power shall not be ineffective because
231 of the failure to give notice to one or more persons under subsection (b)
232 of this section if the authorized fiduciary provided notice in accordance
233 with section 45a-499i of the general statutes, as amended by this act.
234 Notwithstanding the provisions of this subsection, in the case of
235 provision of notice to the Attorney General under subdivision (7) or (8)
236 of subsection (b) of this section, the exercise of decanting power shall
237 not be effective unless the authorized fiduciary has a confirmed
238 electronic mail delivery notification or certified mail receipt indicating
239 that delivery was made to the Attorney General.

240 Sec. 8. (NEW) (*Effective January 1, 2025*) (a) Notice to a person with
241 authority to represent and bind another person under a first-trust
242 instrument or the Connecticut Uniform Trust Code has the same effect
243 as notice given directly to the person represented.

244 (b) Consent of or waiver by a person with authority to represent and
245 bind another person under a first-trust instrument or the Connecticut
246 Uniform Trust Code is binding on the person represented unless the
247 person represented objects to the representation before the consent or
248 waiver otherwise would become effective.

249 (c) A person with authority to represent and bind another person
250 under a first-trust instrument or the Connecticut Uniform Trust Code
251 may file a petition under section 9 of this act on behalf of the person
252 represented.

253 (d) A settlor may not represent or bind a beneficiary under sections 1
254 to 30, inclusive, of this act.

255 Sec. 9. (NEW) (*Effective January 1, 2025*) (a) Upon a petition by an
256 authorized fiduciary, a person entitled to notice under subsection (b) of

257 section 7 of this act, a beneficiary or, with respect to a charitable interest
258 the Attorney General or other person that has standing to enforce the
259 charitable interest, the court may: (1) Provide instructions to the
260 authorized fiduciary regarding whether a proposed exercise of the
261 decanting power is permitted under sections 1 to 30, inclusive, of this
262 act and consistent with the fiduciary duties of the authorized fiduciary;
263 (2) appoint a special fiduciary and authorize the special fiduciary to
264 determine whether the decanting power should be exercised under
265 sections 1 to 30, inclusive, of this act and to exercise the decanting
266 power; (3) approve an exercise of the decanting power; (4) determine
267 that a proposed or attempted exercise of the decanting power is
268 ineffective because: (A) After applying section 22 of this act, the
269 proposed or attempted exercise does not or did not comply with
270 sections 1 to 30, inclusive, of this act; or (B) the proposed or attempted
271 exercise would be or was an abuse of the fiduciary's discretion or a
272 breach of fiduciary duty; (5) determine the extent to which section 22 of
273 this act applies to a prior exercise of the decanting power; (6) provide
274 instructions to the trustee regarding the application of section 22 of this
275 act to a prior exercise of the decanting power; or (7) order other relief to
276 carry out the purposes of sections 1 to 30, inclusive, of this act.

277 (b) Upon a petition by an authorized fiduciary, the court may
278 approve: (1) An increase in the fiduciary's compensation under section
279 16 of this act; or (2) a modification under section 18 of this act of a
280 provision granting a person the right to remove or replace the fiduciary.

281 (c) With respect to a testamentary trust, to be effective, an exercise of
282 the decanting power shall be approved in advance by the Probate Court
283 upon petition by an authorized fiduciary.

284 (d) If the first trust in a proposed exercise of the decanting power
285 contains a determinable charitable interest, as defined in section 14 of
286 this act, an authorized fiduciary shall be barred from exercising the
287 decanting power during the pendency of a petition under subsection (a)
288 of this section, unless otherwise ordered by the court.

289 Sec. 10. (NEW) (Effective January 1, 2025) An exercise of the decanting

290 power shall be made in a record signed by an authorized fiduciary. The
291 signed record shall, directly or by reference to the notice required by
292 section 7 of this act, identify the first trust and the second trust or trusts
293 and state the property of the first trust being distributed to each second
294 trust and the property, if any, that remains in the first trust.

295 Sec. 11. (NEW) (*Effective January 1, 2025*) (a) Subject to subsection (b)
296 of this section and section 14 of this act, an authorized fiduciary that has
297 expanded distributive discretion over the principal of a first trust for the
298 benefit of one or more current beneficiaries may exercise the decanting
299 power over the principal of the first trust.

300 (b) Subject to section 13 of this act, in an exercise of the decanting
301 power under this section, a second trust may not: (1) Include as a current
302 beneficiary a person who is not a current beneficiary of the first trust,
303 except as provided in subsection (d) of this section; (2) include as a
304 presumptive remainder beneficiary or successor beneficiary a person
305 who is not a current beneficiary, presumptive remainder beneficiary or
306 successor beneficiary of the first trust, except as provided in subsection
307 (c) of this section; or (3) reduce or eliminate a vested interest.

308 (c) Subject to subdivision (3) of subsection (b) of this section and
309 section 14 of this act, in an exercise of the decanting power under this
310 section, a second trust may be a trust created or administered under the
311 law of any jurisdiction and may: (1) Reduce or eliminate the interest of
312 any current beneficiary, presumptive remainder beneficiary or
313 successor beneficiary in the first trust, other than a vested interest; (2)
314 retain a power of appointment granted in the first trust; (3) omit a power
315 of appointment granted in the first trust, other than a presently
316 exercisable general power of appointment; (4) create or modify a power
317 of appointment if the powerholder is a current beneficiary of the first
318 trust and the authorized fiduciary has expanded distributive discretion
319 to distribute principal to the beneficiary; and (5) create or modify a
320 power of appointment if the powerholder is a presumptive remainder
321 beneficiary or successor beneficiary of the first trust, but the exercise of
322 the power may take effect only after the powerholder becomes, or

323 would have become if then living, a current beneficiary.

324 (d) A power of appointment described in subdivisions (2) to (5),
325 inclusive, of subsection (c) of this section, may be general or nongeneral.
326 The class of permissible appointees in favor of which the power may be
327 exercised may be broader than or different from the beneficiaries of the
328 first trust.

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

334 Sec. 12. (NEW) (*Effective January 1, 2025*) (a) As used in this section,
335 "limited distributive discretion" means a discretionary power of
336 distribution that is limited to an ascertainable standard or a reasonably
337 definite standard.

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

342 (c) In an exercise of the decanting power under this section, a second
343 trust may not: (1) Have different current beneficiaries, presumptive
344 remainder beneficiaries or successor beneficiaries from the first trust; (2)
345 modify the limited distributive discretion standard from the first trust,
346 except as provided in subsection (d) of this section; (3) modify a power
347 of appointment granted in the first trust; or (4) reduce or eliminate a
348 vested interest.

349 (d) Subject to subdivision (4) of subsection (c) of this section and
350 section 14 of this act, in an exercise of the decanting power under this
351 section, a second trust may be a trust created or administered under the
352 law of any jurisdiction and if the second trust extends the term of the
353 first trust in accordance with section 20 of this act, the second trust may,

354 with respect to any period after the first trust would have otherwise
355 terminated under the provisions of the first trust, modify the limited
356 distributive discretion standard in the first trust including to expanded
357 distributive discretion standard.

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

362 Sec. 13. (NEW) (*Effective January 1, 2025*) (a) As used in this section:

363 (1) "Beneficiary with a disability" means a beneficiary of a first trust
364 who the special-needs fiduciary believes may qualify for governmental
365 benefits based on disability, whether or not the beneficiary currently
366 receives such benefits or is an individual who has been adjudicated
367 incapable.

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

370 (3) "Special-needs fiduciary" means, with respect to a trust that has a
371 beneficiary with a disability: (A) A trustee or other fiduciary, other than
372 a settlor, who has discretion to distribute part or all of the principal of a
373 first trust to one or more current beneficiaries; (B) if no trustee or
374 fiduciary has discretion under subparagraph (A) of this subdivision, a
375 trustee or other fiduciary, other than a settlor, who has discretion to
376 distribute part or all of the income of the first trust to one or more
377 current beneficiaries; or (C) if no trustee or fiduciary has discretion
378 under subparagraphs (A) and (B) of this subdivision, a trustee or other
379 fiduciary, other than a settlor, who is required to distribute part or all of
380 the income or principal of the first trust to one or more current
381 beneficiaries.

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

385 (b) A special-needs fiduciary may exercise the decanting power
386 under section 11 of this act over the principal of a first trust as if the
387 fiduciary had authority to distribute principal to a beneficiary with a
388 disability subject to expanded distributive discretion if: (1) A second
389 trust is a special-needs trust that benefits the beneficiary with a
390 disability; and (2) the special-needs fiduciary determines that exercise
391 of the decanting power will further the purposes of the first trust.

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

394 (1) Notwithstanding subdivision (2) of subsection (b) of section 11 of
395 this act, the interest in the second trust of a beneficiary with a disability
396 may: (A) Be a pooled trust as defined by Medicaid law for the benefit of
397 the beneficiary with a disability under 42 USC 1396p(d)(4)(C), as
398 amended from time to time; or (B) contain payback provisions
399 complying with reimbursement requirements of Medicaid law under 42
400 USC 1396p(d)(4)(A), as amended from time to time.

401 (2) Subdivision (3) of subsection (b) of section 11 of this act shall not
402 apply to the interests of the beneficiary with a disability.

403 (3) Except as affected by any change to the interests of the beneficiary
404 with a disability, the second trust, or if there are two or more second
405 trusts, the second trusts in the aggregate, shall grant each other
406 beneficiary of the first trust beneficial interests in the second trusts in
407 accordance with section 11 or 12 of this act, as the case may be.

408 (4) A special-needs fiduciary shall not exercise the decanting power
409 with respect to a trust established pursuant to and in compliance with
410 42 USC 1396p(d)(4)(A) or (C) in a manner that would impair the state's
411 claim on the death of the beneficiary for (A) medical assistance
412 provided, and (B) any claims for which this state would have valid
413 claims against the estate of the deceased beneficiary not previously paid
414 or reimbursed.

415 Sec. 14. (NEW) (*Effective January 1, 2025*) (a) As used in this section:

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

420 (2) "Unconditional" means not subject to the occurrence of a specified
421 event that is not certain to occur, other than a requirement in a trust
422 instrument that a charitable organization be in existence or qualify
423 under a particular provision of the Internal Revenue Code of 1986, or
424 any subsequent corresponding internal revenue code of the United
425 States, as amended from time to time, and the regulations thereunder,
426 on the date of the distribution, if the charitable organization meets the
427 requirement on the date of determination.

428 (b) If a first trust contains a determinable charitable interest, the
429 Attorney General has the rights of a qualified beneficiary and may
430 represent the public interest in charitable gifts in accordance with the
431 authority granted to the Attorney General under section 3-125 of the
432 general statutes.

433 (c) If a first trust contains a charitable interest, the second trust or
434 trusts may not: (1) Diminish the charitable interest; (2) diminish the
435 interest of an identified charitable organization that holds the charitable
436 interest; (3) alter any charitable purpose stated in the first-trust
437 instrument; or (4) alter any condition or restriction related to the
438 charitable interest.

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

444 (e) If a first trust contains a determinable charitable interest, the
445 second trust or trusts that include a charitable interest pursuant to
446 subsection (c) of this section shall be administered under the law of this
447 state unless: (1) The Attorney General, after receiving notice under

448 section 7 of this act, fails to object in a signed record delivered to the
449 authorized fiduciary within the notice period; (2) the Attorney General
450 consents in a signed record to the second trust or trusts being
451 administered under the law of another jurisdiction; or (3) the exercise of
452 the decanting power was approved by the court in accordance with
453 section 9 of this act.

454 (f) Sections 1 to 30, inclusive, of this act do not limit the powers and
455 duties of the Attorney General under the law of this state.

456 Sec. 15. (NEW) (*Effective January 1, 2025*) (a) An authorized fiduciary
457 may not exercise the decanting power to the extent the first-trust
458 instrument expressly prohibits exercise of: (1) The decanting power; or
459 (2) a power granted by state law to the fiduciary to distribute part or all
460 of the principal of the trust to another trust or to modify the trust.

461 (b) Exercise of the decanting power is subject to any restriction in the
462 first-trust instrument that expressly applies to exercise of: (1) The
463 decanting power; or (2) a power granted by state law to a fiduciary to
464 distribute part or all of the principal of the trust to another trust or to
465 modify the trust.

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

470 (d) Subject to subsections (a) and (b) of this section, an authorized
471 fiduciary may exercise the decanting power under sections 1 to 30,
472 inclusive, of this act even if the first-trust instrument permits the
473 authorized fiduciary or another person to modify the first-trust
474 instrument or to distribute part or all of the principal of the first trust to
475 another trust.

476 (e) If a first-trust instrument contains an express prohibition
477 described in subsection (a) of this section or an express restriction
478 described in subsection (b) of this section, the provision shall be

479 included in the second-trust instrument.

480 Sec. 16. (NEW) (*Effective January 1, 2025*) (a) If a first-trust instrument
481 specifies an authorized fiduciary's compensation, the fiduciary may not
482 exercise the decanting power to increase the fiduciary's compensation
483 above the specified compensation unless: (1) All qualified beneficiaries
484 of the second trust consent to the increase in a signed record; or (2) the
485 increase is approved by the court.

486 (b) If a first-trust instrument does not specify an authorized
487 fiduciary's compensation, the fiduciary may not exercise the decanting
488 power to increase the fiduciary's compensation above the compensation
489 permitted by subsection (a) of section 45a-499yy of the general statutes.

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

494 Sec. 17. (NEW) (*Effective January 1, 2025*) (a) Except as provided in this
495 section, a second-trust instrument may not relieve an authorized
496 fiduciary from liability for breach of trust to a greater extent than the
497 first-trust instrument.

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

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

505 (d) Subject to subsection (c) of this section, a second-trust instrument
506 may divide and reallocate fiduciary powers among fiduciaries,
507 including one or more trustees or trust directors, and relieve a fiduciary
508 from liability for an act or failure to act of another fiduciary as permitted
509 by the law of this state, other than sections 1 to 30, inclusive, of this act.

510 Sec. 18. (NEW) (*Effective January 1, 2025*) An authorized fiduciary may
511 not exercise the decanting power to modify a provision in a first-trust
512 instrument granting another person power to remove or replace the
513 fiduciary unless: (1) The person holding the power consents to the
514 modification in a signed record and the modification applies only to the
515 person; (2) the person holding the power and the qualified beneficiaries
516 of the second trust consent to the modification in a signed record and
517 the modification grants a substantially similar power to another person;
518 or (3) the court approves the modification and the modification grants a
519 substantially similar power to another person.

520 Sec. 19. (NEW) (*Effective January 1, 2025*) (a) As used in this section:

521 (1) "Grantor trust" means a trust as to which a settlor of a first trust is
522 considered the owner under Sections 671 to 677, inclusive, and Section
523 679 of the Internal Revenue Code of 1986, or any subsequent
524 corresponding internal revenue code of the United States, as amended
525 from time to time, and the regulations thereunder.

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

527 (3) "Qualified benefits property" means property subject to the
528 minimum distribution requirements of Section 401(a)(9) of the Internal
529 Revenue Code of 1986, or any subsequent corresponding internal
530 revenue code of the United States, as amended from time to time, and
531 the regulations thereunder, or to any similar requirements that refer to
532 said Section 401(a)(9) or such regulations.

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

535 (1) If a first trust contains property that qualified, or would have
536 qualified but for the provisions of sections 1 to 30, inclusive, of this act
537 other than this section, for a marital deduction for purposes of the gift
538 or estate tax under the Internal Revenue Code of 1986, or any
539 subsequent corresponding internal revenue code of the United States,
540 as amended from time to time, and the regulations thereunder or a state

541 gift, estate or inheritance tax, the second-trust instrument shall not
542 include or omit any term that, if included in or omitted from the trust
543 instrument for the trust to which the property was transferred, would
544 have prevented the transfer from qualifying for the deduction, or would
545 have reduced the amount of the deduction, under the same provisions
546 of said internal revenue code or state law under which the transfer
547 qualified.

548 (2) If the first trust contains property that qualified, or would have
549 qualified but for the provisions of sections 1 to 30, inclusive, of this act
550 other than this section, for a charitable deduction for purposes of the
551 income, gift or estate tax under the Internal Revenue Code of 1986, or
552 any subsequent corresponding internal revenue code of the United
553 States, as amended from time to time, and the regulations thereunder or
554 a state income, gift, estate or inheritance tax, the second-trust instrument
555 shall not include or omit any term that, if included in or omitted from
556 the trust instrument for the trust to which the property was transferred,
557 would have prevented the transfer from qualifying for the deduction, or
558 would have reduced the amount of the deduction, under the same
559 provisions of said internal revenue code or state law under which the
560 transfer qualified.

561 (3) If the first trust contains property that qualified, or would have
562 qualified but for the provisions of sections 1 to 30, inclusive, of this act
563 other than this section, for the exclusion from the gift tax described in
564 Section 2503(b) of the Internal Revenue Code of 1986, or any subsequent
565 corresponding internal revenue code of the United States, as amended
566 from time to time, and the regulations thereunder, the second-trust
567 instrument shall not include or omit a term that, if included in or
568 omitted from the trust instrument for the trust to which the property
569 was transferred, would have prevented the transfer from qualifying
570 under Section 2503(b) of the Internal Revenue Code of 1986, or any
571 subsequent corresponding internal revenue code of the United States,
572 as amended from time to time, and the regulations thereunder. If the
573 first trust contains property that qualified, or would have qualified but
574 for the provisions of sections 1 to 30, inclusive, of this act other than this

575 section, for the exclusion from the gift tax described in Section 2503(b)
576 of the Internal Revenue Code of 1986, or any subsequent corresponding
577 internal revenue code of the United States, as amended from time to
578 time, and the regulations thereunder by application of Section 2503(c) of
579 the Internal Revenue Code of 1986, or any subsequent corresponding
580 internal revenue code of the United States, as amended from time to
581 time, and the regulations thereunder, the second-trust instrument shall
582 not include or omit a term that, if included or omitted from the trust
583 instrument for the trust to which the property was transferred, would
584 have prevented the transfer from qualifying under said Section 2503(c).

585 (4) If the property of the first trust includes shares of stock in an S
586 corporation, as defined in Section 1361 of the Internal Revenue Code of
587 1986, or any subsequent corresponding internal revenue code of the
588 United States, as amended from time to time, and the regulations
589 thereunder and the first trust is, or but for the provisions of sections 1 to
590 30, inclusive, of this act other than this section would be, a permitted
591 shareholder under any provision of said Section 1361, an authorized
592 fiduciary may exercise the power with respect to part or all of the S
593 corporation stock only if any second trust receiving the stock is a
594 permitted shareholder under Section 1361(c)(2) of the Internal Revenue
595 Code of 1986, or any subsequent corresponding internal revenue code
596 of the United States, as amended from time to time, and the regulations
597 thereunder. If the property of the first trust includes shares of stock in
598 an S corporation and the first trust is, or but for the provisions of sections
599 1 to 30, inclusive, of this act other than this section would be, a qualified
600 subchapter-S trust within the meaning of Section 1361(d) of the Internal
601 Revenue Code of 1986, or any subsequent corresponding internal
602 revenue code of the United States, as amended from time to time, and
603 the regulations thereunder, the second-trust instrument shall not
604 include or omit a term that prevents the second trust from qualifying as
605 a qualified subchapter-S trust.

606 (5) If the first trust contains property that qualified, or would have
607 qualified but for the provisions of sections 1 to 30, inclusive, of this act
608 other than this section, for a zero inclusion ratio for purposes of the

609 generation-skipping transfer tax under Section 2642(c) of the Internal
610 Revenue Code of 1986, or any subsequent corresponding internal
611 revenue code of the United States, as amended from time to time, and
612 the regulations thereunder, the second-trust instrument shall not
613 include or omit a term that, if included in or omitted from the first-trust
614 instrument, would have prevented the transfer to the first trust from
615 qualifying for a zero inclusion ratio under said Section 2642(c).

616 (6) If the first trust is directly or indirectly the beneficiary of qualified
617 benefits property, the second-trust instrument may not include or omit
618 any term that, if included in or omitted from the first-trust instrument,
619 would have increased the minimum distributions required with respect
620 to the qualified benefits property under Section 401(a)(9) of the Internal
621 Revenue Code of 1986, or any subsequent corresponding internal
622 revenue code of the United States, as amended from time to time, and
623 the regulations thereunder and any applicable regulations, or any
624 similar requirements that refer to said Section 401(a)(9) or the
625 regulations thereunder. If an attempted exercise of the decanting power
626 violates the provisions of this subdivision, the trustee is deemed to have
627 held the qualified benefits property and any reinvested distributions of
628 the property as a separate share from the date of the exercise of the
629 power and section 22 of this act applies to the separate share.

630 (7) If the first trust qualifies as a grantor trust because of the
631 application of Section 672(f)(2)(A) of the Internal Revenue Code of 1986,
632 or any subsequent corresponding internal revenue code of the United
633 States, as amended from time to time, and the regulations thereunder,
634 the second trust may not include or omit a term that, if included in or
635 omitted from the first-trust instrument, would have prevented the first
636 trust from qualifying under said Section 672(f)(2)(A).

637 (8) As used in this subdivision, "tax benefit" means a federal or state
638 tax deduction, exemption, exclusion or other benefit not otherwise listed
639 in this section, except for a benefit arising from being a grantor trust.
640 Subject to subdivision (9) of this subsection, a second-trust instrument
641 may not include or omit a term that, if included in or omitted from the

642 first-trust instrument, would have prevented qualification for a tax
643 benefit if: (A) The first-trust instrument expressly indicates an intent to
644 qualify for the benefit or the first-trust instrument clearly is designed to
645 enable the first trust to qualify for the benefit; and (B) the transfer of
646 property held by the first trust or the first trust qualified or, but for the
647 provisions of sections 1 to 30, inclusive, of this act other than this section,
648 would have qualified for the tax benefit.

649 (9) Subject to subdivision (4) of this subsection: (A) Except as
650 provided in subdivision (7) of this subsection, the second trust may be a
651 nongrantor trust, even if the first trust is a grantor trust; and (B) except
652 as provided in subdivision (10) of this subsection, the second trust may
653 be a grantor trust, even if the first trust is a nongrantor trust.

654 (10) An authorized fiduciary may not exercise the decanting power if
655 a settlor objects in a signed record delivered to the fiduciary within the
656 notice period and: (A) The first trust and a second trust are both grantor
657 trusts, in whole or in part, the first trust grants the settlor or another
658 person the power to cause the first trust to cease to be a grantor trust,
659 and the second trust does not grant an equivalent power to the settlor
660 or other person; or (B) the first trust is a nongrantor trust and a second
661 trust is a grantor trust, in whole or in part, with respect to the settlor,
662 unless: (i) The settlor has the power at all times to cause the second trust
663 to cease to be a grantor trust; or (ii) the first-trust instrument contains a
664 provision granting the settlor or another person a power that would
665 cause the first trust to cease to be a grantor trust and the second-trust
666 instrument contains the same provision.

667 Sec. 20. (NEW) (*Effective January 1, 2025*) (a) Subject to subsection (b)
668 of this section and section 14 of this act, a second trust may have a
669 duration that is the same as or different from the duration of the first
670 trust.

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

675 Sec. 21. (NEW) (*Effective January 1, 2025*) An authorized fiduciary may
676 exercise the decanting power whether or not under the first trust's
677 discretionary distribution standard the fiduciary would have made, or
678 could have been compelled to make, a discretionary distribution of
679 principal at the time of the exercise.

680 Sec. 22. (NEW) (*Effective January 1, 2025*) (a) If exercise of the
681 decanting power would be effective under sections 1 to 30, inclusive, of
682 this act except that the second-trust instrument in part does not comply
683 with sections 1 to 30, inclusive, of this act, the exercise of the power is
684 effective and the following rules apply with respect to the principal of
685 the second trust attributable to the exercise of the power:

686 (1) A provision in the second-trust instrument that is not permitted
687 under sections 1 to 30, inclusive, of this act is void to the extent necessary
688 to comply with sections 1 to 30, inclusive, of this act.

689 (2) A provision required by sections 1 to 30, inclusive, of this act to be
690 in the second-trust instrument that is not contained in the instrument is
691 deemed to be included in the instrument to the extent necessary to
692 comply with sections 1 to 30, inclusive, of this act.

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

697 Sec. 23. (NEW) (*Effective January 1, 2025*) (a) As used in this section:

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

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

703 (b) The decanting power may be exercised over an animal trust that
704 has a protector to the extent the trust could be decanted under sections

705 1 to 30, inclusive, of this act, if each animal that benefits from the trust
706 were an individual, if the protector consents in a signed record to the
707 exercise of the power.

708 (c) A protector for an animal has the rights under sections 1 to 30,
709 inclusive, of this act of a qualified beneficiary.

710 (d) Notwithstanding the provisions of sections 1 to 30, inclusive, of
711 this act, if a first trust is an animal trust, in an exercise of the decanting
712 power, the second trust shall provide that trust property may be applied
713 only to its intended purpose for the period the first trust benefitted the
714 animal.

715 Sec. 24. (NEW) (*Effective January 1, 2025*) Any reference in the
716 Connecticut Uniform Trust Code to a trust instrument or terms of the
717 trust includes a second-trust instrument and the terms of the second
718 trust.

719 Sec. 25. (NEW) (*Effective January 1, 2025*) (a) For purposes of the law
720 of this state other than sections 1 to 30, inclusive, of this act and subject
721 to subsection (b) of this section, a settlor of a first trust is deemed to be
722 the settlor of the second trust with respect to the portion of the principal
723 of the first trust subject to the exercise of the decanting power.

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

727 Sec. 26. (NEW) (*Effective January 1, 2025*) (a) Except as provided in
728 subsection (c) of this section, if exercise of the decanting power was
729 intended to distribute all the principal of the first trust to one or more
730 second trusts, later-discovered property belonging to the first trust and
731 property paid to or acquired by the first trust after the exercise of the
732 power is part of the trust estate of the second trust or trusts.

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

736 property belonging to the first trust or property paid to or acquired by
737 the first trust after exercise of the power remains part of the trust estate
738 of the first trust.

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

743 Sec. 27. (NEW) (*Effective January 1, 2025*) A debt, liability or other
744 obligation enforceable against property of a first trust is enforceable to
745 the same extent against the property when held by the second trust after
746 exercise of the decanting power.

747 Sec. 28. (NEW) (*Effective January 1, 2025*) In applying and construing
748 the provisions of the Connecticut Uniform Trust Decanting Act,
749 consideration shall be given to the need to promote uniformity of the
750 law with respect to its subject matter among states that enact it.

751 Sec. 29. (NEW) (*Effective January 1, 2025*) Sections 1 to 30, inclusive, of
752 this act modify, limit and supersede the Electronic Signatures in Global
753 and National Commerce Act, 15 USC 7001 et seq., but do not modify,
754 limit or supersede Section 101(c) of said act, 15 USC 7001(c), or authorize
755 electronic delivery of any of the notices described in Section 103(b) of
756 said act, 15 USC 7003(b).

757 Sec. 30. (NEW) (*Effective January 1, 2025*) Except as otherwise
758 provided in sections 1 to 30, inclusive, of this act, on January 1, 2025, the
759 following rules apply:

760 (1) Sections 1 to 30, inclusive, of this act apply to all trusts created
761 before, on or after January 1, 2025.

762 (2) Sections 1 to 30, inclusive, of this act apply to all judicial
763 proceedings concerning trusts commenced on or after January 1, 2025.

764 (3) Sections 1 to 30, inclusive, of this act apply to judicial proceedings
765 concerning trusts commenced before January 1, 2025, unless the court in

766 which the judicial proceeding is pending finds that application of a
767 particular provision of sections 1 to 30, inclusive, of this act would
768 substantially interfere with the effective conduct of the judicial
769 proceedings or prejudice the rights of the parties. If the court finds
770 substantial interference or prejudice, the particular provision of sections
771 1 to 30, inclusive, of this act do not apply and the superseded law
772 applies.

773 (4) Any rule of construction or presumption provided in sections 1 to
774 30, inclusive, of this act applies to trust instruments executed before
775 January 1, 2025, unless there is a clear indication of a contrary intent in
776 the terms of the trust.

777 (5) An act done before January 1, 2025, is not affected by sections 1 to
778 30, inclusive, of this act.

779 Sec. 31. Section 45a-499i of the general statutes is repealed and the
780 following is substituted in lieu thereof (*Effective January 1, 2025*):

781 (a) Notice to a person under sections 45a-487j to 45a-487t, inclusive,
782 [and] 45a-499a to 45a-500s, inclusive, and sections 1 to 30, inclusive, of
783 this act, or the sending of a document to a person under sections 45a-
784 487j to 45a-487t, inclusive, [and] 45a-499a to 45a-500s, inclusive, and
785 sections 1 to 30, inclusive, of this act, shall be accomplished in a manner
786 reasonably suitable under the circumstances and likely to result in
787 receipt of the notice or document. Permissible methods of notice or for
788 sending a document include first-class mail, personal delivery, delivery
789 to the person's last known place of residence or place of business, or, if
790 the person has consented in advance to receive notices or documents by
791 electronic message, a properly directed electronic message.

792 (b) Notice otherwise required under sections 45a-487j to 45a-487t,
793 inclusive, [and] 45a-499a to 45a-500s, inclusive, and sections 1 to 30,
794 inclusive, of this act, or a document otherwise required to be sent under
795 sections 45a-487j to 45a-487t, inclusive, [and] 45a-499a to 45a-500s,
796 inclusive, and sections 1 to 30, inclusive, of this act, need not be provided
797 to a person whose identity or location is unknown to and not reasonably

798 ascertainable by the trustee.

799 (c) Notice under sections 45a-487j to 45a-487t, inclusive, and 45a-499a
800 to 45a-500s, inclusive, or the sending of a document under sections 45a-
801 487j to 45a-487t, inclusive, and 45a-499a to 45a-500s, inclusive, may be
802 waived by the person to be notified or to be sent the document.

803 (d) Notice of a judicial proceeding shall be given as provided in the
804 applicable rules of court.

805 Sec. 32. Section 45a-499o of the general statutes is repealed and the
806 following is substituted in lieu thereof (*Effective January 1, 2025*):

807 (a) Except as provided in subsection (b) of this section, the Probate
808 Courts have sole original jurisdiction relating to testamentary trusts to:

809 (1) Determine the validity of the will establishing the trust pursuant
810 to subdivision (2) of subsection (a) of section 45a-98;

811 (2) Compel a trustee to account pursuant to subdivision (6) of
812 subsection (a) of section 45a-98;

813 (3) Approve a trustee's account pursuant to sections 45a-175 to 45a-
814 179, inclusive, or proposed final distribution pursuant to section 45a-
815 481;

816 (4) With respect to an action that could be reported in a subsequent
817 account pursuant to sections 45a-175 to 45a-179, inclusive, hear and
818 decide the petition of (A) a trustee to approve a proposed action, ratify
819 a previously taken action or provide instructions to address a specific
820 situation, or (B) a beneficiary to compel or prohibit action by a trustee;

821 (5) Approve the settlement of a disputed claim pursuant to section
822 45a-151;

823 (6) Approve the sale of personal property pursuant to section 45a-
824 163;

825 (7) Approve the sale or mortgage of real property pursuant to section

- 826 45a-164;
- 827 (8) Remove or accept the resignation of a trustee pursuant to section
828 45a-499vv or subsection (b) of section 45a-499ww;
- 829 (9) Appoint a successor trustee in the event of a vacancy or
830 anticipated vacancy pursuant to section 45a-499uu;
- 831 (10) Order a trustee to furnish a probate bond pursuant to section 45a-
832 499ss;
- 833 (11) Assume jurisdiction of a trust pursuant to section 45a-477;
- 834 (12) Order distribution of a decedent's estate or testamentary trust to
835 the beneficiaries of an inoperative trust pursuant to section 45a-482;
- 836 (13) Authorize a trustee to disclaim an interest pursuant to section
837 45a-579;
- 838 (14) Authorize a trustee to combine two or more trusts or divide a
839 trust into two or more separate trusts pursuant to section 45a-499ll;
840 [and]
- 841 (15) Terminate a charitable trust pursuant to section 45a-520; and
- 842 (16) Hear and decide a petition related to the exercise of a decanting
843 power pursuant to section 9 of this act.
- 844 (b) The Superior Court and the Probate Courts have concurrent
845 original jurisdiction relating to testamentary trusts to:
- 846 (1) Determine title or rights of possession and use in and to any real,
847 tangible or intangible property that constitutes or may constitute
848 property of a trust, including the rights and obligations of a beneficiary
849 of the trust pursuant to subdivision (3) of subsection (a) of section 45a-
850 98;
- 851 (2) Determine the validity and construe the meaning and effect of a
852 trust pursuant to subdivision (4) of subsection (a) of section 45a-98;

853 (3) Apply the doctrine of cy pres or approximation pursuant to
854 subdivision (5) of subsection (a) of section 45a-98;

855 (4) Recover on a probate bond for breach of fiduciary duty pursuant
856 to sections 45a-144 and 45a-145;

857 (5) Reform a trust to qualify for the marital deduction pursuant to
858 section 45a-485;

859 (6) Reform a trust to qualify for the charitable deduction pursuant to
860 section 45a-519;

861 (7) Reform a charitable remainder unitrust pursuant to section 45a-
862 521;

863 (8) Authorize transfer of the principal place of administration of a
864 trust to another jurisdiction pursuant to section 45a-499h;

865 (9) Modify or terminate a noncharitable trust pursuant to sections
866 45a-499ee, 45a-499ff, 45a-499ii, 45a-499jj and 45a-499kk; and

867 (10) Hear and decide a petition for instruction pursuant to subsection
868 (d) of section 45a-500i.

869 (c) Notwithstanding subsection (a) of this section, the Superior Court
870 has original jurisdiction relating to testamentary trusts with respect to:

871 (1) A proceeding relating to a testamentary trust that the court
872 consolidates with another proceeding involving the same trust over
873 which the Superior Court has original jurisdiction; and

874 (2) Any matter over which the Superior Court has statutory or
875 common law jurisdiction or has powers or remedies that are not
876 available to the Probate Courts.

877 (d) The Superior Court has original jurisdiction over all matters
878 relating to inter vivos trusts. The Probate Courts have concurrent
879 original jurisdiction with the Superior Court relating to inter vivos trusts
880 to:

881 (1) Compel a trustee to account pursuant to subdivision (6) of
882 subsection (a) of section 45a-98;

883 (2) Approve a trustee's account pursuant to section 45a-175;

884 (3) With respect to an action that could be reported in a subsequent
885 account pursuant to section 45a-175, hear and decide the petition of a
886 trustee to approve a proposed action, ratify a previously taken action or
887 provide instruction to address a specific situation or the petition of a
888 beneficiary to compel or prohibit an action by a trustee;

889 (4) Remove a trustee pursuant to subsection (b) of section 45a-499ww;

890 (5) Appoint a successor trustee in the event of a vacancy or
891 anticipated vacancy pursuant to section 45a-487m or 45a-499uu and
892 subsection (g) of section 45a-487p;

893 (6) Recover on a probate bond for breach of fiduciary duty pursuant
894 to sections 45a-144 and 45a-145;

895 (7) Authorize a trustee to disclaim an interest pursuant to section 45a-
896 579;

897 (8) Authorize a trustee to combine two or more trusts or divide a trust
898 into two or more separate trusts pursuant to section 45a-499ll;

899 (9) Terminate a charitable trust pursuant to section 45a-520;

900 (10) Determine title or rights of possession and use in and to any real,
901 tangible or intangible property that constitutes or may constitute
902 property of a trust, including the rights and obligations of any
903 beneficiary of the trust pursuant to subdivision (3) of subsection (a) of
904 section 45a-98;

905 (11) Determine the validity and construe the meaning and effect of a
906 trust pursuant to subdivision (4) of subsection (a) of section 45a-98;

907 (12) Apply the doctrine of cy pres or approximation pursuant to
908 subdivision (5) of subsection (a) of section 45a-98;

909 (13) Reform a trust to achieve the settlor's tax objectives pursuant to
910 section 45a-499kk;

911 (14) Authorize transfer of the principal place of administration of a
912 trust to another jurisdiction pursuant to section 45a-499h;

913 (15) Modify or terminate a noncharitable trust pursuant to sections
914 45a-499ee, 45a-499ff, 45a-499ii, 45a-499jj and 45a-499kk; [and]

915 (16) Hear and decide a petition for instruction pursuant to subsection
916 (d) of section 45a-500i; and

917 (17) Hear and decide a petition related to the exercise of a decanting
918 power pursuant to section 9 of this act.

919 (e) With respect to a matter over which the court has jurisdiction, the
920 court may hear and decide a trustee's request for instructions or for
921 approval of action or a party's request to compel or prohibit an action
922 by a trustee.

923 Sec. 33. Section 45a-106a of the 2024 supplement to the general
924 statutes, as amended by section 4 of public act 23-161, is repealed and
925 the following is substituted in lieu thereof (*Effective January 1, 2025*):

926 (a) The fees set forth in this section apply to each filing made in a
927 Probate Court in any matter other than a decedent's estate.

928 (b) The fee to file each of the following motions, petitions or
929 applications in a Probate Court is two hundred fifty dollars:

930 (1) With respect to a minor child: (A) Appoint a temporary guardian,
931 temporary custodian, guardian, coguardian, permanent guardian or
932 statutory parent, (B) remove a guardian, including the appointment of
933 another guardian, (C) reinstate a parent as guardian, (D) terminate
934 parental rights, including the appointment of a guardian or statutory
935 parent, (E) grant visitation, (F) make findings regarding special
936 immigrant juvenile status, (G) approve placement of a child for
937 adoption outside this state, (H) approve an adoption, (I) validate a

938 foreign adoption, (J) review, modify or enforce a cooperative
939 postadoption agreement, (K) review an order concerning contact
940 between an adopted child and his or her siblings, (L) resolve a dispute
941 concerning a standby guardian, (M) approve a plan for voluntary
942 services provided by the Department of Children and Families, (N)
943 determine whether the termination of voluntary services provided by
944 the Department of Children and Families is in accordance with
945 applicable regulations, (O) conduct an in-court review to modify an
946 order, (P) grant emancipation, (Q) grant approval to marry, (R) transfer
947 funds to a custodian under sections 45a-557 to 45a-560b, inclusive, (S)
948 appoint a successor custodian under section 45a-559c, (T) resolve a
949 dispute concerning custodianship under sections 45a-557 to 45a-560b,
950 inclusive, and (U) grant authority to purchase real estate;

951 (2) Determine parentage;

952 (3) Validate a genetic surrogacy agreement;

953 (4) Determine the age and date of birth of an adopted person born
954 outside the United States;

955 (5) With respect to adoption records: (A) Appoint a guardian ad litem
956 for a biological relative who cannot be located or appears to be
957 incompetent, (B) appeal the refusal of an agency to release information,
958 (C) release medical information when required for treatment, and (D)
959 grant access to an original birth certificate;

960 (6) Approve an adult adoption;

961 (7) With respect to a conservatorship: (A) Appoint a temporary
962 conservator, conservator or special limited conservator, (B) change
963 residence, terminate a tenancy or lease, sell or dispose household
964 furnishings, or place in a long-term care facility, (C) determine
965 competency to vote, (D) approve a support allowance for a spouse, (E)
966 grant authority to elect the spousal share, (F) grant authority to purchase
967 real estate, (G) give instructions regarding administration of a joint asset
968 or liability, (H) distribute gifts, (I) grant authority to consent to

969 involuntary medication, (J) determine whether informed consent has
970 been given for voluntary admission to a hospital for psychiatric
971 disabilities, (K) determine life-sustaining medical treatment, (L) transfer
972 to or from another state, (M) modify the conservatorship in connection
973 with a periodic review, (N) excuse accounts under rules of procedure
974 approved by the Supreme Court under section 45a-78, (O) terminate the
975 conservatorship, and (P) grant a writ of habeas corpus;

976 (8) With respect to a power of attorney: (A) Compel an account by an
977 agent, (B) review the conduct of an agent, (C) construe the power of
978 attorney, and (D) mandate acceptance of the power of attorney;

979 (9) Resolve a dispute concerning advance directives or life-sustaining
980 medical treatment when the individual does not have a conservator or
981 guardian;

982 (10) With respect to an elderly person, as defined in section 17b-450,
983 or an eligible adult, as defined in section 36b-14: (A) Enjoin an
984 individual from interfering with the provision of protective services to
985 such elderly person, (B) authorize the Commissioner of Social Services
986 to enter the premises of such elderly person to determine whether such
987 elderly person needs protective services, and (C) release a financial hold
988 or a hold by a broker-dealer or investment advisor pursuant to section
989 45a-664;

990 (11) With respect to an adult with intellectual disability: (A) Appoint
991 a temporary limited guardian, guardian or standby guardian, (B) grant
992 visitation, (C) determine competency to vote, (D) modify the
993 guardianship in connection with a periodic review, (E) determine life-
994 sustaining medical treatment, (F) approve an involuntary placement,
995 (G) review an involuntary placement, (H) authorize a guardian to
996 manage the finances of such adult, and (I) grant a writ of habeas corpus;

997 (12) With respect to psychiatric disability: (A) Commit an individual
998 for treatment, (B) issue a warrant for examination of an individual at a
999 general hospital, (C) determine whether there is probable cause to
1000 continue an involuntary confinement, (D) review an involuntary

1001 confinement for possible release, (E) authorize shock therapy, (F)
1002 authorize medication for treatment of psychiatric disability, (G) review
1003 the status of an individual under the age of sixteen as a voluntary
1004 patient, and (H) recommit an individual under the age of sixteen for
1005 further treatment;

1006 (13) With respect to drug or alcohol dependency: (A) Commit an
1007 individual for treatment, (B) recommit an individual for further
1008 treatment, and (C) terminate an involuntary confinement;

1009 (14) With respect to tuberculosis: (A) Commit an individual for
1010 treatment, (B) issue a warrant to enforce an examination order, and (C)
1011 terminate an involuntary confinement;

1012 (15) Compel an account by the trustee of an inter vivos trust,
1013 custodian under sections 45a-557 to 45a-560b, inclusive, or treasurer of
1014 an ecclesiastical society or cemetery association;

1015 (16) With respect to a testamentary or inter vivos trust: (A) Construe,
1016 validate, divide, combine, reform, modify or terminate the trust, (B)
1017 enforce the provisions of a pet trust, (C) excuse a final account under
1018 rules of procedure approved by the Supreme Court under section 45a-
1019 78, and (D) assume jurisdiction of an out-of-state trust;

1020 (17) Authorize a fiduciary to establish a trust;

1021 (18) Appoint a trustee for a missing person;

1022 (19) Issue an order to amend the birth certificate of an individual born
1023 in another state to reflect a gender change;

1024 (20) Require the Department of Public Health to issue a delayed birth
1025 certificate;

1026 (21) Compel the board of a cemetery association to disclose the
1027 minutes of the annual meeting;

1028 (22) Issue an order to protect a grave marker;

- 1029 (23) Restore rights to purchase, possess and transport firearms;
- 1030 (24) Issue an order permitting sterilization of an individual;
- 1031 (25) Approve the transfer of structured settlement payment rights;
- 1032 [and]
- 1033 (26) With respect to any case in a Probate Court other than a
- 1034 decedent's estate: (A) Compel or approve an action by the fiduciary, (B)
- 1035 give instruction to the fiduciary, (C) authorize a fiduciary to
- 1036 compromise a claim, (D) list, sell or mortgage real property, (E)
- 1037 determine title to property, (F) resolve a dispute between cofiduciaries
- 1038 or among fiduciaries, (G) remove a fiduciary, (H) appoint a successor
- 1039 fiduciary or fill a vacancy in the office of fiduciary, (I) approve fiduciary
- 1040 or attorney's fees, (J) apply the doctrine of cy pres or approximation, (K)
- 1041 reconsider, modify or revoke an order, and (L) decide an action on a
- 1042 probate bond; and
- 1043 (27) Permit an attorney who has not been admitted as an attorney
- 1044 under the provisions of section 51-80 to appear pro hac vice in a matter
- 1045 in the Probate Court.
- 1046 (c) The fee to file a petition for custody of the remains of a deceased
- 1047 person in a Probate Court is one hundred fifty dollars, except that the
- 1048 court shall waive the fee if the state is obligated to pay funeral and burial
- 1049 expenses under section 17b-84 or 17b-131.
- 1050 (d) The fee for a fiduciary to request the release of funds from a
- 1051 restricted account in a Probate Court is one hundred fifty dollars, except
- 1052 that the court shall waive the fee if the court approves the request
- 1053 without notice and hearing in accordance with the rules of procedure
- 1054 adopted by the Supreme Court under section 45a-78.
- 1055 (e) The fee to register a conservator of the person or conservator of
- 1056 the estate order from another state under section 45a-667r or 45a-667s,
- 1057 or to register both types of orders for the same person at the same time,
- 1058 is one hundred fifty dollars.

1059 (f) The fee for mediation conducted by a member of the panel
1060 established by the Probate Court Administrator is three hundred fifty
1061 dollars per day or part thereof.

1062 (g) The fee to request a continuance in a Probate Court is fifty dollars,
1063 plus the actual expenses of rescheduling the hearing that are payable
1064 under section 45a-109, except that the court, for cause shown, may waive
1065 either the fifty-dollar fee or the actual expenses of rescheduling the
1066 hearing, or both. The fee shall be payable by the party who requests the
1067 continuance of a scheduled hearing or whose failure to appear
1068 necessitates the continuance.

1069 (h) The fee to file a [motion to permit an attorney who has not been
1070 admitted as an attorney under the provisions of section 51-80 to appear
1071 pro hac vice in a matter in the Probate Court is two hundred fifty
1072 dollars] petition to exercise the decanting power under section 9 of this
1073 act is three hundred dollars.

1074 (i) The fee to file an affidavit concerning the possessions and personal
1075 effects of a deceased occupant under section 47a-11d is one hundred
1076 fifty dollars.

1077 (j) The fee for the issuance of a foreign subpoena pursuant to section
1078 52-657 is one hundred dollars.

1079 (k) Except as provided in subsection (d) of section 45a-111, fees
1080 imposed under this section shall be paid at the time of filing.

1081 (l) If a statute or rule of procedure approved by the Supreme Court
1082 under section 45a-78 specifies filings that may be combined into a single
1083 motion, petition or application, the fee under this section for the
1084 combined filing is the amount equal to the largest of the individual filing
1085 fees applicable to the underlying motions, petitions or applications.

1086 (m) No fee shall be charged under this section if exempted or waived
1087 under section 45a-111 or any other provision of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2025	New section
Sec. 2	January 1, 2025	New section
Sec. 3	January 1, 2025	New section
Sec. 4	January 1, 2025	New section
Sec. 5	January 1, 2025	New section
Sec. 6	January 1, 2025	New section
Sec. 7	January 1, 2025	New section
Sec. 8	January 1, 2025	New section
Sec. 9	January 1, 2025	New section
Sec. 10	January 1, 2025	New section
Sec. 11	January 1, 2025	New section
Sec. 12	January 1, 2025	New section
Sec. 13	January 1, 2025	New section
Sec. 14	January 1, 2025	New section
Sec. 15	January 1, 2025	New section
Sec. 16	January 1, 2025	New section
Sec. 17	January 1, 2025	New section
Sec. 18	January 1, 2025	New section
Sec. 19	January 1, 2025	New section
Sec. 20	January 1, 2025	New section
Sec. 21	January 1, 2025	New section
Sec. 22	January 1, 2025	New section
Sec. 23	January 1, 2025	New section
Sec. 24	January 1, 2025	New section
Sec. 25	January 1, 2025	New section
Sec. 26	January 1, 2025	New section
Sec. 27	January 1, 2025	New section
Sec. 28	January 1, 2025	New section
Sec. 29	January 1, 2025	New section
Sec. 30	January 1, 2025	New section
Sec. 31	January 1, 2025	45a-499i
Sec. 32	January 1, 2025	45a-499o
Sec. 33	January 1, 2025	45a-106a

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 25 \$	FY 26 \$
Probate Court	PCAF - Potential Revenue Gain	Minimal	Minimal

Note: PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill, which creates a trust decanting process and sets a fee of \$300 for such filings, results in a potential revenue gain the Probate Court Administration Fund to the extent that these types of petitions are filed.¹

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of filings.

¹Most petition fees for Probate Court filings are \$250.

OLR Bill Analysis**sSB 272*****AN ACT CONCERNING ADOPTION OF THE CONNECTICUT UNIFORM TRUST DECANTING ACT.*****SUMMARY**

This bill adopts the Connecticut Uniform Trust Decanting Act. Generally, a trust decanting occurs when a trust's authorized fiduciary (typically, the trustee), in line with authority granted under the trust, modifies the trust's terms or distributes property from it to another trust. Existing law recognizes decanting but does not set specific procedures or standards for this practice.

The bill generally allows decanting for express irrevocable trusts, or under limited circumstances, revocable trusts. It does not allow decanting of wholly charitable trusts (but sets rules for decanting of charitable interests within other trusts). For a decanting to occur, the authorized fiduciary generally must have the discretionary power under the trust's terms to make principal distributions (except for certain trusts for a beneficiary with a disability). The decanting power differs based on whether the authorized fiduciary has limited or expanded discretion under the first trust to distribute principal.

Under the bill, authorized fiduciaries who choose to decant must do so in line with their fiduciary duties. These fiduciaries generally (1) do not need court approval for decanting, except for testamentary trusts, but (2) must notify qualified beneficiaries and in some cases, certain state officials.

Among other things, the bill:

1. protects trustees or other people from liability for reasonably relying on a prior decanting;

2. specifically grants the court authority over certain decanting-related matters, upon petition of the authorized fiduciary or certain other parties;
3. sets specific standards for decanting involving special needs trusts for a beneficiary with a disability;
4. sets certain limits on the decanting power, such as limits to avoid unintended tax consequences; and
5. includes a saving provision to address a decanting that does not comply with all of its requirements.

The bill also makes certain related changes to existing laws, including (1) establishing which court has jurisdiction over decanting-related matters and (2) setting a \$300 fee for petitions to the probate court for approval of a decanting (as noted above, court approval is not generally required).

EFFECTIVE DATE: January 1, 2025

§§ 1-30 — CONNECTICUT UNIFORM TRUST DECANTING ACT

The bill sets rules for trust decanting. A trust, generally speaking, is an arrangement in which one person (the trustee) holds money or other property for another person (the beneficiary). The trustee owes certain duties to the beneficiary with regard to safeguarding, managing, and disposing of the trust property and income according to the trust's terms. The person who created the trust is called the settlor.

Under the bill, a "first trust" is a trust over which an authorized fiduciary may exercise the decanting power. A "second trust" is a (1) first trust after its modification under the bill or (2) trust to which a property distribution from a first trust was or could be made under the bill. The "decanting power" is an authorized fiduciary's power to modify the first trust's terms or distribute its property to one or more second trusts under the bill.

An "authorized fiduciary" is generally a trustee or other fiduciary,

other than a settlor or a beneficiary, with discretion to distribute or direct a trustee to distribute any part of the first trust's principal to one or more current beneficiaries. The term also includes a (1) court-appointed special fiduciary (see § 9) or (2) special-needs fiduciary (see § 13).

Scope (§ 3)

The bill generally applies to express trusts that are (1) irrevocable (whether created under a will or otherwise) or (2) revocable by the settlor only with the consent of the trustee or someone holding an adverse interest. It does not apply to (1) wholly charitable trusts or (2) statutory trusts created under the existing Connecticut Statutory Trust Act (CGS § 34-500 et seq.).

The bill allows a trust instrument to restrict or prohibit the exercise of the decanting power (see § 15).

Under the bill, for special needs trusts created under specified federal Medicaid law, (1) the bill's applicable provisions must not be interpreted in a way that is inconsistent with or contradicts federal law and (2) courts may not issue an order or other ruling that is inconsistent with or contradicts federal law.

The bill does not limit anyone's authority to distribute or appoint property in further trust or to modify a trust under the trust instrument, other state law, the common law, a court order, or a nonjudicial settlement agreement. It also does not affect the settlor's ability to provide in a trust instrument for the distribution of the trust property, appointment in further trust of the property, or modification of the trust instrument.

Fiduciary Duty (§ 4)

The bill requires authorized fiduciaries, in exercising the decanting power, to act in line with their fiduciary duties, including the duty to act in line with the first trust's purposes. It does not create or imply a duty to decant or to inform beneficiaries about the bill's applicability.

Under the bill, and for a trustee's specified fiduciary duties under the existing Connecticut Uniform Trust Code (see BACKGROUND), the first trust's terms are deemed to include the decanting power unless the trust provides otherwise. These duties include, among other things, to administer trust assets solely in the beneficiary's interests and consistent with the settlor's intent.

Application; Governing Law (§ 5)

The bill applies to trusts, whenever created, that have their principal place of administration in Connecticut. It also applies to trusts, whenever created, that specify that they are governed by Connecticut law generally or for their administration, construction of terms, or to determine the meaning or effect of terms.

Reasonable Reliance (§ 6)

The bill allows a trustee or other person to reasonably rely on the validity of a prior decanting performed under the bill, another state law, or the law of another jurisdiction. The person is not liable for any act or failure to act on that reliance.

Notice; Exercise of Decanting Power (§ 7)

The bill allows an authorized fiduciary to exercise the decanting power without anyone else's consent and without court approval unless the bill requires otherwise. Generally, before decanting, an authorized fiduciary must give at least 60 days' notice in a record to the following:

1. the first trust's settlors (if living or in existence) and qualified beneficiaries (see below),
2. holders of a presently exercisable power of appointment over part or all of the first trust,
3. anyone with the right to remove or replace the fiduciary,
4. the first trust's other fiduciaries and the second trust's fiduciaries,
5. the attorney general (for trusts with a determinable charitable interest), and

6. the attorney general and the Department of Social Services (for special needs trusts created under federal Medicaid law).

“Qualified beneficiaries” are those who (1) are currently eligible to receive a trust distribution or (2) would be eligible upon termination of the trust or the interests of current qualified beneficiaries.

The bill allows a fiduciary to decant before this notice period expires if all people entitled to receive notice provide a signed waiver.

The required notice must (1) specify how and when the fiduciary intends to decant and (2) include a copy of the first-trust instrument and all second-trust instruments.

Under the bill, a person’s receiving or waiving of the notice, or the notice period’s expiration, does not prevent the person from bringing a court petition asserting that (1) the decanting did not comply with the bill or was an abuse of discretion or breach of fiduciary duty or (2) the bill’s saving provision applies (see § 22).

The failure to give required notice generally does not invalidate the decanting if the authorized fiduciary complied with certain notice provisions under the state’s Uniform Trust Code (which sets the permissible forms of notice, among other things; see § 31). But when the attorney general must receive notice under the bill (see above), the decanting is not valid unless the authorized fiduciary has a confirmed email delivery notification or certified mail receipt.

Representation (§ 8)

The bill sets rules about people authorized by the first-trust instrument or the existing trust code to represent and bind another person. Under the bill, (1) notice to a person’s representative has the same effect as if the person were directly notified, (2) the representative’s consent or waiver is binding on the represented person unless that person objects to the representation beforehand, and (3) a representative may bring a court petition on the person’s behalf.

The bill does not allow a settlor to represent or bind a beneficiary.

Court Involvement (§ 9)

The bill allows the authorized fiduciary, anyone entitled to notice under the bill (see § 7 above), a beneficiary, or anyone with standing to enforce a charitable interest (including the attorney general), to petition the court for certain decanting-related purposes. Specifically, they may ask the court to:

1. instruct the fiduciary as to whether a proposed decanting is permissible under the bill and consistent with the fiduciary's duties;
2. appoint a special fiduciary and authorize that person to determine whether a decanting should occur and to decant;
3. approve the exercise of the decanting power;
4. determine that a proposed or attempted decanting is ineffective because it violates the bill, even after applying the saving clause, or is an abuse of the fiduciary's discretion or breach of fiduciary duty;
5. determine the extent to which the saving clause applies to a prior decanting;
6. instruct a trustee on the saving clause's application to a prior decanting; or
7. order other relief to carry out the bill's purposes.

The bill also allows the authorized fiduciary to petition the court for approval of (1) an increase in the fiduciary's compensation (see § 16) or (2) a modification of a provision granting someone the right to remove or replace the fiduciary (see § 18).

Under the bill, for testamentary trusts, an authorized fiduciary must obtain probate court approval before decanting.

If a first trust has a determinable charitable interest, an authorized fiduciary is barred from using the decanting power while a related court petition is pending, unless the court orders otherwise.

Formalities (§ 10)

Under the bill, a decanting must be in a record signed by an authorized fiduciary. The record, directly or by referencing the required notice, must (1) identify the involved trusts and (2) state the property being distributed to each second trust and any property remaining in the first trust.

Decanting Power Under Expanded Distributive Discretion (§ 11)

Under the bill, an authorized fiduciary with expanded distributive discretion over the first trust's principal for the benefit of one or more current beneficiaries generally may exercise the decanting power over that principal. "Expanded distributive discretion" is a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard. (Generally, these are standards relating to, among other things, someone's health, education, support, maintenance, or standard of living.)

Generally, in the decanting, a second trust in these cases may not (1) reduce or eliminate a vested interest; (2) include as a current beneficiary a person who is not a current beneficiary of the first trust; or (3) include as a presumptive remainder beneficiary or successor beneficiary a person who is not a current, presumptive remainder, or successor beneficiary of the first trust. Generally, a "current beneficiary" is a beneficiary who is currently receiving, or is entitled to receive, trust income and principal; a "successor beneficiary" is a beneficiary that is not a qualified beneficiary; and a "presumptive remainder beneficiary" is a qualified beneficiary other than a current beneficiary.

Under the bill and subject to certain limitations, the second trust may do the following:

1. reduce or eliminate non-vested interests of current, presumptive remainder, or successor beneficiaries;

2. keep a power of appointment;
3. omit a power of appointment (other than a presently exercisable general power of appointment); and
4. under certain conditions, create or modify a power of appointment.

A “power of appointment” is a power allowing someone acting in a nonfiduciary capacity to designate someone to receive an ownership interest in property or to another power of appointment over that property. It does not include a power of attorney. Among other things, the bill specifies that people who are not beneficiaries of the first trust may be permissible appointees of a current beneficiary’s power of appointment.

The bill also specifies that the second trust need not be created or administered under Connecticut law (except trusts with charitable interests must be administered here under certain circumstances; see § 14).

Under the bill, if an authorized fiduciary has expanded distributive discretion over only part of the first trust’s principal, the fiduciary may exercise the decanting power over that part of the principal.

Decanting Power Under Limited Distributive Discretion (§ 12)

The bill allows an authorized fiduciary with limited distributive discretion over the first trust’s principal for the benefit of one or more current beneficiaries to exercise the decanting power over the principal. “Limited distributive discretion” is a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

In a decanting under these circumstances, a second trust may not (1) have different current, presumptive remainder, or successor beneficiaries than the first trust; (2) change the discretion standard from the first trust, except as provided below; (3) modify a power of

appointment granted in the first trust; or (4) reduce or eliminate a vested interest.

Under the bill and subject to certain limitations, if the second trust extends the duration of the first trust, it may change the first trust's discretion standard, including to make it an expanded standard. This only applies to the period after which the first trust would have otherwise terminated.

The second trust need not be created or administered under Connecticut law (except trusts with charitable interests must be administered here under certain circumstances; see § 14).

If an authorized fiduciary has limited distributive discretion over only part of a first trust's principal, the fiduciary may exercise the decanting power over that part.

Trust for Beneficiary With a Disability (§ 13)

The bill sets specific rules for how a fiduciary can exercise the decanting power over "special needs trusts" for a beneficiary with a disability. These are trusts that the trustee believes would not be considered an asset for determining the beneficiary's eligibility for governmental benefits. The beneficiary does not have to currently be receiving these benefits or to have been adjudicated incapable.

Under the bill, the fiduciary with power to decant these trusts is called a "special-needs fiduciary." Unlike with other authorized fiduciaries under the bill, this term is not restricted to fiduciaries with discretionary authority to distribute the first trust's principal to current beneficiaries. If there is no such fiduciary, the special needs fiduciary can be one with discretionary authority to distribute the trust's income, or if there is no such fiduciary, one who is required to make distributions of principal or income.

The bill allows a special-needs fiduciary to decant the first trust's principal under its provisions on expanded distributive discretion (see § 11) if the (1) second trust is a special-needs trust for a beneficiary with

a disability and (2) fiduciary determines that decanting will further the first trust's purposes.

In this decanting, the bill allows the second trust to be a pooled trust as defined under federal Medicaid law or have payback provisions that comply with Medicaid reimbursement requirements (i.e., upon the beneficiary's death, the state is reimbursed for the Medicaid assistance it gave the person). (Generally, a pooled trust is a trust, established by a nonprofit organization, that holds the assets of several people with disabilities in separate accounts, but pools the accounts for investing and managing the funds.)

In either case, the decanting must not impair the state's claim, upon the beneficiary's death, for (1) medical assistance the state provided or (2) other claims the state would have against the beneficiary's estate.

The bill's general prohibition on decanting that reduces or eliminates a vested interest does not apply to the interests of beneficiaries with a disability.

The second trust (or if there are multiple second trusts, those trusts in total) generally must give each of the first trust's other beneficiaries the beneficial interest in the second trust in line with the bill's general requirements (see §§ 11 & 12). This applies except to the extent these other people's interests are affected by changes to the interests of the beneficiary with a disability.

Protection of Charitable Interests (§ 14)

Under the bill, if a first trust contains a determinable charitable interest, the attorney general has the rights of a qualified beneficiary and may represent and bind the charitable interest in line with existing law.

If a first trust contains a charitable interest, the second trust or trusts may not:

1. diminish that interest or the interest of an identified charitable organization that holds that interest or

2. change any charitable purpose in the first-trust instrument or any condition or restriction related to that interest.

If there are multiple second trusts, they must be treated as one trust when determining whether decanting diminishes the charitable interest or the interest of an organization holding that interest.

If a first trust has a determinable charitable interest, the second trust with a charitable interest must be administered under Connecticut law unless (1) the attorney general, after receiving notice, fails to timely object; (2) the attorney general consents in a signed record to the second trust being administered under another jurisdiction's law; or (3) the court approved the decanting.

The bill specifies that it does not limit the attorney general's powers and duties under state law.

Trust Limitation on Decanting (§ 15)

The bill prohibits an authorized fiduciary from exercising the decanting power to the extent the first-trust instrument expressly prohibits (1) decanting or (2) a fiduciary from using authority under state law to modify the trust or distribute any part of its principal to another trust. Decanting is subject to any of the first trust instrument's express restrictions on these activities.

Subject to these provisions, an authorized fiduciary may decant under the bill even if the first-trust instrument permits the fiduciary or someone else to modify that instrument or to distribute part or all of the first trust's principal to another trust.

Any of the first trust's express prohibitions or restrictions as described above must be included in the second-trust instrument.

A general prohibition on amending or revoking a first trust, a spendthrift clause (generally, a limitation on the beneficiaries' or their creditors' ability to reach the trust assets), or a clause restraining the transfer of a beneficiary's interest does not prevent decanting.

Change in Compensation (§ 16)

The bill requires court approval or unanimous consent of the second trust's qualified beneficiaries for an authorized fiduciary to use decanting to increase the fiduciary's compensation above the amount specified in the first trust. If the first trust does not set the compensation, the fiduciary may not use decanting to increase his or her compensation above that allowed under the state's existing trust code.

These provisions do not apply to compensation increases that are incidental to other changes made by decanting.

Relief From Liability and Indemnification (§ 17)

The bill generally prohibits a second-trust instrument from protecting an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument. But a second-trust instrument may provide for indemnification of the first trust's authorized fiduciary (or someone else acting in a fiduciary capacity under the first trust) for any liability or claim that would have been payable from the first trust if the decanting had not occurred.

Under the bill, a second-trust instrument may not reduce fiduciary liability in total. But it can divide and reallocate fiduciary powers among fiduciaries (including trustees or trust directors) and relieve a fiduciary from liability for another fiduciary's act or failure to act as permitted by other state law.

Removal or Replacement of Authorized Fiduciary (§ 18)

Under the bill, an authorized fiduciary may not use decanting to change a provision in a first-trust instrument authorizing another person to remove or replace the fiduciary unless the (1) person consents in a signed record and the change applies only to that person, (2) person and the second trust's qualified beneficiaries consent in a signed record and the change gives a substantially similar power to another person, or (3) court approves the change that gives a substantially similar power to another person.

Tax-Related Limitations (§ 19)

The bill places specified tax-related limitations on the decanting power (i.e., limits certain actions that could disqualify a trust from a particular tax benefit). This applies to tax situations involving the following:

1. the marital deduction under the federal gift or estate tax, or a state gift, estate, or inheritance tax;
2. the charitable deduction under the federal income, gift, or estate tax, or a state income, gift, estate, or inheritance tax;
3. the federal gift tax annual exclusion;
4. S corporation stock;
5. the federal generation-skipping transfer tax;
6. qualified benefits and minimum distributions under certain retirement plans; and
7. grantor trusts, non-grantor trusts, or foreign grantor trusts (a grantor trust is one for which a first trust's settlor is considered the owner for federal income tax purposes).

For example, if a first trust contains property that qualified for the marital or charitable deduction, or would have qualified except for the bill's other provisions, the second trust instrument must not include or omit any term that, if included or omitted, would prevent the transfer from qualifying for the deduction or reduce the deduction.

The bill also contains a catch-all provision on tax benefits. It generally prohibits a second-trust instrument from including or omitting any term that, if included or omitted from the first-trust instrument, would lead to disqualification for a tax benefit. This applies if the (1) first-trust instrument expressly indicated an intention, or was clearly designed, to qualify for the benefit and (2) property transfer or first trust qualified for the benefit, or would have qualified except for the bill's other provisions. This catch-all provision does not apply to benefits arising

from being a grantor trust.

Duration of Second Trust (§ 20)

Subject to its provisions on charitable interests, the bill generally allows a second trust's duration to be the same or different than the first trust's duration. But perpetuities rules that apply to the first trust also apply to the second trust to the extent that the second trust's assets are from the first trust. This includes rules on maximum perpetuity, accumulation, or suspension of the power of alienation.

Need to Distribute Not Required (§ 21)

The bill allows an authorized fiduciary to exercise the decanting power regardless of whether the fiduciary would have distributed principal to a current beneficiary (or been required to do so) under the first trust's discretionary distribution standard.

Saving Provision (§ 22)

If a decanting would be valid except for the second-trust instrument's partial noncompliance with the bill, the decanting is still valid, subject to the following rules for the second trust's principal from the decanting. Generally, impermissible provisions in the second-trust instrument are deemed void, and missing required provisions are deemed included. The bill requires a second trust's trustee or other fiduciary to take corrective action after determining that a prior decanting is subject to these provisions.

Trust for Care of an Animal (§ 23)

The bill allows decanting to be used in an animal trust if it would otherwise be allowed under the bill as if the animals were people and the protector consents in a signed record. A "protector" is someone appointed in the trust, or by the court, to enforce the trust on the animal's behalf. Under the bill, a protector has the rights of a qualified beneficiary.

In a decanting, if a first trust is an animal trust, the second trust must provide that trust property may be applied only to its intended purpose

for the period the first trust benefitted the animal.

Terms of a Second Trust (§ 24)

Under the bill, any reference in the state's Uniform Trust Code to a trust instrument or trust terms includes a second-trust instrument and terms.

Settlor (§ 25)

Under the bill, for other state law, a first trust's settlor is deemed to be the second trust's settlor for the portion of the first trust's principal that is subject to decanting. The intent of either trust's settlors and the authorized fiduciary may be considered when determining settlor intent about the second trust.

Later-Discovered Property (§ 26)

The bill sets rules for what happens to a first trust's later-discovered property or property that the first trust received after the decanting. Generally, if the decanting was intended to distribute all of the first trust's principal, this property goes to the second trust; if not, it stays with the first trust. But the authorized fiduciary may provide otherwise in the decanting or by the second trust's terms.

Obligations (§ 27)

Under the bill, a debt, liability, or other obligation against the first trust's property is enforceable to the same extent against the second trust's property after the decanting.

Uniformity of Application and Construction (§ 28)

The bill specifies that, in applying and construing its provisions, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Relation to E-SIGN Act (§ 29)

The bill provides that its provisions modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act, except for that act's consumer disclosure requirements. But it does not authorize electronic delivery of specified notices not subject

to E-SIGN, such as court orders or notices.

Applicability (§ 30)

The bill establishes rules for its applicability on the date that it takes effect unless the bill provides otherwise. Under these rules (and subject to the bill's provisions on scope, see § 3), the bill applies to:

1. all trusts, whenever created;
2. all trust-related judicial proceedings begun on or after January 1, 2025; and
3. all trust-related judicial proceedings begun before then, although if the court finds that applying a particular provision would substantially interfere with the proceeding or prejudice the parties' rights, that provision would not apply.

Also, unless the bill requires otherwise, (1) it does not affect any act done before January 1, 2025, and (2) unless the trust's terms clearly indicate otherwise, the bill's rules of construction or presumptions apply to trust instruments executed before January 1, 2025.

§§ 31-33 — CORRESPONDING CHANGES TO EXISTING LAWS

Methods of Notice (§ 31)

The bill applies the state's Uniform Trust Code standards for permissible methods of notice to notices or documents under the bill (allowing them to be sent, among other ways, by first-class mail, or if the person has consented in advance, by email).

It similarly extends to these notices and documents an existing provision which allows notices or documents to not be sent to someone whose identity or location is unknown to, and not reasonably determinable by, the trustee.

Court Jurisdiction (§ 32)

For testamentary trusts, the bill gives the probate court sole original jurisdiction to hear and decide decanting-related petitions (see § 9). For

inter vivos trusts, the bill gives the probate court and Superior Court concurrent jurisdiction over these petitions.

Probate Court Fee (§ 33)

The bill sets a \$300 fee for probate court petitions to exercise the decanting power under § 9.

BACKGROUND

Connecticut Uniform Trust Code

PA 19-137 enacted the Connecticut Uniform Trust Code. The code establishes numerous rules on creating, modifying, terminating, and enforcing trusts (CGS § 45a-499a et seq.).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0 (03/28/2024)