

SENATE BILL 446

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3lr0808
CF 3lr1559

By: **Senator West**

Introduced and read first time: February 2, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Trusts – Decanting**
3 **(Maryland Trust Decanting Act)**

4 FOR the purpose of establishing rules governing the exercise of the decanting power to
5 distribute the property of a first trust to one or more second trusts or modify the
6 terms of a first trust; applying this Act retroactively; and generally relating to the
7 Maryland Trust Decanting Act.

8 BY adding to

9 Article – Estates and Trusts

10 Section 14–601 through 14–625 to be under the new subtitle “Subtitle 6. Maryland
11 Trust Decanting Act”

12 Annotated Code of Maryland

13 (2022 Replacement Volume and 2022 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
15 That the Laws of Maryland read as follows:

16 **Article – Estates and Trusts**

17 **SUBTITLE 6. MARYLAND TRUST DECANTING ACT.**

18 **14–601.**

19 **(A) THE DEFINITIONS IN § 14.5–103 OF THIS ARTICLE APPLY IN THIS**
20 **SUBTITLE.**

21 **(B) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
22 **INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(C) (1) “AUTHORIZED FIDUCIARY” MEANS A TRUSTEE OR OTHER**
2 **FIDUCIARY, OTHER THAN A SETTLOR, WHO HAS DISCRETION TO DISTRIBUTE OR**
3 **DIRECT A TRUSTEE TO DISTRIBUTE ALL OR PART OF THE PRINCIPAL OF THE FIRST**
4 **TRUST TO A BENEFICIARY.**

5 **(2) “AUTHORIZED FIDUCIARY” INCLUDES:**

6 **(I) A SPECIAL FIDUCIARY APPOINTED UNDER § 14–606 OF THIS**
7 **SUBTITLE; AND**

8 **(II) A SPECIAL NEEDS FIDUCIARY, AS DEFINED IN § 14–610 OF**
9 **THIS SUBTITLE.**

10 **(D) “CHARITABLE INTEREST” MEANS AN INTEREST IN A TRUST THAT:**

11 **(1) IS HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION AND**
12 **MAKES THE ORGANIZATION A QUALIFIED BENEFICIARY;**

13 **(2) BENEFITS ONLY CHARITABLE ORGANIZATIONS AND, IF THE**
14 **INTEREST WERE HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION, WOULD**
15 **MAKE THE ORGANIZATION A QUALIFIED BENEFICIARY; OR**

16 **(3) IS HELD SOLELY FOR CHARITABLE PURPOSES AND, IF THE**
17 **INTEREST WERE HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION, WOULD**
18 **MAKE THE ORGANIZATION A QUALIFIED BENEFICIARY.**

19 **(E) “CHARITABLE ORGANIZATION” MEANS:**

20 **(1) A PERSON, OTHER THAN AN INDIVIDUAL, ORGANIZED AND**
21 **OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES; OR**

22 **(2) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR**
23 **INSTRUMENTALITY THAT HOLDS FUNDS EXCLUSIVELY FOR CHARITABLE PURPOSES.**

24 **(F) “COURT” MEANS THE COURT IN THIS STATE HAVING JURISDICTION IN**
25 **MATTERS RELATING TO TRUSTS.**

26 **(G) (1) “CURRENT BENEFICIARY” MEANS A BENEFICIARY THAT, ON THE**
27 **DATE THE BENEFICIARY’S QUALIFICATION IS DETERMINED, IS A DISTRIBUTEE OR**
28 **PERMISSIBLE DISTRIBUTEE OF TRUST INCOME OR PRINCIPAL.**

1 **(2) “CURRENT BENEFICIARY” INCLUDES A PERSON WHO IS A**
2 **BENEFICIARY SOLELY BECAUSE THE PERSON HOLDS A PRESENTLY EXERCISABLE**
3 **GENERAL POWER OF APPOINTMENT.**

4 **(3) “CURRENT BENEFICIARY” DOES NOT INCLUDE A PERSON WHO IS**
5 **A BENEFICIARY ONLY BECAUSE THE PERSON HOLDS A POWER OF APPOINTMENT**
6 **OTHER THAN A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT.**

7 **(H) “DECANTING POWER” MEANS THE POWER OF AN AUTHORIZED**
8 **FIDUCIARY TO DISTRIBUTE PROPERTY OF A FIRST TRUST TO ONE OR MORE SECOND**
9 **TRUSTS OR TO MODIFY THE TERMS OF A FIRST TRUST.**

10 **(I) “EXPANDED DISTRIBUTIVE DISCRETION” MEANS A DISCRETIONARY**
11 **POWER OF DISTRIBUTION THAT IS NOT LIMITED TO AN ASCERTAINABLE STANDARD**
12 **OR A REASONABLY DEFINITE STANDARD.**

13 **(J) “FIRST TRUST” MEANS A TRUST OVER WHICH AN AUTHORIZED**
14 **FIDUCIARY MAY EXERCISE DECANTING POWER.**

15 **(K) “FIRST TRUST INSTRUMENT” MEANS THE TRUST INSTRUMENT OF A**
16 **FIRST TRUST.**

17 **(L) “POWERHOLDER” MEANS A PERSON IN WHICH A SETTLOR CREATES A**
18 **POWER OF APPOINTMENT.**

19 **(M) (1) “PRESENTLY EXERCISABLE POWER OF APPOINTMENT” MEANS A**
20 **POWER OF APPOINTMENT EXERCISABLE BY THE POWERHOLDER AT THE RELEVANT**
21 **TIME.**

22 **(2) “PRESENTLY EXERCISABLE POWER OF APPOINTMENT” INCLUDES**
23 **A POWER OF APPOINTMENT EXERCISABLE ONLY AFTER THE OCCURRENCE OF A**
24 **SPECIFIED EVENT, THE SATISFACTION OF AN ASCERTAINABLE STANDARD, OR THE**
25 **PASSAGE OF A SPECIFIED TIME ONLY AFTER:**

26 **(I) THE OCCURRENCE OF THE SPECIFIED EVENT;**

27 **(II) THE SATISFACTION OF THE ASCERTAINABLE STANDARD; OR**

28 **(III) THE PASSAGE OF THE SPECIFIED TIME.**

29 **(3) “PRESENTLY EXERCISABLE POWER OF APPOINTMENT” DOES NOT**
30 **INCLUDE A POWER EXERCISABLE ONLY AT THE POWERHOLDER’S DEATH.**

1 (N) "REASONABLY DEFINITE STANDARD" MEANS A CLEARLY MEASURABLE
2 STANDARD UNDER WHICH A HOLDER OF A POWER OF DISTRIBUTION IS LEGALLY
3 ACCOUNTABLE WITHIN THE MEANING OF 26 U.S.C. § 674(B)(5)(A) AND ANY
4 APPLICABLE REGULATIONS.

5 (O) "RECORD" MEANS INFORMATION THAT IS:

6 (1) INSCRIBED ON A TANGIBLE MEDIUM; OR

7 (2) (I) STORED IN AN ELECTRONIC OR OTHER MEDIUM; AND

8 (II) RETRIEVABLE IN PERCEIVABLE FORM.

9 (P) "SECOND TRUST" MEANS:

10 (1) A FIRST TRUST WHICH HAS BEEN MODIFIED UNDER THIS TITLE;

11 OR

12 (2) A TRUST TO WHICH A DISTRIBUTION OF PROPERTY FROM A FIRST
13 TRUST HAS OR MAY BE MADE UNDER THIS TITLE.

14 (Q) "SECOND TRUST INSTRUMENT" MEANS THE TRUST INSTRUMENT OF A
15 SECOND TRUST.

16 14-602.

17 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THIS SUBTITLE
18 APPLIES TO ANY EXPRESS TRUST THAT:

19 (1) IS IRREVOCABLE OR REVOCABLE BY THE SETTLOR ONLY WITH
20 THE CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST; AND

21 (2) (I) HAS ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS
22 STATE, INCLUDING A TRUST WHOSE PRINCIPAL PLACE OF ADMINISTRATION HAS
23 BEEN CHANGED TO THIS STATE; OR

24 (II) IS GOVERNED BY THE LAW OF THIS STATE FOR THE
25 PURPOSE OF:

26 1. ADMINISTRATION, INCLUDING ADMINISTRATION OF A
27 TRUST WHOSE GOVERNING LAW FOR PURPOSES OF ADMINISTRATION HAS BEEN
28 CHANGED TO THE LAW OF THIS STATE;

1 2. **CONSTRUCTION OF THE TERMS OF THE TRUST; OR**

2 3. **DETERMINING THE MEANING OR EFFECT OF THE**
3 **TERMS OF THE TRUST.**

4 **(B) THIS SUBTITLE DOES NOT APPLY TO A TRUST HELD SOLELY FOR**
5 **CHARITABLE PURPOSES.**

6 **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A TRUST**
7 **INSTRUMENT MAY RESTRICT OR PROHIBIT THE EXERCISE OF THE DECANTING**
8 **POWER.**

9 **(D) THIS SUBTITLE DOES NOT LIMIT THE POWER OF A TRUSTEE, A**
10 **POWERHOLDER, OR ANY OTHER PERSON TO:**

11 **(1) DISTRIBUTE OR APPOINT PROPERTY IN FURTHER TRUST; OR**

12 **(2) MODIFY A TRUST UNDER THE TRUST INSTRUMENT, LAW OF THIS**
13 **STATE OTHER THAN THIS TITLE, COMMON LAW, A COURT ORDER, OR A NONJUDICIAL**
14 **SETTLEMENT AGREEMENT.**

15 **(E) THIS SUBTITLE DOES NOT LIMIT THE ABILITY OF A SETTLOR TO**
16 **PROVIDE IN A TRUST INSTRUMENT FOR THE DISTRIBUTION OR APPOINTMENT IN**
17 **FURTHER TRUST OF TRUST PROPERTY OR THE MODIFICATION OF THE TRUST**
18 **INSTRUMENT.**

19 **14-603.**

20 **(A) IN EXERCISING THE DECANTING POWER, AN AUTHORIZED FIDUCIARY**
21 **SHALL ACT IN ACCORDANCE WITH ITS FIDUCIARY DUTIES, INCLUDING THE DUTY TO**
22 **ACT IN ACCORDANCE WITH THE PURPOSES OF THE FIRST TRUST.**

23 **(B) THIS SUBTITLE DOES NOT CREATE OR IMPLY A DUTY TO EXERCISE THE**
24 **DECANTING POWER OR GIVE NOTICE TO BENEFICIARIES OF THE APPLICABILITY OF**
25 **THIS SUBTITLE.**

26 **(C) EXCEPT AS OTHERWISE PROVIDED IN A FIRST TRUST INSTRUMENT, FOR**
27 **PURPOSES OF THIS TITLE AND §§ 14.5-801 AND 14.5-802(A) OF THIS ARTICLE, THE**
28 **TERMS OF THE FIRST TRUST ARE DEEMED TO INCLUDE THE DECANTING POWER.**

29 **14-604.**

1 **A TRUSTEE OR OTHER PERSON WHO REASONABLY RELIES ON THE VALIDITY**
2 **OF A DISTRIBUTION OF TRUST PROPERTY TO ANOTHER TRUST OR ON A**
3 **MODIFICATION OF A TRUST UNDER THIS SUBTITLE, THE LAW OF THIS STATE, OR THE**
4 **LAW OF ANY OTHER JURISDICTION IS NOT LIABLE TO ANY PERSON FOR ANY ACT OR**
5 **FAILURE TO ACT AS A RESULT OF THE RELIANCE.**

6 **14-605.**

7 **(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, AN AUTHORIZED**
8 **FIDUCIARY MAY EXERCISE THE DECANTING POWER WITHOUT THE CONSENT OF ANY**
9 **PERSON AND WITHOUT COURT APPROVAL.**

10 **(B) (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION AND**
11 **PARAGRAPH (2) OF THIS SUBSECTION, AN AUTHORIZED FIDUCIARY SHALL GIVE**
12 **NOTICE IN A RECORD OF ANY INTENDED EXERCISE OF THE DECANTING POWER AT**
13 **LEAST 60 DAYS BEFORE THE EXERCISE TO:**

14 **(I) EACH SETTLOR OF THE FIRST TRUST, IF LIVING OR THEN IN**
15 **EXISTENCE;**

16 **(II) EACH QUALIFIED BENEFICIARY OF THE FIRST TRUST AND**
17 **THE ATTORNEY GENERAL IF THE ATTORNEY GENERAL HAS THE RIGHTS OF A**
18 **QUALIFIED BENEFICIARY UNDER § 14-611 OF THIS SUBTITLE;**

19 **(III) EACH HOLDER OF A PRESENTLY EXERCISABLE POWER OF**
20 **APPOINTMENT OVER ANY PART OF THE FIRST TRUST;**

21 **(IV) EACH PERSON THAT CURRENTLY HAS A RIGHT TO REMOVE**
22 **OR REPLACE THE AUTHORIZED FIDUCIARY; AND**

23 **(V) ANY OTHER FIDUCIARY OF THE FIRST OR SECOND TRUSTS.**

24 **(2) AN AUTHORIZED FIDUCIARY IS NOT REQUIRED TO GIVE NOTICE**
25 **TO ANY PERSON UNDER THIS SUBSECTION IF THE PERSON IS NOT KNOWN TO THE**
26 **FIDUCIARY OR IS KNOWN TO THE FIDUCIARY AND CANNOT BE LOCATED AFTER**
27 **REASONABLE DILIGENCE.**

28 **(C) THE NOTICE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION**
29 **SHALL:**

30 **(1) SPECIFY THE MANNER IN WHICH THE AUTHORIZED FIDUCIARY**
31 **INTENDS TO EXERCISE THE DECANTING POWER;**

1 **(2) SPECIFY THE PROPOSED EFFECTIVE DATE FOR THE EXERCISE OF**
2 **THE POWER; AND**

3 **(3) INCLUDE A COPY OF THE FIRST TRUST INSTRUMENT AND ALL**
4 **SECOND TRUST INSTRUMENTS.**

5 **(D) AN AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER**
6 **SOONER THAN 60 DAYS AFTER PROVIDING THE NOTICE REQUIRED BY SUBSECTION**
7 **(B) OF THIS SECTION IF ALL PERSONS ENTITLED TO RECEIVE THE NOTICE WAIVE**
8 **THE PERIOD IN A SIGNED RECORD.**

9 **(E) THE RECEIPT OF NOTICE, WAIVER OF THE NOTICE PERIOD, OR**
10 **EXPIRATION OF THE NOTICE PERIOD DOES NOT AFFECT THE RIGHT OF A PERSON TO**
11 **FILE AN APPLICATION ASSERTING THAT:**

12 **(1) AN ATTEMPTED EXERCISE OF THE DECANTING POWER IS**
13 **INEFFECTIVE BECAUSE THE EXERCISE:**

14 **(I) DID NOT COMPLY WITH THE PROVISIONS OF THIS SUBTITLE;**

15 **(II) WAS AN ABUSE OF DISCRETION; OR**

16 **(III) WAS A BREACH OF FIDUCIARY DUTY; OR**

17 **(2) § 14–619 OF THIS SUBTITLE APPLIES TO THE EXERCISE OF THE**
18 **DECANTING POWER.**

19 **(F) AN EXERCISE OF THE DECANTING POWER IS NOT INEFFECTIVE BECAUSE**
20 **AN AUTHORIZED FIDUCIARY FAILED TO GIVE NOTICE AS REQUIRED BY SUBSECTION**
21 **(B) OF THIS SECTION IF THE AUTHORIZED FIDUCIARY ACTED WITH REASONABLE**
22 **CARE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.**

23 **14–606.**

24 **ON APPLICATION OF AN AUTHORIZED FIDUCIARY OR A PERSON ENTITLED TO**
25 **RECEIVE NOTICE UNDER § 14–605 OF THIS SUBTITLE, A COURT MAY:**

26 **(1) PROVIDE INSTRUCTIONS TO THE AUTHORIZED FIDUCIARY**
27 **REGARDING WHETHER A PROPOSED OR ATTEMPTED EXERCISE OF THE DECANTING**
28 **POWER IS ALLOWED UNDER THIS SUBTITLE AND CONSISTENT WITH THE FIDUCIARY**
29 **DUTIES OF THE AUTHORIZED FIDUCIARY;**

1 **(2) APPOINT A SPECIAL FIDUCIARY AND AUTHORIZE THE SPECIAL**
2 **FIDUCIARY TO DETERMINE WHETHER THE DECANTING POWER SHOULD BE**
3 **EXERCISED AND TO EXERCISE THE DECANTING POWER;**

4 **(3) APPROVE THE EXERCISE OF THE DECANTING POWER;**

5 **(4) DETERMINE THAT THE PROPOSED OR ATTEMPTED EXERCISE OF**
6 **THE DECANTING POWER IS INEFFECTIVE:**

7 **(I) DUE TO A FAILURE TO COMPLY WITH THE PROVISIONS OF**
8 **THIS SUBTITLE;**

9 **(II) AS AN ABUSE OF THE AUTHORIZED FIDUCIARY'S**
10 **DISCRETION; OR**

11 **(III) AS A BREACH OF THE AUTHORIZED FIDUCIARY'S FIDUCIARY**
12 **DUTIES;**

13 **(5) DETERMINE THE EXTENT TO WHICH § 14-619 OF THIS SUBTITLE**
14 **APPLIES TO A PRIOR EXERCISE OF THE DECANTING POWER;**

15 **(6) PROVIDE INSTRUCTIONS TO THE TRUSTEE REGARDING THE**
16 **APPLICATION OF § 14-619 OF THIS SUBTITLE TO A PRIOR EXERCISE OF THE**
17 **DECANTING POWER; OR**

18 **(7) ORDER OTHER RELIEF TO CARRY OUT THE PURPOSES OF THIS**
19 **TITLE.**

20 **14-607.**

21 **(A) ANY EXERCISE OF THE DECANTING POWER SHALL BE MADE IN A**
22 **RECORD SIGNED BY AN AUTHORIZED FIDUCIARY.**

23 **(B) (1) THE RECORD REQUIRED BY THIS SUBSECTION SHALL IDENTIFY:**

24 **(I) THE FIRST TRUST;**

25 **(II) ANY SECOND TRUST;**

26 **(III) ANY PROPERTY BEING DISTRIBUTED TO A SECOND TRUST;**

27 **AND**

28 **(IV) ANY PROPERTY REMAINING IN THE FIRST TRUST.**

1 **(2) THE RECORD REQUIRED BY THIS SUBSECTION MAY INCLUDE**
2 **INFORMATION BY REFERENCE TO THE NOTICE REQUIRED BY § 14-605 OF THIS**
3 **SUBTITLE.**

4 **14-608.**

5 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
6 **INDICATED.**

7 **(2) (I) “NONCONTINGENT RIGHT” MEANS A RIGHT THAT IS NOT**
8 **SUBJECT TO THE EXERCISE OF DISCRETION OR THE OCCURRENCE OF A SPECIFIED**
9 **EVENT THAT IS NOT CERTAIN TO OCCUR.**

10 **(II) “NONCONTINGENT RIGHT” DOES NOT INCLUDE A RIGHT**
11 **HELD BY A BENEFICIARY IF ANY OTHER PERSON HAS DISCRETION TO DISTRIBUTE**
12 **PROPERTY SUBJECT TO THE RIGHT TO ANY PERSON OTHER THAN THE BENEFICIARY**
13 **OR THE BENEFICIARY’S ESTATE.**

14 **(3) “PRESUMPTIVE REMAINDER BENEFICIARY” MEANS A QUALIFIED**
15 **BENEFICIARY OTHER THAN A CURRENT BENEFICIARY.**

16 **(4) (I) “SUCCESSOR BENEFICIARY” MEANS A BENEFICIARY THAT**
17 **IS NOT A QUALIFIED BENEFICIARY ON THE DATE THAT THE BENEFICIARY’S**
18 **QUALIFICATION IS DETERMINED.**

19 **(II) “SUCCESSOR BENEFICIARY” DOES NOT INCLUDE A PERSON**
20 **THAT IS A BENEFICIARY SOLELY BECAUSE THE PERSON HOLDS A NONGENERAL**
21 **POWER OF APPOINTMENT.**

22 **(5) “VESTED INTEREST” MEANS:**

23 **(I) A RIGHT TO A MANDATORY DISTRIBUTION THAT IS A**
24 **NONCONTINGENT RIGHT AS OF THE DATE OF THE EXERCISE OF THE DECANTING**
25 **POWER;**

26 **(II) A CURRENT AND NONCONTINGENT RIGHT, AT LEAST**
27 **ANNUALLY, TO A MANDATORY DISTRIBUTION OF INCOME, A SPECIFIED DOLLAR**
28 **AMOUNT, OR A PERCENTAGE VALUE OF SOME OR ALL OF THE TRUST PROPERTY;**

29 **(III) A CURRENT AND NONCONTINGENT RIGHT, AT LEAST**
30 **ANNUALLY, TO WITHDRAW INCOME, A SPECIFIED DOLLAR AMOUNT, OR A**
31 **PERCENTAGE VALUE OF SOME OR ALL OF THE TRUST PROPERTY;**

1 (IV) A PRESENTLY EXERCISABLE GENERAL POWER OF
2 APPOINTMENT; OR

3 (V) A RIGHT TO RECEIVE AN ASCERTAINABLE PART OF TRUST
4 PROPERTY ON TERMINATION OF THE TRUST THAT IS NOT SUBJECT TO THE EXERCISE
5 OF DISCRETION OR THE OCCURRENCE OF A SPECIFIED EVENT THAT IS NOT CERTAIN
6 TO OCCUR.

7 (B) EXCEPT AS OTHERWISE PROVIDED IN § 14-610 OF THIS SUBTITLE, AN
8 AUTHORIZED FIDUCIARY THAT HAS EXPANDED DISTRIBUTIVE DISCRETION OVER
9 THE PRINCIPAL OF A FIRST TRUST FOR THE BENEFIT OF ONE OR MORE CURRENT
10 BENEFICIARIES MAY EXERCISE THE DECANTING POWER OVER THE PRINCIPAL OF
11 THE FIRST TRUST.

12 (C) EXCEPT AS OTHERWISE PROVIDED THIS SUBTITLE, IN EXERCISING THE
13 DECANTING POWER, A SECOND TRUST MAY NOT:

14 (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
15 INCLUDE AS A CURRENT BENEFICIARY A PERSON THAT IS NOT A CURRENT
16 BENEFICIARY OF THE FIRST TRUST;

17 (2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
18 INCLUDE AS A PRESUMPTIVE REMAINDER BENEFICIARY OR SUCCESSOR
19 BENEFICIARY A PERSON THAT IS NOT A CURRENT BENEFICIARY, PRESUMPTIVE
20 REMAINDER BENEFICIARY, OR SUCCESSOR BENEFICIARY OF THE FIRST TRUST; OR

21 (3) REDUCE OR ELIMINATE A VESTED INTEREST.

22 (D) SUBJECT TO SUBSECTION (C)(3) OF THIS SECTION AND § 14-611 OF THIS
23 SUBTITLE, IN THE EXERCISE OF THE DECANTING POWER UNDER THIS SECTION, ONE
24 OR MORE SECOND TRUSTS MAY BE CREATED OR ADMINISTERED UNDER THE LAW OF
25 ANY JURISDICTION AND MAY:

26 (1) RETAIN A POWER OF APPOINTMENT GRANTED IN THE FIRST
27 TRUST;

28 (2) OMIT A POWER OF APPOINTMENT GRANTED IN THE FIRST TRUST,
29 OTHER THAN A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT;

30 (3) CREATE OR MODIFY A POWER OF APPOINTMENT IF THE
31 POWERHOLDER IS A CURRENT BENEFICIARY OF THE FIRST TRUST AND THE

1 AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE DISCRETION TO
2 DISTRIBUTE PRINCIPAL TO THAT BENEFICIARY; OR

3 (4) CREATE OR MODIFY A POWER OF APPOINTMENT IF THE
4 POWERHOLDER IS A PRESUMPTIVE REMAINDER BENEFICIARY OR SUCCESSOR
5 BENEFICIARY OF THE FIRST TRUST AND THE EXERCISE OF THE POWER MAY TAKE
6 EFFECT ONLY AFTER THE POWERHOLDER BECOMES, OR WOULD HAVE BECOME IF
7 THEN LIVING, A CURRENT BENEFICIARY.

8 (E) (1) A POWER OF APPOINTMENT DESCRIBED IN SUBSECTION (D) OF
9 THIS SECTION MAY BE GENERAL OR NONGENERAL.

10 (2) THE CLASS OF PERMISSIBLE APPOINTEES IN FAVOR OF WHICH A
11 POWER OF APPOINTMENT DESCRIBED IN SUBSECTION (D) OF THIS SECTION MAY BE
12 EXERCISED MAY BE BROADER THAN OR DIFFERENT FROM THE BENEFICIARIES OF
13 THE FIRST TRUST.

14 (F) IF AN AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE
15 DISCRETION OVER PART BUT NOT ALL OF THE PRINCIPAL OF A FIRST TRUST, THE
16 AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER THIS
17 SECTION ONLY OVER THE PART OF THE PRINCIPAL OVER WHICH THE AUTHORIZED
18 FIDUCIARY HAS EXPANDED DISTRIBUTIVE DISCRETION.

19 14-609.

20 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (2) "DEFERRED DISTRIBUTION" MEANS A PROVISION IN A SECOND
23 TRUST THAT DEFERS OR POSTPONES, AS COMPARED WITH THE FIRST TRUST, A
24 CONTINGENT RIGHT OF A BENEFICIARY TO RECEIVE AN OUTRIGHT DISTRIBUTION
25 OF ASSETS ON THE ATTAINMENT OF A CERTAIN AGE OR THE OCCURRENCE OF A
26 SPECIFIED EVENT.

27 (3) "LIMITED DISTRIBUTIVE DISCRETION" MEANS A DISCRETIONARY
28 POWER OF DISTRIBUTION THAT IS LIMITED TO AN ASCERTAINABLE STANDARD OR A
29 REASONABLY DEFINITE STANDARD.

30 (B) AN AUTHORIZED FIDUCIARY WHO HAS LIMITED DISTRIBUTIVE
31 DISCRETION OVER THE PRINCIPAL OF A FIRST TRUST MAY EXERCISE THE
32 DECANTING POWER OVER THE PRINCIPAL OF THE FIRST TRUST.

1 **(C) (1) SUBJECT TO § 14–611 OF THIS SUBTITLE, ONE OR MORE SECOND**
2 **TRUSTS MAY BE CREATED OR ADMINISTERED UNDER THE LAW OF ANY**
3 **JURISDICTION.**

4 **(2) THE SECOND TRUSTS, IN THE AGGREGATE, SHALL GRANT EACH**
5 **BENEFICIARY OF THE FIRST TRUST BENEFICIAL INTERESTS THAT ARE**
6 **SUBSTANTIALLY SIMILAR TO THE BENEFICIARY’S BENEFICIAL INTERESTS UNDER**
7 **THE FIRST TRUST.**

8 **(3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, A**
9 **SECOND TRUST MAY:**

10 **(I) INCLUDE A DEFERRED DISTRIBUTION, IF THE SECOND**
11 **TRUST PROVIDES THAT:**

12 **1. DURING THE LIFETIME OF THE BENEFICIARY, NO**
13 **PORTION OF THE INCOME OR PRINCIPAL ATTRIBUTABLE TO THE DEFERRED**
14 **DISTRIBUTION MAY BE DISTRIBUTED TO, OR FOR THE BENEFIT OF, ANY PERSON**
15 **OTHER THAN THE BENEFICIARY; AND**

16 **2. A. THE BENEFICIARY SHALL HAVE A**
17 **TESTAMENTARY QUALIFIED POWER OF APPOINTMENT EXERCISABLE IN FAVOR OF**
18 **THE BENEFICIARY’S ESTATE OVER THE DEFERRED DISTRIBUTION; OR**

19 **B. THE DEFERRED DISTRIBUTION SHALL BE PAYABLE**
20 **TO THE BENEFICIARY’S ESTATE IF THE SECOND TRUST DOES NOT TERMINATE**
21 **DURING THE BENEFICIARY’S LIFETIME;**

22 **(II) EXPAND A POWER OF APPOINTMENT EXISTING IN THE FIRST**
23 **TRUST TO INCLUDE AS PERMISSIBLE APPOINTEES THE CREDITORS OF THE**
24 **POWERHOLDER’S ESTATE; OR**

25 **(III) NARROW A POWER OF APPOINTMENT EXISTING IN THE**
26 **FIRST TRUST THAT IS NOT PRESENTLY EXERCISABLE TO REMOVE AS PERMISSIBLE**
27 **APPOINTEES ANY OF THE FOLLOWING:**

28 **1. THE POWERHOLDER;**

29 **2. THE POWERHOLDER’S ESTATE;**

30 **3. THE CREDITORS OF THE POWERHOLDER; OR**

31 **4. THE CREDITORS OF THE POWERHOLDER’S ESTATE.**

1 **(D) (1) A POWER TO MAKE A DISTRIBUTION UNDER A SECOND TRUST FOR**
2 **THE BENEFIT OF A BENEFICIARY WHO IS AN INDIVIDUAL IS SUBSTANTIALLY SIMILAR**
3 **TO A POWER UNDER THE FIRST TRUST TO MAKE A DISTRIBUTION DIRECTLY TO THE**
4 **BENEFICIARY.**

5 **(2) A DISTRIBUTION IS FOR THE BENEFIT OF THE BENEFICIARY IF:**

6 **(I) THE DISTRIBUTION IS APPLIED FOR THE BENEFIT OF THE**
7 **BENEFICIARY;**

8 **(II) 1. THE BENEFICIARY IS UNDER A LEGAL DISABILITY OR**
9 **THE TRUSTEE REASONABLY BELIEVES THE BENEFICIARY IS INCAPACITATED; AND**

10 **2. THE DISTRIBUTION IS MADE AS ALLOWED BY THIS**
11 **TITLE; OR**

12 **(III) THE DISTRIBUTION IS MADE AS ALLOWED UNDER THE**
13 **TERMS OF THE FIRST TRUST INSTRUMENT AND THE SECOND TRUST INSTRUMENT**
14 **FOR THE BENEFIT OF THE BENEFICIARY.**

15 **(E) IF AN AUTHORIZED FIDUCIARY HAS LIMITED DISTRIBUTIVE**
16 **DISCRETION OVER PART OF BUT NOT ALL OF THE PRINCIPAL OF A FIRST TRUST, THE**
17 **AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER THIS**
18 **SECTION ONLY OVER THE PART OF THE PRINCIPAL OVER WHICH THE AUTHORIZED**
19 **FIDUCIARY HAS LIMITED DISTRIBUTIVE DISCRETION.**

20 **14-610.**

21 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
22 **INDICATED.**

23 **(2) “BENEFICIARY WITH A DISABILITY” MEANS A BENEFICIARY OF A**
24 **FIRST TRUST WHO THE SPECIAL NEEDS FIDUCIARY REASONABLY BELIEVES**
25 **QUALIFIES FOR GOVERNMENTAL BENEFITS BASED ON DISABILITY, WHETHER OR**
26 **NOT THE BENEFICIARY CURRENTLY RECEIVES GOVERNMENTAL BENEFITS OR HAS**
27 **BEEN ADJUDICATED INCAPACITATED.**

28 **(3) “GOVERNMENTAL BENEFITS” MEANS FINANCIAL AID OR**
29 **SERVICES FROM A STATE, FEDERAL, OR OTHER PUBLIC AGENCY.**

30 **(4) “SPECIAL NEEDS FIDUCIARY” MEANS, WITH RESPECT TO A TRUST**
31 **THAT HAS A BENEFICIARY WITH A DISABILITY:**

1 **(I) A TRUSTEE OR OTHER FIDUCIARY, OTHER THAN A SETTLOR,**
2 **THAT HAS DISCRETION TO DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF A FIRST**
3 **TRUST TO ONE OR MORE CURRENT BENEFICIARIES;**

4 **(II) IF NO TRUSTEE OR FIDUCIARY HAS DISCRETION UNDER**
5 **ITEM (I) OF THIS PARAGRAPH, A TRUSTEE OR OTHER FIDUCIARY, OTHER THAN A**
6 **SETTLOR, THAT HAS DISCRETION TO DISTRIBUTE PART OR ALL OF THE INCOME OF**
7 **THE FIRST TRUST TO ONE OR MORE CURRENT BENEFICIARIES; OR**

8 **(III) IF NO TRUSTEE OR FIDUCIARY HAS DISCRETION UNDER**
9 **ITEM (I) OR (II) OF THIS PARAGRAPH, A TRUSTEE OR OTHER FIDUCIARY, OTHER**
10 **THAN A SETTLOR, THAT IS REQUIRED TO DISTRIBUTE PART OR ALL OF THE INCOME**
11 **OR PRINCIPAL OF THE FIRST TRUST TO ONE OR MORE CURRENT BENEFICIARIES.**

12 **(5) “SPECIAL NEEDS TRUST” MEANS A TRUST THAT THE TRUSTEE**
13 **REASONABLY BELIEVES WOULD NOT BE CONSIDERED A RESOURCE FOR THE**
14 **PURPOSE OF DETERMINING WHETHER A BENEFICIARY WITH A DISABILITY IS**
15 **ELIGIBLE FOR GOVERNMENTAL BENEFITS.**

16 **(B) A SPECIAL NEEDS FIDUCIARY MAY EXERCISE THE DECANTING POWER**
17 **OVER THE PRINCIPAL OF A FIRST TRUST AS IF THE FIDUCIARY HAD AUTHORITY TO**
18 **DISTRIBUTE PRINCIPAL TO A BENEFICIARY WITH A DISABILITY SUBJECT TO**
19 **EXPANDED DISTRIBUTED DISCRETION, IF:**

20 **(1) A SECOND TRUST IS A SPECIAL NEEDS TRUST THAT BENEFITS THE**
21 **BENEFICIARY WITH A DISABILITY; AND**

22 **(2) THE SPECIAL NEEDS FIDUCIARY DETERMINES THAT THE**
23 **EXERCISE OF THE DECANTING POWER WILL FURTHER PURPOSES OF THE FIRST**
24 **TRUST.**

25 **(C) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IN AN**
26 **EXERCISE OF THE DECANTING POWER UNDER THIS SECTION:**

27 **(1) THE INTEREST IN A SECOND TRUST OF A BENEFICIARY WITH A**
28 **DISABILITY MAY:**

29 **(I) BE A POOLED TRUST, AS DEFINED IN TITLE 42 OF THE**
30 **UNITED STATES CODE, FOR A BENEFICIARY WITH A DISABILITY; OR**

31 **(II) CONTAIN PAYBACK PROVISIONS COMPLYING WITH THE**
32 **REQUIREMENTS FOR REIMBURSEMENT IN TITLE 42 OF THE UNITED STATES CODE;**

1 **(2) A SECOND TRUST MAY REDUCE OR ELIMINATE A VESTED**
2 **INTEREST OF A BENEFICIARY WITH A DISABILITY; AND**

3 **(3) EXCEPT AS AFFECTED BY ANY CHANGE TO THE INTERESTS OF THE**
4 **BENEFICIARY WITH A DISABILITY, A SECOND TRUST, OR SECOND TRUSTS IN THE**
5 **AGGREGATE, SHALL GRANT EACH OTHER BENEFICIARY OF THE FIRST TRUST**
6 **BENEFICIAL INTERESTS IN THE SECOND TRUSTS THAT ARE SUBSTANTIALLY**
7 **SIMILAR TO THE BENEFICIARY'S BENEFICIAL INTERESTS IN THE FIRST TRUST.**

8 **14-611.**

9 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
10 **INDICATED.**

11 **(2) "DETERMINABLE CHARITABLE INTEREST" MEANS A CHARITABLE**
12 **INTEREST THAT IS A RIGHT TO A MANDATORY DISTRIBUTION CURRENTLY,**
13 **PERIODICALLY, ON THE OCCURRENCE OF A SPECIFIED EVENT, OR AFTER PASSAGE**
14 **OF A SPECIFIED TIME AND THAT IS UNCONDITIONAL OR WILL BE HELD SOLELY FOR**
15 **CHARITABLE PURPOSES.**

16 **(3) (I) "UNCONDITIONAL" MEANS NOT SUBJECT TO THE**
17 **OCCURRENCE OF A SPECIFIED EVENT THAT IS NOT CERTAIN TO OCCUR.**

18 **(II) "UNCONDITIONAL" INCLUDES AN INTEREST SUBJECT TO**
19 **THE SOLE REQUIREMENT THAT A CHARITABLE ORGANIZATION BE IN EXISTENCE OR**
20 **QUALIFY UNDER ANY PROVISION OF TITLE 26 OF THE UNITED STATES CODE ON THE**
21 **DATE OF THE DISTRIBUTION, IF THE CHARITABLE ORGANIZATION MEETS THE**
22 **REQUIREMENT ON THE DATE OF DETERMINATION.**

23 **(B) (1) IF A FIRST TRUST CONTAINS A DETERMINABLE CHARITABLE**
24 **INTEREST, THE ATTORNEY GENERAL HAS THE RIGHTS OF A QUALIFIED**
25 **BENEFICIARY AND MAY REPRESENT AND BIND THE CHARITABLE INTEREST.**

26 **(2) IF A FIRST TRUST CONTAINS A CHARITABLE INTEREST, A SECOND**
27 **TRUST MAY NOT:**

28 **(I) DIMINISH THE CHARITABLE INTEREST;**

29 **(II) DIMINISH THE INTEREST OF AN IDENTIFIED CHARITABLE**
30 **ORGANIZATION THAT HOLDS THE CHARITABLE INTEREST;**

1 (III) ALTER ANY CHARITABLE PURPOSE STATED IN THE FIRST
2 TRUST INSTRUMENT; OR

3 (IV) ALTER ANY CONDITION OR RESTRICTION RELATED TO THE
4 CHARITABLE INTEREST.

5 (3) IF A FIRST TRUST CONTAINS A DETERMINABLE CHARITABLE
6 INTEREST, THE SECOND TRUST SHALL BE ADMINISTERED UNDER THE LAW OF THIS
7 STATE, UNLESS:

8 (I) THE ATTORNEY GENERAL, AFTER RECEIVING NOTICE OF
9 THE EXERCISE OF THE DECANTING POWER, DOES NOT OBJECT WITHIN 60 DAYS
10 AFTER RECEIVING THE NOTICE;

11 (II) THE ATTORNEY GENERAL CONSENTS IN A SIGNED RECORD
12 TO THE SECOND TRUST BEING ADMINISTERED UNDER THE LAW OF ANOTHER
13 JURISDICTION; OR

14 (III) A COURT APPROVES THE EXERCISE OF THE DECANTING
15 POWER.

16 (C) IF THERE ARE TWO OR MORE SECOND TRUSTS, THE SECOND TRUSTS
17 SHALL BE TREATED AS ONE TRUST FOR PURPOSES OF DETERMINING WHETHER THE
18 EXERCISE OF THE DECANTING POWER DIMINISHES THE CHARITABLE INTEREST OR
19 DIMINISHES THE INTEREST OF AN IDENTIFIED CHARITABLE ORGANIZATION FOR
20 PURPOSES OF SUBSECTION (B) OF THIS SECTION.

21 14-612.

22 (A) AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE DECANTING
23 POWER TO THE EXTENT THAT THE FIRST TRUST INSTRUMENT EXPRESSLY
24 PROHIBITS EXERCISE OF:

25 (1) THE DECANTING POWER; OR

26 (2) A POWER GRANTED BY STATE LAW TO THE FIDUCIARY TO
27 DISTRIBUTE ALL OR PART OF THE TRUST TO ANOTHER TRUST OR TO MODIFY THE
28 TRUST.

29 (B) EXERCISE OF THE DECANTING POWER IS SUBJECT TO ANY RESTRICTION
30 IN THE FIRST TRUST INSTRUMENT THAT EXPRESSLY APPLIES TO EXERCISE OF:

31 (1) THE DECANTING POWER; OR

1 **(2) A POWER GRANTED BY STATE LAW TO THE FIDUCIARY TO**
2 **DISTRIBUTE ALL OR PART OF THE TRUST TO ANOTHER TRUST OR TO MODIFY THE**
3 **TRUST.**

4 **(C) EXERCISE OF THE DECANTING POWER IS NOT PROHIBITED BY:**

5 **(1) A GENERAL PROHIBITION OF THE AMENDMENT OR REVOCATION**
6 **OF A FIRST TRUST;**

7 **(2) A SPENDTHRIFT CLAUSE; OR**

8 **(3) A CLAUSE RESTRAINING THE VOLUNTARY OR INVOLUNTARY**
9 **TRANSFER OF A BENEFICIARY'S INTEREST.**

10 **(D) SUBJECT TO SUBSECTIONS (A) AND (B) OF THIS SECTION, AN**
11 **AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER EVEN IF THE FIRST**
12 **TRUST INSTRUMENT ALLOWS THE AUTHORIZED FIDUCIARY OR ANOTHER PERSON**
13 **TO MODIFY THE FIRST TRUST INSTRUMENT OR TO DISTRIBUTE PART OR ALL OF THE**
14 **PRINCIPAL OF THE FIRST TRUST TO ANOTHER TRUST.**

15 **(E) IF A FIRST TRUST INSTRUMENT CONTAINS AN EXPRESS PROHIBITION OR**
16 **RESTRICTION DESCRIBED IN SUBSECTION (A) OR (B) OF THIS SECTION, THE SAME**
17 **PROHIBITION OR RESTRICTION SHALL BE INCLUDED IN ANY SECOND TRUST**
18 **INSTRUMENT.**

19 **14-613.**

20 **AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE DECANTING POWER TO**
21 **INCREASE THE AUTHORIZED FIDUCIARY'S COMPENSATION, UNLESS:**

22 **(1) ALL QUALIFIED BENEFICIARIES OF THE SECOND TRUST CONSENT**
23 **TO THE INCREASE IN A SIGNED RECORD;**

24 **(2) A COURT APPROVES THE INCREASE; OR**

25 **(3) THE INCREASE IS INCIDENTAL TO OTHER CHANGES MADE BY THE**
26 **EXERCISE OF THE DECANTING POWER.**

27 **14-614.**

28 **(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A SECOND TRUST**
29 **INSTRUMENT MAY NOT:**

1 **(1) RELIEVE AN AUTHORIZED FIDUCIARY FROM LIABILITY FOR**
2 **BREACH OF TRUST TO A GREATER EXTENT THAN A FIRST TRUST INSTRUMENT; OR**

3 **(2) REDUCE FIDUCIARY LIABILITY IN THE AGGREGATE.**

4 **(B) A SECOND TRUST INSTRUMENT MAY PROVIDE FOR INDEMNIFICATION**
5 **OF AN AUTHORIZED FIDUCIARY OF THE FIRST TRUST OR ANOTHER PERSON ACTING**
6 **AS A FIDUCIARY OF THE FIRST TRUST FOR ANY LIABILITY OR CLAIM THAT WOULD**
7 **HAVE BEEN PAYABLE FROM THE FIRST TRUST IF THE DECANTING POWER HAD NOT**
8 **BEEN EXERCISED.**

9 **(C) SUBJECT TO SUBSECTION (A)(2) OF THIS SECTION, A SECOND TRUST**
10 **INSTRUMENT MAY DIVIDE AND REALLOCATE FIDUCIARY POWERS AMONG**
11 **FIDUCIARIES, INCLUDING ONE OR MORE TRUSTEES, DISTRIBUTION ADVISORS,**
12 **INVESTMENT ADVISORS, TRUST PROTECTORS, OR OTHER PERSONS, AND RELIEVE A**
13 **FIDUCIARY FROM LIABILITY FOR AN ACT OR FAILURE TO ACT OF ANOTHER**
14 **FIDUCIARY AS ALLOWED BY THE LAW OF THIS STATE OTHER THAN THIS TITLE.**

15 **14-615.**

16 **AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE DECANTING POWER TO**
17 **MODIFY A PROVISION IN A FIRST TRUST INSTRUMENT GRANTING ANOTHER PERSON**
18 **THE POWER TO REMOVE OR REPLACE THE AUTHORIZED FIDUCIARY UNLESS:**

19 **(1) IF THE MODIFICATION APPLIES ONLY TO THE PERSON, THE**
20 **PERSON HOLDING THE POWER CONSENTS TO THE MODIFICATION IN A SIGNED**
21 **RECORD;**

22 **(2) THE PERSON HOLDING THE POWER AND THE QUALIFIED**
23 **BENEFICIARIES OF THE SECOND TRUST CONSENT TO THE MODIFICATION IN A**
24 **SIGNED RECORD AND THE MODIFICATION GRANTS A SUBSTANTIALLY SIMILAR**
25 **POWER TO ANOTHER PERSON; OR**

26 **(3) A COURT APPROVES THE MODIFICATION AND THE MODIFICATION**
27 **GRANTS A SUBSTANTIALLY SIMILAR POWER TO ANOTHER PERSON.**

28 **14-616.**

29 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
30 **INDICATED.**

1 **(2) “GRANTOR TRUST” MEANS A TRUST AS TO WHICH A SETTLOR OF A**
2 **FIRST TRUST IS CONSIDERED THE OWNER UNDER 26 U.S.C. §§ 671 THROUGH 677**
3 **OR § 679.**

4 **(3) “INTERNAL REVENUE CODE” MEANS TITLE 26 OF THE UNITED**
5 **STATES CODE.**

6 **(4) “NONGRANTOR TRUST” MEANS A TRUST THAT IS NOT A GRANTOR**
7 **TRUST.**

8 **(5) “QUALIFIED BENEFITS PROPERTY” MEANS PROPERTY SUBJECT**
9 **TO THE MINIMUM DISTRIBUTION REQUIREMENTS OF 26 U.S.C. § 401(A)(9), ANY**
10 **APPLICABLE REGULATIONS, OR SIMILAR REQUIREMENTS.**

11 **(6) (I) “TAX BENEFIT” MEANS A FEDERAL OR STATE TAX**
12 **DEDUCTION, EXEMPTION, EXCLUSION, OR OTHER BENEFIT.**

13 **(II) “TAX BENEFIT” DOES NOT INCLUDE A BENEFIT ARISING**
14 **FROM BEING A GRANTOR TRUST.**

15 **(B) (1) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR**
16 **WOULD HAVE QUALIFIED BUT FOR ANY PROVISION OF THIS SUBTITLE OTHER THAN**
17 **THIS SECTION, FOR A MARITAL DEDUCTION FOR PURPOSES OF THE GIFT TAX OR**
18 **ESTATE TAX UNDER THE INTERNAL REVENUE CODE OR A STATE GIFT, ESTATE, OR**
19 **INHERITANCE TAX, THE SECOND TRUST INSTRUMENT MAY NOT INCLUDE OR OMIT**
20 **ANY TERM THAT, IF INCLUDED IN OR OMITTED FROM THE TRUST INSTRUMENT FOR**
21 **THE TRUST TO WHICH PROPERTY WAS TRANSFERRED, WOULD HAVE PREVENTED**
22 **THE TRANSFER FROM QUALIFYING FOR THE DEDUCTION OR WOULD HAVE REDUCED**
23 **THE AMOUNT OF THE DEDUCTION UNDER THE PROVISIONS OF THE INTERNAL**
24 **REVENUE CODE OR STATE LAW UNDER WHICH THE TRANSFER QUALIFIED.**

25 **(2) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR**
26 **WOULD HAVE QUALIFIED BUT FOR ANY PROVISION OF THIS SUBTITLE OTHER THAN**
27 **THIS SECTION, FOR A CHARITABLE DEDUCTION FOR PURPOSES OF THE INCOME,**
28 **GIFT, OR ESTATE TAX UNDER THE INTERNAL REVENUE CODE OR A STATE INCOME,**
29 **GIFT, ESTATE, OR INHERITANCE TAX, THE SECOND TRUST INSTRUMENT MAY NOT**
30 **INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED IN OR OMITTED FROM THE TRUST**
31 **INSTRUMENT FOR THE TRUST TO WHICH THE PROPERTY WAS TRANSFERRED,**
32 **WOULD HAVE PREVENTED THE TRANSFER FROM QUALIFYING FOR THE DEDUCTION**
33 **OR WOULD HAVE REDUCED THE AMOUNT OF THE DEDUCTION UNDER THE SAME**
34 **PROVISIONS OF THE INTERNAL REVENUE CODE OR STATE LAW UNDER WHICH THE**
35 **TRANSFER QUALIFIED.**

1 **(3) (I) IF THE FIRST TRUST CONTAINS PROPERTY THAT**
2 **QUALIFIED, OR WOULD HAVE QUALIFIED BUT FOR ANY PROVISION OF THIS**
3 **SUBTITLE OTHER THAN THIS SECTION, FOR THE EXCLUSION FROM THE GIFT TAX**
4 **DESCRIBED IN 26 U.S.C. § 2503(B), THE SECOND TRUST INSTRUMENT MAY NOT**
5 **INCLUDE OR OMIT A TERM THAT, IF INCLUDED OR OMITTED FROM THE TRUST**
6 **INSTRUMENT FOR THE TRUST TO WHICH THE PROPERTY WAS TRANSFERRED,**
7 **WOULD HAVE PREVENTED THE TRANSFER FROM QUALIFYING UNDER 26 U.S.C. §**
8 **2503(B).**

9 **(II) IF THE FIRST TRUST CONTAINS PROPERTY THAT**
10 **QUALIFIED, OR WOULD HAVE QUALIFIED BUT FOR ANY PROVISION OF THIS**
11 **SUBTITLE OTHER THAN THIS SECTION, FOR THE EXCLUSION FROM THE GIFT TAX**
12 **DESCRIBED IN 26 U.S.C. § 2503(B) BY APPLICATION OF 26 U.S.C. § 2503(C), THE**
13 **SECOND TRUST INSTRUMENT MAY NOT INCLUDE OR OMIT A TERM THAT, IF**
14 **INCLUDED OR OMITTED FROM THE TRUST INSTRUMENT FOR THE TRUST TO WHICH**
15 **THE PROPERTY WAS TRANSFERRED, WOULD HAVE PREVENTED THE TRANSFER**
16 **FROM QUALIFYING UNDER 26 U.S.C. § 2503(C).**

17 **(4) (I) IF THE PROPERTY OF THE FIRST TRUST INCLUDES SHARES**
18 **OF STOCK IN AN S CORPORATION, AS DEFINED IN THE INTERNAL REVENUE CODE,**
19 **AND THE FIRST TRUST IS, OR WOULD BE BUT FOR ANY PROVISION OF THIS SUBTITLE**
20 **OTHER THAN THIS SECTION, A PERMITTED SHAREHOLDER UNDER ANY PROVISION**
21 **OF 26 U.S.C. § 1361, AN AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING**
22 **POWER WITH RESPECT TO PART OR ALL OF THE S CORPORATION STOCK ONLY IF ANY**
23 **SECOND TRUST RECEIVING THE STOCK IS A PERMITTED SHAREHOLDER UNDER 26**
24 **U.S.C. § 1361(C)(2).**

25 **(II) IF THE PROPERTY OF THE FIRST TRUST INCLUDES SHARES**
26 **OF STOCK IN AN S CORPORATION, AS DEFINED IN THE INTERNAL REVENUE CODE,**
27 **AND THE FIRST TRUST IS, OR WOULD BE BUT FOR ANY PROVISION OF THIS SUBTITLE**
28 **OTHER THAN THIS SECTION, A QUALIFIED SUBCHAPTER S TRUST WITHIN THE**
29 **MEANING OF 26 U.S.C. § 1361(D), THE SECOND TRUST INSTRUMENT MAY NOT**
30 **INCLUDE OR OMIT A TERM THAT PREVENTS THE SECOND TRUST FROM QUALIFYING**
31 **AS A QUALIFIED SUBCHAPTER S TRUST.**

32 **(5) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR**
33 **WOULD HAVE QUALIFIED BUT FOR ANY PROVISION OF THIS SUBTITLE OTHER THAN**
34 **THIS SECTION, FOR A ZERO INCLUSION RATIO FOR PURPOSES OF THE**
35 **GENERATION-SKIPPING TRANSFER TAX UNDER 26 U.S.C. § 2642(C), THE SECOND**
36 **TRUST INSTRUMENT MAY NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED OR**
37 **OMITTED FROM THE FIRST TRUST INSTRUMENT, WOULD HAVE PREVENTED THE**
38 **TRANSFER TO THE FIRST TRUST FROM QUALIFYING FOR A ZERO INCLUSION RATIO**
39 **UNDER 26 U.S.C. § 2642(C).**

1 **(6) (I) IF THE FIRST TRUST IS DIRECTLY OR INDIRECTLY THE**
2 **BENEFICIARY OF QUALIFIED BENEFITS PROPERTY, THE SECOND TRUST**
3 **INSTRUMENT MAY NOT INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED IN OR**
4 **OMITTED FROM THE FIRST TRUST INSTRUMENT, WOULD HAVE INCREASED THE**
5 **MINIMUM DISTRIBUTIONS REQUIRED WITH RESPECT TO THE QUALIFIED BENEFITS**
6 **PROPERTY UNDER 26 U.S.C. § 401(A)(9) AND ANY APPLICABLE REGULATION OR**
7 **SIMILAR REQUIREMENTS.**

8 **(II) IF AN ATTEMPTED EXERCISE OF THE DECANTING POWER**
9 **VIOLATES THIS PARAGRAPH:**

10 **1. THE TRUSTEE IS DEEMED TO HAVE HELD THE**
11 **QUALIFIED BENEFITS PROPERTY AND ANY REINVESTED DISTRIBUTIONS OF THE**
12 **PROPERTY AS A SEPARATE SHARE FROM THE DATE OF THE EXERCISE OF THE**
13 **DECANTING POWER; AND**

14 **2. § 14-619 OF THIS SUBTITLE APPLIES TO THE**
15 **SEPARATE SHARE.**

16 **(7) IF THE FIRST TRUST QUALIFIES AS A GRANTOR TRUST BECAUSE**
17 **OF THE APPLICATION OF 26 U.S.C. § 672(F)(2)(A), THE SECOND TRUST MAY NOT**
18 **INCLUDE OR OMIT A TERM THAT, IF INCLUDED OR OMITTED FROM THE FIRST TRUST**
19 **INSTRUMENT, WOULD HAVE PREVENTED THE FIRST TRUST FROM QUALIFYING**
20 **UNDER 26 U.S.C. § 672(F)(2)(A).**

21 **(8) SUBJECT TO PARAGRAPH (9) OF THIS SUBSECTION, A SECOND**
22 **TRUST INSTRUMENT MAY NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED OR**
23 **OMITTED FROM THE FIRST TRUST INSTRUMENT, WOULD HAVE PREVENTED**
24 **QUALIFICATION FOR A TAX BENEFIT IF:**

25 **(I) 1. THE FIRST TRUST INSTRUMENT EXPRESSLY**
26 **INDICATES AN INTENT TO QUALIFY FOR THE BENEFIT; OR**

27 **2. THE FIRST TRUST INSTRUMENT IS CLEARLY**
28 **DESIGNED TO ENABLE THE FIRST TRUST TO QUALIFY FOR THE BENEFIT; AND**

29 **(II) THE TRANSFER OF PROPERTY HELD BY THE FIRST TRUST**
30 **OR THE FIRST TRUST QUALIFIED, OR WOULD HAVE QUALIFIED BUT FOR ANY**
31 **PROVISION OF THIS SUBTITLE OTHER THAN THIS SECTION, FOR THE TAX BENEFIT.**

32 **(9) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE**
33 **SECOND TRUST MAY BE A NONGRANTOR TRUST OR A GRANTOR TRUST.**

1 **(10) AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE DECANTING**
2 **POWER IF A SETTLOR OBJECTS IN A SIGNED RECORD DELIVERED WITHIN THE**
3 **NOTICE PERIOD TO THE FIDUCIARY AND:**

4 **(i) 1. THE FIRST TRUST AND A SECOND TRUST ARE BOTH**
5 **GRANTOR TRUSTS, IN WHOLE OR IN PART;**

6 **2. THE FIRST TRUST GRANTS THE SETTLOR OR**
7 **ANOTHER PERSON THE POWER TO CAUSE THE FIRST TRUST TO CEASE TO BE A**
8 **GRANTOR TRUST; AND**

9 **3. THE SECOND TRUST DOES NOT GRANT AN**
10 **EQUIVALENT POWER TO THE SETTLOR OR OTHER PERSON; OR**

11 **(ii) THE FIRST TRUST IS A NONGRANTOR TRUST AND A SECOND**
12 **TRUST IS A GRANTOR TRUST, IN WHOLE OR IN PART, WITH RESPECT TO THE**
13 **SETTLOR, UNLESS:**

14 **1. THE SETTLOR HAS THE POWER AT ALL TIMES TO**
15 **CAUSE THE SECOND TRUST TO CEASE TO BE A GRANTOR TRUST; OR**

16 **2. A. THE FIRST TRUST INSTRUMENT CONTAINS A**
17 **PROVISION GRANTING THE SETTLOR OR ANOTHER PERSON A POWER THAT WOULD**
18 **CAUSE THE FIRST TRUST TO CEASE TO BE A GRANTOR TRUST; AND**

19 **B. THE SECOND TRUST INSTRUMENT CONTAINS THE**
20 **SAME PROVISION.**

21 **14-617.**

22 **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A SECOND TRUST MAY**
23 **HAVE A DURATION THAT IS THE SAME AS OR DIFFERENT FROM THE DURATION OF**
24 **THE FIRST TRUST.**

25 **(B) TO THE EXTENT THAT THE PROPERTY OF A SECOND TRUST IS**
26 **ATTRIBUTABLE TO PROPERTY OF A FIRST TRUST, THE PROPERTY OF THE SECOND**
27 **TRUST IS SUBJECT TO ANY RULES GOVERNING MAXIMUM PERPETUITY,**
28 **ACCUMULATION, OR SUSPENSION OF THE POWER OF ALIENATION THAT APPLY TO**
29 **THE PROPERTY OF THE FIRST TRUST.**

30 **14-618.**

1 AN AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER
2 WHETHER OR NOT UNDER THE FIRST TRUST'S DISCRETIONARY DISTRIBUTION
3 STANDARD THE FIDUCIARY WOULD HAVE MADE OR COULD HAVE BEEN COMPELLED
4 TO MAKE A DISCRETIONARY DISTRIBUTION OF PRINCIPAL AT THE TIME OF THE
5 EXERCISE.

6 14-619.

7 (A) IF AN EXERCISE OF THE DECANTING POWER VIOLATES THE PROVISIONS
8 OF THIS SUBTITLE SOLELY BECAUSE A SECOND TRUST INSTRUMENT IN PART DOES
9 NOT COMPLY WITH THE REQUIREMENTS OF THIS SUBTITLE, THE EXERCISE IS
10 EFFECTIVE.

11 (B) IF AN EXERCISE OF THE DECANTING POWER IS EFFECTIVE
12 NOTWITHSTANDING A FAILURE TO MEET ANY REQUIREMENT OF THIS SUBTITLE IN
13 ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, WITH RESPECT TO THE
14 PRINCIPAL OF THE SECOND TRUST ATTRIBUTABLE TO THE EXERCISE OF THE
15 POWER:

16 (1) ANY PROVISION IN THE SECOND TRUST INSTRUMENT PROHIBITED
17 BY THIS SUBTITLE IS VOID TO THE EXTENT NECESSARY TO COMPLY WITH THIS
18 SUBTITLE; AND

19 (2) THE SECOND TRUST INSTRUMENT SHALL BE TREATED AS
20 CONTAINING ANY PROVISION WHICH IS REQUIRED BY THIS SUBTITLE BUT NOT
21 INCLUDED IN THE INSTRUMENT.

22 (C) IF A TRUSTEE OR OTHER FIDUCIARY OF A SECOND TRUST DETERMINES
23 THAT AN EXERCISE OF THE DECANTING POWER IS EFFECTIVE NOTWITHSTANDING A
24 FAILURE TO MEET ANY REQUIREMENT OF THIS SUBTITLE UNDER SUBSECTION (A)
25 OF THIS SECTION, THAT FIDUCIARY SHALL TAKE CORRECTIVE ACTION.

26 14-620.

27 (A) THE DECANTING POWER MAY BE EXERCISED FOR A TRUST
28 ESTABLISHED UNDER § 14.5-407 OF THIS ARTICLE TO THE SAME EXTENT THAT THE
29 DECANTING POWER COULD BE EXERCISED IF EACH ANIMAL BENEFITTING FROM THE
30 TRUST WERE A PERSON.

31 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IN AN
32 EXERCISE OF THE DECANTING POWER UNDER THIS SECTION, THE SECOND TRUST
33 MUST PROVIDE THAT TRUST PROPERTY MAY BE APPLIED ONLY TO ITS INTENDED
34 PURPOSE FOR THE PERIOD THE FIRST TRUST BENEFITTED THE ANIMAL.

1 14-621.

2 A REFERENCE IN TITLE 14.5 OF THIS ARTICLE TO A TRUST INSTRUMENT OR
3 TERMS OF A TRUST INCLUDES A SECOND TRUST INSTRUMENT AND THE TERMS OF A
4 SECOND TRUST.

5 14-622.

6 (A) A SETTLOR OF A FIRST TRUST IS DEEMED TO BE THE SETTLOR OF THE
7 SECOND TRUST WITH RESPECT TO ANY PORTION OF THE PRINCIPAL OF THE FIRST
8 TRUST SUBJECT TO THE EXERCISE OF THE DECANTING POWER.

9 (B) IN DETERMINING SETTLOR INTENT WITH RESPECT TO A SECOND TRUST,
10 A COURT MAY CONSIDER THE INTENT OF:

11 (1) A SETTLOR OF THE FIRST TRUST;

12 (2) A SETTLOR OF THE SECOND TRUST; AND

13 (3) AN AUTHORIZED FIDUCIARY.

14 14-623.

15 (A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IF AN
16 EXERCISE OF THE DECANTING POWER WAS INTENDED TO DISTRIBUTE ALL THE
17 PRINCIPAL OF THE FIRST TRUST TO ONE OR MORE SECOND TRUSTS,
18 LATER-DISCOVERED PROPERTY BELONGING TO THE FIRST TRUST AND PROPERTY
19 PAID TO OR ACQUIRED BY THE FIRST TRUST AFTER THE EXERCISE OF THE
20 DECANTING POWER IS PART OF THE TRUST ESTATE OF THE SECOND TRUST OR
21 TRUSTS.

22 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IF AN
23 EXERCISE OF THE DECANTING POWER WAS INTENDED TO DISTRIBUTE LESS THAN
24 ALL OF THE PRINCIPAL OF THE FIRST TRUST TO ONE OR MORE SECOND TRUSTS,
25 LATER-DISCOVERED PROPERTY BELONGING TO THE FIRST TRUST OR PROPERTY
26 PAID TO OR ACQUIRED BY THE FIRST TRUST AFTER THE EXERCISE OF THE
27 DECANTING POWER REMAINS PART OF THE TRUST ESTATE OF THE FIRST TRUST.

28 (C) AN AUTHORIZED FIDUCIARY MAY PROVIDE IN AN EXERCISE OF THE
29 DECANTING POWER OR THE TERMS OF A SECOND TRUST INSTRUMENT FOR THE
30 DISPOSITION OF LATER-DISCOVERED PROPERTY BELONGING TO THE FIRST TRUST

1 OR PROPERTY PAID TO OR ACQUIRED BY THE FIRST TRUST AFTER THE EXERCISE OF
2 THE DECANTING POWER.

3 14-624.

4 A DEBT, LIABILITY, OR OTHER OBLIGATION ENFORCEABLE AGAINST
5 PROPERTY OF A FIRST TRUST IS ENFORCEABLE TO THE SAME EXTENT AGAINST THE
6 PROPERTY WHEN HELD BY A SECOND TRUST AFTER THE EXERCISE OF THE
7 DECANTING POWER.

8 14-625.

9 THIS SUBTITLE MAY BE CITED AS THE MARYLAND TRUST DECANTING ACT.

10 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
11 the application thereof to any person or circumstance is held invalid for any reason in a
12 court of competent jurisdiction, the invalidity does not affect other provisions or any other
13 application of this Act that can be given effect without the invalid provision or application,
14 and for this purpose the provisions of this Act are declared severable.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
16 apply retroactively and shall be applied to and interpreted to affect any trust created before,
17 on, or after October 1, 2023, that:

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

20 (2) is governed by the law of this State or is governed by the law of this
21 State for the purpose of:

22 (i) administration, including administration of a trust whose
23 governing law for purposes of administration has been changed to the law of this State;

24 (ii) construction of the terms of the trust; or

25 (iii) determining the meaning or effect of the terms of the trust.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2023.