

1 HB163  
2 189266-1  
3 By Representative Beckman  
4 RFD: Financial Services  
5 First Read: 11-JAN-18

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8 SYNOPSIS: This bill would provide for the Alabama  
9 Uniform Trust Decanting Act and would give the  
10 authorized fiduciary of certain trusts decanting  
11 power to modify the trust either directly or by  
12 distributing assets to another trust while still  
13 carrying out the material purposes of the settlor  
14 and protecting the beneficiaries of the trust.

15 This bill would provide for the fiduciary  
16 duties of the authorized fiduciary and would  
17 provide procedures for an authorized fiduciary who  
18 exercises the decanting power.

19 This bill would provide notice requirements  
20 and circumstances that would involve the Attorney  
21 General or the courts with respect to the decanting  
22 of certain types of trusts.

23 This bill would provide limitations and  
24 restrictions on the exercise of the decanting power  
25 and authorize under certain circumstances decanting  
26 of trusts for the care of an animal.

1 A BILL  
2 TO BE ENTITLED  
3 AN ACT  
4

5 To provide for the Alabama Uniform Trust Decanting  
6 Act; to give authorized fiduciaries of certain trusts  
7 decanting power; to provide for fiduciary duties; to provide  
8 procedures for exercising the decanting power; to provide  
9 notice requirements; to specify circumstances that would  
10 involve the courts or the Attorney General in decanting; to  
11 provide limitations and restrictions on the exercise of the  
12 decanting power; and to authorize under certain circumstances  
13 the decanting of trusts for the care of an animal.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. SHORT TITLE. This act may be cited as the  
16 Alabama Uniform Trust Decanting Act.

17 Section 2. DEFINITIONS. In this act the following  
18 terms have the following meanings:

19 (1) APPOINTIVE PROPERTY. The property or property  
20 interest subject to a power of appointment.

21 (2) ASCERTAINABLE STANDARD. A standard relating to  
22 an individual's health, education, support, or maintenance  
23 within the meaning of 26 U.S.C. Section 2041(b)(1)(A), as  
24 amended, or 26 U.S.C. Section 2514(c)(1), as amended, and any  
25 applicable regulations.

26 (3) AUTHORIZED FIDUCIARY. (A) A trustee or other  
27 fiduciary, other than a settlor, that has the discretion to

1 distribute or direct a trustee to distribute part or all of  
2 the principal of the first trust to one or more current  
3 beneficiaries;

4 (B) a special fiduciary appointed under Section 9;  
5 or

6 (C) a special-needs fiduciary under Section 13.

7 (4) BENEFICIARY. A person that:

8 (A) has a present or future, vested or contingent,  
9 beneficial interest in a trust;

10 (B) holds a power of appointment over trust  
11 property; or

12 (C) is an identified charitable organization that  
13 will or may receive distributions under the terms of the  
14 trust.

15 (5) CHARITABLE INTEREST. An interest in a trust  
16 which:

17 (A) is held by an identified charitable organization  
18 and makes the organization a qualified beneficiary;

19 (B) benefits only charitable organizations and, if  
20 the interest were held by an identified charitable  
21 organization, would make the organization a qualified  
22 beneficiary; or

23 (C) is held solely for charitable purposes and, if  
24 the interest were held by an identified charitable  
25 organization, would make the organization a qualified  
26 beneficiary.

1           (6) CHARITABLE ORGANIZATION. (A) a person, other  
2 than an individual, organized and operated exclusively for  
3 charitable purposes; or

4           (B) a government or governmental subdivision,  
5 agency, or instrumentality, to the extent it holds funds  
6 exclusively for a charitable purpose.

7           (7) CHARITABLE PURPOSE. The relief of poverty, the  
8 advancement of education or religion, the promotion of health,  
9 a municipal or other governmental purpose, or another purpose,  
10 the achievement of which is beneficial to the community.

11          (8) COURT. The court in this state having  
12 jurisdiction in matters relating to trusts.

13          (9) CURRENT BENEFICIARY. A beneficiary that on the  
14 date the beneficiary's qualification is determined is a  
15 distributee or permissible distributee of trust income or  
16 principal. The term includes the holder of a presently  
17 exercisable general power of appointment but does not include  
18 a person that is a beneficiary only because the person holds  
19 any other power of appointment.

20          (10) DECANTING POWER. The power of an authorized  
21 fiduciary under this act to distribute property of a first  
22 trust to one or more second trusts or to modify the terms of  
23 the first trust.

24          (11) EXPANDED DISTRIBUTIVE DISCRETION. A  
25 discretionary power of distribution that is not limited to an  
26 ascertainable standard or a reasonably definite standard.

1           (12) FIRST TRUST. A trust over which an authorized  
2 fiduciary may exercise the decanting power.

3           (13) FIRST-TRUST INSTRUMENT. The trust instrument  
4 for a first trust.

5           (14) GENERAL POWER OF APPOINTMENT. A power of  
6 appointment exercisable in favor of a powerholder, the  
7 powerholder's estate, a creditor of the powerholder, or a  
8 creditor of the powerholder's estate.

9           (15) JURISDICTION. With respect to a geographic  
10 area, includes a state or country.

11           (16) PERSON. An individual, estate, business or  
12 nonprofit entity, public corporation, government or  
13 governmental subdivision, agency, or instrumentality, or other  
14 legal entity.

15           (17) POWER OF APPOINTMENT. A power that enables a  
16 powerholder acting in a nonfiduciary capacity to designate a  
17 recipient of an ownership interest in or another power of  
18 appointment over the appointive property. The term does not  
19 include a power of attorney.

20           (18) POWERHOLDER. A person in which a donor creates  
21 a power of appointment.

22           (19) PRESENTLY EXERCISABLE POWER OF APPOINTMENT. A  
23 power of appointment exercisable by the powerholder at the  
24 relevant time. The term:

25           (A) includes a power of appointment exercisable only  
26 after the occurrence of a specified event, the satisfaction of

1 an ascertainable standard, or the passage of a specified time  
2 only after:

3 (i) the occurrence of the specified event;

4 (ii) the satisfaction of the ascertainable standard;

5 or

6 (iii) the passage of the specified time; and

7 (B) does not include a power exercisable only at the  
8 powerholder's death.

9 (20) QUALIFIED BENEFICIARY. A beneficiary that on  
10 the date the beneficiary's qualification is determined:

11 (A) to be a distributee or permissible distributee  
12 of trust income or principal;

13 (B) would be a distributee or permissible  
14 distributee of trust income or principal if the interests of  
15 the distributees described in subparagraph (A) terminated on  
16 that date, but the termination of those interests would not  
17 cause the trust to terminate; or

18 (C) would be a distributee or permissible  
19 distributee of trust income or principal if the trust  
20 terminated on that date.

21 (21) REASONABLY DEFINITE STANDARD. A clearly  
22 measurable standard under which a holder of a power of  
23 distribution is legally accountable within the meaning of 26  
24 U.S.C. Section 674(b) (5) (A), as amended, and any applicable  
25 regulations.

1           (22) RECORD. Information that is inscribed on a  
2 tangible medium or that is stored in an electronic or other  
3 medium and is retrievable in perceivable form.

4           (23) SECOND TRUST. (A) a first trust after  
5 modification under this act; or

6           (B) a trust to which a distribution of property from  
7 a first trust is or may be made under this act.

8           (24) SECOND-TRUST INSTRUMENT. The trust instrument  
9 for a second trust.

10          (25) SETTLOR. Except as otherwise provided in  
11 Section 25, a person, including a testator, that creates or  
12 contributes property to a trust. If more than one person  
13 creates or contributes property to a trust, each person is a  
14 settlor of the portion of the trust property attributable to  
15 the person's contribution except to the extent another person  
16 has power to revoke or withdraw that portion.

17          (26) SIGN. With present intent to authenticate or  
18 adopt a record:

19           (A) to execute or adopt a tangible symbol; or

20           (B) to attach to or logically associate with the  
21 record an electronic symbol, sound, or process.

22          (27) STATE. A state of the United States, the  
23 District of Columbia, Puerto Rico, the United States Virgin  
24 Islands, or any territory or insular possession subject to the  
25 jurisdiction of the United States.

26          (28) TERMS OF THE TRUST. The manifestation of the  
27 settlor's intent regarding a trust's provisions as expressed



1 in the trust instrument, as may be established by other  
2 evidence that would be admissible in a judicial proceeding, or  
3 as may be established by court order or nonjudicial settlement  
4 agreement.

5 (29) TRUST INSTRUMENT. A record executed by the  
6 settlor to create a trust or by any person to create a second  
7 trust which contains some or all of the terms of the trust,  
8 including any amendments.

9 Section 3. SCOPE.

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

14 (b) This act does not apply to a trust held solely  
15 for charitable purposes.

16 (c) Subject to Section 15, a trust instrument may  
17 restrict or prohibit exercise of the decanting power.

18 (d) This act does not limit the power of a trustee,  
19 powerholder, or other person to distribute or appoint property  
20 in further trust or to modify a trust under the trust  
21 instrument, laws of this state other than this act, common  
22 law, a court order, or a nonjudicial settlement agreement.

23 (e) This act does not affect the ability of a  
24 settlor to provide in a trust instrument for the distribution  
25 of the trust property or appointment in further trust of the  
26 trust property or for modification of the trust instrument.

27 Section 4. FIDUCIARY DUTY.

1           (a) In exercising the decanting power, an authorized  
2           fiduciary shall act in accordance with its fiduciary duties,  
3           including the duty to act in accordance with the purposes of  
4           the first trust.

5           (b) This act does not create or imply a duty to  
6           consider or exercise the decanting power or to inform  
7           beneficiaries about the applicability of this act.

8           (c) Except as otherwise provided in a first-trust  
9           instrument, for purposes of this act and Sections 19-3B-801  
10          and 19-3B-802(a) of the Code of Alabama 1975, the terms of the  
11          first trust are deemed to include the decanting power.

12          Section 5. APPLICATION; GOVERNING LAW. This act  
13          applies to a trust created before, on, or after the effective  
14          date of this act which:

15               (1) has its principal place of administration in  
16               this state, including a trust whose principal place of  
17               administration has been changed to this state; or

18               (2) provides by its trust instrument that it is  
19               governed by the law of this state or is governed by the law of  
20               this state for the purpose of:

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

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

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

1           Section 6. REASONABLE RELIANCE. A trustee or other  
2 person that reasonably relies on the validity of a  
3 distribution of part or all of the property of a trust to  
4 another trust, or a modification of a trust, under this act,  
5 laws of this state other than this act, or the law of another  
6 jurisdiction is not liable to any person for any action or  
7 failure to act as a result of the reliance.

8           Section 7. NOTICE; EXERCISE OF DECANTING POWER.

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

12           (b) Except as otherwise provided in this act, an  
13 authorized fiduciary may exercise the decanting power without  
14 the consent of any person and without court approval.

15           (c) Except as otherwise provided in subsection (f),  
16 an authorized fiduciary shall not exercise the decanting power  
17 prior to 60 days after giving record notice of the intended  
18 exercise of the decanting power to:

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

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

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

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

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

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

1 (7) the Attorney General, if Section 14(b) applies.

2 (d) An authorized fiduciary may give notice under  
3 subsection (c) to a qualified beneficiary who is a minor or  
4 incapacitated individual by giving notice to such individual's  
5 representative. An authorized fiduciary is not required to  
6 give notice under subsection (c) to a person that is not known  
7 to the fiduciary or is known to the fiduciary but cannot be  
8 located by the fiduciary after reasonable diligence.

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

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

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

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

15 (4) include a copy of all second-trust instruments;

16 (5) include a statement indicating the capacity in  
17 which the intended recipient is being given notice; and

18 (6) include a statement that any application under  
19 Section 9 must be filed within six months from the day notice  
20 is given.

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

25 (g) The receipt of notice, waiver of the notice  
26 period, or expiration of the notice period does not affect the  
27 right of a person to file an application under Section 9.

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

5 Section 8. REPRESENTATION.

6 (a) Notice to a person with authority to represent  
7 and bind another person under a first-trust instrument or  
8 Chapter 3B (commencing with Section 19-3B-101) of Title 19 of  
9 the Code of Alabama 1975, has the same effect as notice given  
10 directly to the person represented.

11 (b) Consent of or waiver by a person with authority  
12 to represent and bind another person under a first-trust  
13 instrument or Chapter 3B (commencing with Section 19-3B-101)  
14 of Title 19 of the Code of Alabama 1975, is binding on the  
15 person represented unless the person represented objects to  
16 the representation before the consent or waiver otherwise  
17 would become effective.

18 (c) A person with authority to represent and bind  
19 another person under a first-trust instrument or Chapter 3B  
20 (commencing with Section 19-3B-101) of Title 19 of the Code of  
21 Alabama 1975, may file an application under Section 9 on  
22 behalf of the person represented.

23 (d) A settlor may not represent or bind a  
24 beneficiary under this act.

25 Section 9. COURT INVOLVEMENT.

26 (a) On application of an authorized fiduciary, a  
27 person entitled to notice under Section 7(c), a beneficiary,

1 or with respect to a charitable interest that is not entirely  
2 held by or for the benefit of one or more identified and  
3 existing charitable organizations, the Attorney General or  
4 other person that has standing to enforce the charitable  
5 interest, the court may:

6 (1) provide instructions to the authorized fiduciary  
7 regarding whether a proposed exercise of the decanting power  
8 is permitted under this act and consistent with the fiduciary  
9 duties of the authorized fiduciary;

10 (2) appoint a special fiduciary and authorize the  
11 special fiduciary to determine whether the decanting power  
12 should be exercised under this act and to exercise the  
13 decanting power;

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

15 (4) subject to the limitations set forth in  
16 subsection (c), determine that a proposed or attempted  
17 exercise of the decanting power is ineffective because:

18 (A) after applying Section 22, the proposed or  
19 attempted exercise does not or did not comply with this act;  
20 or

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

24 (5) determine the extent to which Section 22 applies  
25 to a prior exercise of the decanting power;

1           (6) provide instructions to the trustee regarding  
2 the application of Section 22 to a prior exercise of the  
3 decanting power; or

4           (7) order other relief to carry out the purposes of  
5 this act.

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

8           (1) an increase in the fiduciary's compensation  
9 under Section 16; or

10          (2) a modification under Section 18 of a provision  
11 granting a person the right to remove or replace the  
12 fiduciary.

13          (c) A proceeding under subsection (a) (4) may not be  
14 commenced by a person entitled to notice under Section 7(c),  
15 or by a beneficiary, unless such proceeding is commenced  
16 within six months from the day notice is given under Section  
17 7(a). Failure to receive notice shall not extend the notice  
18 period if the authorized fiduciary acted with reasonable  
19 diligence to comply with the requirements of Section 7(c).

20          Section 10. FORMALITIES. An exercise of the  
21 decanting power must be made in a record signed by an  
22 authorized fiduciary. The signed record must, directly or by  
23 reference to the notice required by Section 7, identify the  
24 first trust and the second trust or trusts and state the  
25 property of the first trust being distributed to each second  
26 trust and the property, if any, that remains in the first  
27 trust.

1                   Section 11. DECANTING POWER UNDER EXPANDED  
2                   DISTRIBUTIVE DISCRETION.

3                   (a) In this section the following terms have the  
4                   following meanings:

5                   (1) NONCONTINGENT RIGHT. A right that is not subject  
6                   to the exercise of discretion or the occurrence of a specified  
7                   event that is not certain to occur. The term does not include  
8                   a right held by a beneficiary if any person has discretion to  
9                   distribute property subject to the right to any person other  
10                  than the beneficiary or the beneficiary's estate.

11                  (2) PRESUMPTIVE REMAINDER BENEFICIARY. A qualified  
12                  beneficiary other than a current beneficiary.

13                  (3) SUCCESSOR BENEFICIARY. A beneficiary that is not  
14                  a qualified beneficiary on the date the beneficiary's  
15                  qualification is determined. The term does not include a  
16                  person that is a beneficiary only because the person holds a  
17                  nongeneral power of appointment.

18                  (4) VESTED INTEREST. (A) A right to a mandatory  
19                  distribution that is a noncontingent right as of the date of  
20                  the exercise of the decanting power;

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

25                  (C) a current and noncontingent right, annually or  
26                  more frequently, to withdraw income, a specified dollar



1 amount, or a percentage of value of some or all of the trust  
2 property;

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

5 (E) a right to receive an ascertainable part of the  
6 trust property on the trust's termination which is not subject  
7 to the exercise of discretion or to the occurrence of a  
8 specified event that is not certain to occur.

9 (b) Subject to subsection (c) and Section 14:

10 (1) an authorized fiduciary that has expanded  
11 distributive discretion over the entire principal of a first  
12 trust for the benefit of one or more current beneficiaries may  
13 exercise the decanting power over the entire principal of the  
14 first trust; and

15 (2) an authorized fiduciary that has expanded  
16 distributive discretion over part but not all of the principal  
17 of a first trust may exercise the decanting power over that  
18 part of the principal over which the authorized fiduciary has  
19 expanded distributive discretion.

20 (c) Subject to Section 13, in an exercise of the  
21 decanting power under this section, a second trust may not:

22 (1) include as a current beneficiary a person that  
23 is not a current beneficiary of the first trust, except as  
24 otherwise provided in subsection (d);

25 (2) include as a presumptive remainder beneficiary  
26 or successor beneficiary a person that is not a current  
27 beneficiary, presumptive remainder beneficiary, or successor

1 beneficiary of the first trust, except as otherwise provided  
2 in subsection (d); or

3 (3) reduce or eliminate a vested interest.

4 (d) Subject to subsection (c) (3) and Section 14, in  
5 an exercise of the decanting power under this section, a  
6 second trust may be a trust created or administered under the  
7 law of any jurisdiction and may:

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

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

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

17 (4) create or modify a power of appointment if the  
18 powerholder is a presumptive remainder beneficiary or  
19 successor beneficiary of the first trust, but the exercise of  
20 the power may take effect only after the powerholder becomes,  
21 or would have become if then living, a current beneficiary.

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

1                   Section 12. DECANTING POWER UNDER LIMITED  
2 DISTRIBUTIVE DISCRETION.

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

7                   (b) An authorized fiduciary that has limited  
8 distributive discretion over the principal of the first trust  
9 for benefit of one or more current beneficiaries may exercise  
10 the decanting power over the principal of the first trust. If  
11 an authorized fiduciary has limited distributive discretion  
12 over part but not all of the principal of a first trust, the  
13 fiduciary may exercise the decanting power over that part of  
14 the principal over which the authorized fiduciary has limited  
15 distributive discretion.

16                   (c) Under this section and subject to Section 14, a  
17 second trust may be created or administered under the law of  
18 any jurisdiction. Under this section, the second trusts, in  
19 the aggregate, must grant each beneficiary of the first trust  
20 beneficial interests which are substantially similar to the  
21 beneficial interests of the beneficiary in the first trust.

22                   (d) A power to make a distribution under a second  
23 trust for the benefit of a beneficiary who is an individual is  
24 substantially similar to a power under the first trust to make  
25 a distribution directly to the beneficiary. A distribution is  
26 for the benefit of a beneficiary if:

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

3           (2) the beneficiary is under a legal disability or  
4 the trustee reasonably believes the beneficiary is  
5 incapacitated, and the distribution is made as permitted under  
6 Chapter 3B (commencing with Section 19-3B-101) of Title 19 of  
7 the Code of Alabama 1975; or

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

11           Section 13. TRUST FOR BENEFICIARY WITH DISABILITY.

12           (a) In this section the following terms have the  
13 following meanings:

14           (1) BENEFICIARY WITH A DISABILITY. A beneficiary of  
15 a first trust who the authorized fiduciary believes may  
16 qualify for governmental benefits based on disability, whether  
17 or not the beneficiary currently receives those benefits or is  
18 an individual who has been adjudicated incompetent or  
19 incapacitated.

20           (2) GOVERNMENTAL BENEFITS. Financial aid or services  
21 from a state, federal, or other public agency.

22           (3) SPECIAL-NEEDS FIDUCIARY. With respect to a trust  
23 that has a beneficiary with a disability:

24           (A) a trustee or other fiduciary, other than a  
25 settlor, that has discretion to distribute part or all of the  
26 principal of a first trust to one or more current  
27 beneficiaries;

1 (B) if no trustee or fiduciary has discretion under  
2 subparagraph (A), a trustee or other fiduciary, other than a  
3 settlor, that has discretion to distribute part or all of the  
4 income of the first trust to one or more current  
5 beneficiaries; or

6 (C) if no trustee or fiduciary has discretion under  
7 subparagraphs (A) and (B), a trustee or other fiduciary, other  
8 than a settlor, that is required to distribute part or all of  
9 the income or principal of the first trust to one or more  
10 current beneficiaries.

11 (4) SPECIAL-NEEDS TRUST. A trust the trustee  
12 believes would not be considered a resource for purposes of  
13 determining whether a beneficiary with a disability is  
14 eligible for governmental benefits.

15 (b) A special-needs fiduciary may exercise the  
16 decanting power under Section 11 over the principal of a first  
17 trust as if the fiduciary had authority to distribute  
18 principal to a beneficiary with a disability subject to  
19 expanded distributive discretion if:

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

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

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

1           (1) Notwithstanding Section 11(c)(2), the interest  
2 in the second trust of a beneficiary with a disability may:

3           (A) be a pooled trust as defined by Medicaid law for  
4 the benefit of the beneficiary with a disability under 42  
5 U.S.C. Section 1396p(d)(4)(C), as amended; or

6           (B) contain payback provisions complying with  
7 reimbursement requirements of Medicaid law under 42 U.S.C.  
8 Section 1396p(d)(4)(A), as amended.

9           (2) Section 11(c)(3) does not apply to the interests  
10 of the beneficiary with a disability.

11           (3) Except as affected by any change to the  
12 interests of the beneficiary with a disability, the second  
13 trust, or if there are two or more second trusts, the second  
14 trusts in the aggregate, must grant each other beneficiary of  
15 the first trust beneficial interests in the second trusts  
16 which are substantially similar to the beneficiary's  
17 beneficial interests in the first trust.

18           Section 14. PROTECTION OF CHARITABLE INTEREST.

19           (a) In this section the following terms have the  
20 following meanings:

21           (1) DETERMINABLE CHARITABLE INTEREST. A charitable  
22 interest that is a right to a mandatory distribution  
23 currently, periodically, on the occurrence of a specified  
24 event, or after the passage of a specified time, and which is  
25 unconditional or will be held solely for charitable purposes.

26           (2) UNCONDITIONAL. Not subject to the occurrence of  
27 a specified event that is not certain to occur, other than a

1 requirement in a trust instrument that a charitable  
2 organization be in existence or qualify under a particular  
3 provision of the United States Internal Revenue Code of 1986,  
4 as amended, on the date of the distribution, if the charitable  
5 organization meets the requirement on the date of  
6 determination.

7 (b) If a first trust contains a determinable  
8 charitable interest that is not entirely held by or for the  
9 benefit of one or more identified and existing charitable  
10 organizations, the Attorney General has the rights of a  
11 qualified beneficiary and may represent and bind the  
12 charitable interest.

13 (c) If a first trust contains a charitable interest,  
14 the second trust or trusts may not:

15 (1) diminish the charitable interest;

16 (2) diminish the interest of an identified  
17 charitable organization that holds the charitable interest;

18 (3) alter any charitable purpose stated in the  
19 first-trust instrument; or

20 (4) alter any condition or restriction related to  
21 the charitable interest.

22 (d) If there are two or more second trusts, the  
23 second trusts shall be treated as one trust for purposes of  
24 determining whether the exercise of the decanting power  
25 diminishes the charitable interest or diminishes the interest  
26 of an identified charitable organization for purposes of  
27 subsection (c).

1 (e) If a first trust contains a determinable  
2 charitable interest that is not entirely held by or for the  
3 benefit of one or more identified and existing charitable  
4 organizations, the second trust or trusts that include a  
5 charitable interest pursuant to subsection (c) must be  
6 administered under the law of this state unless:

7 (1) the Attorney General, after receiving notice  
8 under Section 7, fails to object in a signed record delivered  
9 to the authorized fiduciary within the notice period;

10 (2) the Attorney General consents in a signed record  
11 to the second trust or trusts being administered under the law  
12 of another jurisdiction; or

13 (3) the court approves the exercise of the decanting  
14 power.

15 (f) This act does not limit the powers and duties of  
16 the Attorney General under laws of this state other than this  
17 act.

18 Section 15. TRUST LIMITATION ON DECANTING.

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

22 (1) the decanting power; or

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



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

4 (1) the decanting power; or

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

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

13 (d) Subject to subsections (a) and (b), an  
14 authorized fiduciary may exercise the decanting power under  
15 this act even if the first-trust instrument permits the  
16 authorized fiduciary or another person to modify the  
17 first-trust instrument or to distribute part or all of the  
18 principal of the first trust to another trust.

19 (e) If a first-trust instrument contains an express  
20 prohibition described in subsection (a) or an express  
21 restriction described in subsection (b), the provision must be  
22 included in the second-trust instrument.

23 Section 16. CHANGE IN COMPENSATION.

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

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

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

4           (b) If a first-trust instrument does not specify an  
5 authorized fiduciary's compensation, the fiduciary may not  
6 exercise the decanting power to increase the fiduciary's  
7 compensation above the compensation permitted by Chapter 3B  
8 (commencing with Section 19-3B-101) of Title 19 of the Code of  
9 Alabama 1975, unless:

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

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

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

18           Section 17. RELIEF FROM LIABILITY AND  
19 INDEMNIFICATION.

20           (a) Except as otherwise provided in this section, a  
21 second-trust instrument may not relieve an authorized  
22 fiduciary from liability for breach of trust to a greater  
23 extent than the first-trust instrument.

24           (b) A second-trust instrument may provide for  
25 indemnification of an authorized fiduciary of the first trust  
26 or another person acting in a fiduciary capacity under the  
27 first trust for any liability or claim that would have been

1 payable from the first trust if the decanting power had not  
2 been exercised.

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

5 (d) Subject to subsection (c), a second-trust  
6 instrument may divide and reallocate fiduciary powers among  
7 fiduciaries, including one or more trustees, distribution  
8 advisors, investment advisors, trust protectors, or other  
9 persons, and relieve a fiduciary from liability for an act or  
10 failure to act of another fiduciary as permitted by laws of  
11 this state other than this act.

12 Section 18. REMOVAL OR REPLACEMENT OF AUTHORIZED  
13 FIDUCIARY. An authorized fiduciary may not exercise the  
14 decanting power to modify a provision in a first-trust  
15 instrument granting another person power to remove or replace  
16 the fiduciary unless:

17 (1) the person holding the power consents to the  
18 modification in a signed record and the modification applies  
19 only to the person;

20 (2) the person holding the power and the qualified  
21 beneficiaries of the second trust consent to the modification  
22 in a signed record and the modification grants a substantially  
23 similar power to another person; or

24 (3) the court approves the modification and the  
25 modification grants a substantially similar power to another  
26 person.

27 Section 19. TAX-RELATED LIMITATIONS.

1 (a) In this section the following terms have the  
2 following meanings:

3 (1) GRANTOR TRUST. A trust as to which a settlor of  
4 a first trust is considered the owner under 26 U.S.C. Sections  
5 671 through 677, as amended, or 26 U.S.C. Section 679, as  
6 amended.

7 (2) INTERNAL REVENUE CODE. The United States  
8 Internal Revenue Code of 1986, as amended.

9 (3) NONGRANTOR TRUST. A trust that is not a grantor  
10 trust.

11 (4) QUALIFIED BENEFITS PROPERTY. Property subject to  
12 the minimum distribution requirements of 26 U.S.C. Section  
13 401(a)(9), as amended, and any applicable regulations, or to  
14 any similar requirements that refer to 26 U.S.C. Section  
15 401(a)(9) or the regulations.

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

18 (1) If a first trust contains property that  
19 qualified, or would have qualified but for provisions of this  
20 act other than this section, for a marital deduction for  
21 purposes of the gift or estate tax under the Internal Revenue  
22 Code or a state gift, estate, or inheritance tax, the  
23 second-trust instrument must not include or omit any term  
24 that, if included in or omitted from the trust instrument for  
25 the trust to which the property was transferred, would have  
26 prevented the transfer from qualifying for the deduction, or  
27 would have reduced the amount of the deduction, under the same

1 provisions of the Internal Revenue Code or state law under  
2 which the transfer qualified.

3 (2) If the first trust contains property that  
4 qualified, or would have qualified but for provisions of this  
5 act other than this section, for a charitable deduction for  
6 purposes of the income, gift, or estate tax under the Internal  
7 Revenue Code or a state income, gift, estate, or inheritance  
8 tax, the second-trust instrument must not include or omit any  
9 term that, if included in or omitted from the trust instrument  
10 for the trust to which the property was transferred, would  
11 have prevented the transfer from qualifying for the deduction,  
12 or would have reduced the amount of the deduction, under the  
13 same provisions of the Internal Revenue Code or state law  
14 under which the transfer qualified.

15 (3) If the first trust contains property that  
16 qualified, or would have qualified but for provisions of this  
17 act other than this section, for the exclusion from the gift  
18 tax described in 26 U.S.C. Section 2503(b), as amended, the  
19 second-trust instrument must not include or omit a term that,  
20 if included in or omitted from the trust instrument for the  
21 trust to which the property was transferred, would have  
22 prevented the transfer from qualifying under 26 U.S.C. Section  
23 2503(b), as amended. If the first trust contains property  
24 that qualified, or would have qualified but for provisions of  
25 this act other than this section, for the exclusion from the  
26 gift tax described in 26 U.S.C. Section 2503(b), as amended,  
27 by application of 26 U.S.C. Section 2503(c), as amended, the

1 second-trust instrument must not include or omit a term that,  
2 if included or omitted from the trust instrument for the trust  
3 to which the property was transferred, would have prevented  
4 the transfer from qualifying under 26 U.S.C. Section 2503(c),  
5 as amended.

6 (4) If the property of the first trust includes  
7 shares of stock in an S corporation, as defined in 26 U.S.C.  
8 Section 1361, as amended, and the first trust is, or but for  
9 provisions of this act other than this section would be, a  
10 permitted shareholder under any provision of 26 U.S.C. Section  
11 1361, as amended, an authorized fiduciary may exercise the  
12 power with respect to part or all of the S-corporation stock  
13 only if any second trust receiving the stock is a permitted  
14 shareholder under 26 U.S.C. Section 1361(c)(2), as amended.  
15 If the property of the first trust includes shares of stock in  
16 an S corporation and the first trust is, or but for provisions  
17 of this act other than this section would be, a qualified  
18 subchapter-S trust within the meaning of 26 U.S.C. Section  
19 1361(d), as amended, the second-trust instrument must not  
20 include or omit a term that prevents the second trust from  
21 qualifying as a qualified subchapter-S trust.

22 (5) If the first trust contains property that  
23 qualified, or would have qualified but for provisions of this  
24 act other than this section, for a zero inclusion ratio for  
25 purposes of the generation-skipping transfer tax under 26  
26 U.S.C. Section 2642(c), as amended, the second-trust  
27 instrument must not include or omit a term that, if included

1 in or omitted from the first-trust instrument, would have  
2 prevented the transfer to the first trust from qualifying for  
3 a zero inclusion ratio under 26 U.S.C. Section 2642(c), as  
4 amended.

5 (6) If the first trust is directly or indirectly the  
6 beneficiary of qualified benefits property, the second-trust  
7 instrument may not include or omit any term that, if included  
8 in or omitted from the first-trust instrument, would have  
9 increased the minimum distributions required with respect to  
10 the qualified benefits property under 26 U.S.C. Section  
11 401(a)(9), as amended, and any applicable regulations, or any  
12 similar requirements that refer to 26 U.S.C. Section  
13 401(a)(9), as amended or the regulations. If an attempted  
14 exercise of the decanting power violates the preceding  
15 sentence, the trustee is deemed to have held the qualified  
16 benefits property and any reinvested distributions of the  
17 property as a separate share from the date of the exercise of  
18 the power and Section 22 applies to the separate share.

19 (7) If the first trust qualifies as a grantor trust  
20 because of the application of 26 U.S.C. Section 672(f)(2)(A),  
21 as amended, the second trust may not include or omit a term  
22 that, if included in or omitted from the first-trust  
23 instrument, would have prevented the first trust from  
24 qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended.

25 (8) In this paragraph, "tax benefit" means a federal  
26 or state tax deduction, exemption, exclusion, or other benefit  
27 not otherwise listed in this section, except for a benefit

1 arising from being a grantor trust. Subject to paragraph (9),  
2 a second-trust instrument may not include or omit a term that,  
3 if included in or omitted from the first-trust instrument,  
4 would have prevented qualification for a tax benefit if:

5 (A) the first-trust instrument expressly indicates  
6 an intent to qualify for the benefit or the first-trust  
7 instrument clearly is designed to enable the first trust to  
8 qualify for the benefit; and

9 (B) the transfer of property held by the first trust  
10 or the first trust qualified, or but for provisions of this  
11 act other than this section, would have qualified for the tax  
12 benefit.

13 (9) Subject to paragraph (4):

14 (A) except as otherwise provided in paragraph (7),  
15 the second trust may be a nongrantor trust, even if the first  
16 trust is a grantor trust; and

17 (B) except as otherwise provided in paragraph (10),  
18 the second trust may be a grantor trust, even if the first  
19 trust is a nongrantor trust.

20 (10) An authorized fiduciary may not exercise the  
21 decanting power if a settlor objects in a signed record  
22 delivered to the fiduciary within the notice period and:

23 (A) the first trust and a second trust are both  
24 grantor trusts, in whole or in part, the first trust grants  
25 the settlor or another person the power to cause the first  
26 trust to cease to be a grantor trust, and the second trust



1 does not grant an equivalent power to the settlor or other  
2 person; or

3 (B) the first trust is a nongrantor trust and a  
4 second trust is a grantor trust, in whole or in part, with  
5 respect to the settlor, unless:

6 (i) the settlor has the power at all times to cause  
7 the second trust to cease to be a grantor trust; or

8 (ii) the first-trust instrument contains a provision  
9 granting the settlor or another person a power that would  
10 cause the first trust to cease to be a grantor trust and the  
11 second-trust instrument contains the same provision.

12 Section 20. DURATION OF SECOND TRUST.

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

16 (b) To the extent that property of a second trust is  
17 attributable to property of the first trust, the property of  
18 the second trust is subject to any rules governing maximum  
19 perpetuity, accumulation, or suspension of the power of  
20 alienation which apply to property of the first trust.

21 Section 21. NEED TO DISTRIBUTE NOT REQUIRED. An  
22 authorized fiduciary may exercise the decanting power whether  
23 or not under the first trust's discretionary distribution  
24 standard the fiduciary would have made or could have been  
25 compelled to make a discretionary distribution of principal at  
26 the time of the exercise.

27 Section 22. SAVING PROVISION.

1 (a) If exercise of the decanting power would be  
2 effective under this act except that the second-trust  
3 instrument in part does not comply with this act, the exercise  
4 of the power is effective and the following rules apply with  
5 respect to the principal of the second trust attributable to  
6 the exercise of the power:

7 (1) A provision in the second-trust instrument which  
8 is not permitted under this act is void to the extent  
9 necessary to comply with this act.

10 (2) A provision required by this act to be in the  
11 second-trust instrument which is not contained in the  
12 instrument is deemed to be included in the instrument to the  
13 extent necessary to comply with this act.

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

18 Section 23. TRUST FOR CARE OF ANIMAL.

19 (a) In this section the following terms have the  
20 following meanings:

21 (1) ANIMAL TRUST. A trust or an interest in a trust  
22 created to provide for the care of one or more animals.

23 (2) PROTECTOR. A person appointed in an animal trust  
24 to enforce the trust on behalf of the animal or, if no such  
25 person is appointed in the trust, a person appointed by the  
26 court for that purpose.

1           (b) The decanting power may be exercised over an  
2 animal trust that has a protector to the extent the trust  
3 could be decanted under this act if each animal that benefits  
4 from the trust were an individual, if the protector consents  
5 in a signed record to the exercise of the power.

6           (c) A protector for an animal has the rights under  
7 this act of a qualified beneficiary.

8           (d) Notwithstanding any other provision of this act,  
9 if a first trust is an animal trust, in an exercise of the  
10 decanting power, the second trust must provide that trust  
11 property may be applied only to its intended purpose for the  
12 period the first trust benefitted the animal.

13           Section 24. TERMS OF SECOND TRUST. A reference in  
14 Chapter 3B (commencing with Section 19-3B-101) of Title 19 of  
15 the Code of Alabama 1975, to a trust instrument or terms of  
16 the trust includes a second-trust instrument and the terms of  
17 the second trust.

18           Section 25. SETTLOR.

19           (a) For purposes of laws of this state other than  
20 this act and subject to subsection (b), a settlor of a first  
21 trust is deemed to be the settlor of the second trust with  
22 respect to the portion of the principal of the first trust  
23 subject to the exercise of the decanting power.

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

1                   Section 26. LATER-DISCOVERED PROPERTY.

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

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

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

21                   Section 27. OBLIGATIONS. A debt, liability, or other  
22 obligation enforceable against property of a first trust is  
23 enforceable to the same extent against the property when held  
24 by the second trust after exercise of the decanting power.

25                   Section 28. UNIFORMITY OF APPLICATION AND  
26 CONSTRUCTION. In applying and construing this uniform act,  
27 consideration must be given to the need to promote uniformity

1 of the law with respect to its subject matter among states  
2 that enact it.

3 Section 29. RELATION TO ELECTRONIC SIGNATURES IN  
4 GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits,  
5 or supersedes the Electronic Signatures in Global and National  
6 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
7 modify, limit, or supersede Section 101(c) of that act, 15  
8 U.S.C. Section 7001(c), or authorize electronic delivery of  
9 any of the notices described in Section 103(b) of that act, 15  
10 U.S.C. Section 7003(b).

11 Section 30. This act shall become effective on  
12 January 1, 2019, following its passage and approval by the  
13 Governor, or its otherwise becoming law.