

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

HOUSE BILL 1749

5 By: Representative M. Brown
6 By: Senator Dees
7

For An Act To Be Entitled

9 AN ACT TO ADOPT THE UNIFORM TRUST DECANTING ACT; AND
10 FOR OTHER PURPOSES.
11

Subtitle

12
13 TO ADOPT THE UNIFORM TRUST DECANTING
14 ACT.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 28 is amended to add an additional
20 chapter to read as follows:
21

CHAPTER 78

UNIFORM TRUST DECANTING ACT

22
23
24
25 28-78-101. Short title.

26 This chapter may be cited as the Uniform Trust Decanting Act.
27

28 28-78-102. Definitions.

29 In this chapter:

30 (1) "Appointive property" means the property or property
31 interest subject to a power of appointment;

32 (2) "Ascertainable standard" means a standard relating to an
33 individual's health, education, support, or maintenance within the meaning of
34 26 U.S.C. Section 2041(b)(1)(A), as it existed on January 1, 2025, or 26
35 U.S.C. Section 2514(c)(1), as it existed on January, 1, 2025, and any
36 applicable regulations;



1 (3) “Authorized fiduciary” means:

2 (A) A trustee or other fiduciary, other than a settlor,
3 that has discretion to distribute or direct a trustee to distribute part or
4 all of the principal of the first trust to one or more current beneficiaries;

5 (B) A special fiduciary appointed under § 28-78-109; or

6 (C) A special-needs fiduciary under § 28-78-113;

7 (4) “Beneficiary” means 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 property; or

11 (C) Is an identified charitable organization that will or
12 may receive distributions under the terms of the trust;

13 (5) “Charitable interest” means an interest in a trust which:

14 (A) Is held by an identified charitable organization and
15 makes the organization a qualified beneficiary;

16 (B) Benefits only charitable organizations and, if the
17 interest were held by an identified charitable organization, would make the
18 organization a qualified beneficiary; or

19 (C) Is held solely for charitable purposes and, if the
20 interest were held by an identified charitable organization, would make the
21 organization a qualified beneficiary;

22 (6) “Charitable organization” means:

23 (A) A person, other than an individual, organized and
24 operated exclusively for charitable purposes; or

25 (B) A government or governmental subdivision, agency, or
26 instrumentality, to the extent it holds funds exclusively for a charitable
27 purpose;

28 (7) “Charitable purpose” means the relief of poverty, the
29 advancement of education or religion, the promotion of health, a municipal or
30 other governmental purpose, or another purpose the achievement of which is
31 beneficial to the community;

32 (8) “Court” means the court in this state having jurisdiction in
33 matters relating to trusts;

34 (9)(A) “Current beneficiary” means a beneficiary that on the
35 date the beneficiary’s qualification is determined is a distributee or
36 permissible distributee of trust income or principal.

1 (B) "Current beneficiary" includes the holder of a
2 presently exercisable general power of appointment but does not include a
3 person that is a beneficiary only because the person holds any other power of
4 appointment;

5 (10) "Decanting power" or "the decanting power" means the power
6 of an authorized fiduciary under this chapter to distribute property of a
7 first trust to one or more second trusts or to modify the terms of the first
8 trust;

9 (11) "Expanded distributive discretion" means a discretionary
10 power of distribution that is not limited to an ascertainable standard or a
11 reasonably definite standard;

12 (12) "First trust" means a trust over which an authorized
13 fiduciary may exercise the decanting power;

14 (13) "First-trust instrument" means the trust instrument for a
15 first trust;

16 (14) "General power of appointment" means a power of appointment
17 exercisable in favor of a powerholder, the powerholder's estate, a creditor
18 of the powerholder, or a creditor of the powerholder's estate;

19 (15) "Jurisdiction", with respect to a geographic area, includes
20 a state or country;

21 (16) "Person" means an individual, estate, business or nonprofit
22 entity, public corporation, government or governmental subdivision, agency,
23 or instrumentality, or other legal entity;

24 (17)(A) "Power of appointment" means a power that enables a
25 powerholder acting in a nonfiduciary capacity to designate a recipient of an
26 ownership interest in or another power of appointment over the appointive
27 property.

28 (B) "Power of appointment" does not include a power of
29 attorney;

30 (18) "Powerholder" means a person in which a donor creates a
31 power of appointment;

32 (19)(A) "Presently exercisable power of appointment" means a
33 power of appointment exercisable by the powerholder at the relevant time.

34 (B) "Presently exercisable power of appointment":

35 (1) Includes a power of appointment exercisable only
36 after the occurrence of a specified event, the satisfaction of an

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

2 (i) Occurrence of the specified event;

3 (ii) Satisfaction of the ascertainable

4 standard; or

5 (iii) Passage of the specified time; and

6 (2) Does not include a power exercisable only at the
7 powerholder's death;

8 (20) "Qualified beneficiary" means a beneficiary that on the
9 date the beneficiary's qualification is determined:

10 (A) Is a distributee or permissible distributee of trust
11 income or principal;

12 (B) Would be a distributee or permissible distributee of
13 trust income or principal if the interests of the distributees described in
14 subdivision (20)(A) of this section terminated on that date without causing
15 the trust to terminate; or

16 (C) Would be a distributee or permissible distributee of
17 trust income or principal if the trust terminated on that date;

18 (21) "Reasonably definite standard" means a clearly measurable
19 standard under which a holder of a power of distribution is legally
20 accountable within the meaning of 26 U.S.C. Section 674(b)(5)(A), as is
21 existed on January 1, 2025, and any applicable regulations;

22 (22) "Record" means information that is inscribed on a tangible
23 medium or that is stored in an electronic or other medium and is retrievable
24 in perceivable form;

25 (23) "Second trust" means a:

26 (A) First trust after modification under this chapter; or

27 (B) Trust to which a distribution of property from a first
28 trust is or may be made under this chapter;

29 (24) "Second-trust instrument" means the trust instrument for a
30 second trust;

31 (25)(A) "Settlor", except as otherwise provided in § 28-78-125,
32 means a person, including a testator, that creates or contributes property to
33 a trust.

34 (B) If more than one person creates or contributes
35 property to a trust, each person is a settlor of the portion of the trust
36 property attributable to the person's contribution except to the extent

1 another person has power to revoke or withdraw that portion;

2 (26) "Sign" means, with present intent to authenticate or adopt
 3 a record to:

4 (A) Execute or adopt a tangible symbol; or

5 (B) Attach to or logically associate with the record an
 6 electronic symbol, sound, or process;

7 (27) "State" means a state of the United States, the District of
 8 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
 9 insular possession subject to the jurisdiction of the United States;

10 (28) "Terms of the trust" means:

11 (A) Except as otherwise provided in subdivision (28)(B) of
 12 this section, the manifestation of the settlor's intent regarding a trust's
 13 provisions as:

14 (i) Expressed in the trust instrument; or

15 (ii) Established by other evidence that would be
 16 admissible in a judicial proceeding; or

17 (B) The trust's provisions as established, determined, or
 18 amended by a:

19 (i) Trustee or other person in accordance with
 20 applicable law;

21 (ii) Court order; or

22 (iii) Nonjudicial settlement agreement under § 28-
 23 73-111; and

24 (29) "Trust instrument" means a record executed by the settlor
 25 to create a trust or by any person to create a second trust which contains
 26 some or all of the terms of the trust, including any amendments.

27
 28 28-78-103. Scope.

29 (a) Except as otherwise provided in subsections (b) and (c) of this
 30 section, this chapter applies to an express trust that is irrevocable or
 31 revocable by the settlor only with the consent of the trustee or a person
 32 holding an adverse interest.

33 (b) This chapter does not apply to a trust held solely for charitable
 34 purposes.

35 (c) Subject to § 28-78-115, a trust instrument may restrict or
 36 prohibit exercise of the decanting power.

1 (d) This chapter does not limit the power of a trustee, powerholder,
2 or other person to distribute or appoint property in further trust or to
3 modify a trust under the trust instrument, law of this state other than this
4 act, common law, a court order, or a nonjudicial settlement agreement.

5 (e) This chapter does not affect the ability of a settlor to provide
6 in a trust instrument for the distribution of the trust property or
7 appointment in further trust of the trust property or for modification of the
8 trust instrument.

9
10 28-78-104. Fiduciary duty.

11 (a) In exercising the decanting power, an authorized fiduciary shall
12 act in accordance with its fiduciary duties, including the duty to chapter in
13 accordance with the purposes of the first trust.

14 (b) This chapter does not create or imply a duty to exercise the
15 decanting power or to inform beneficiaries about the applicability of this
16 act.

17 (c) Except as otherwise provided in a first-trust instrument, for
18 purposes of this chapter and § 28-73-802 and § 28-73-803, the terms of the
19 first trust are deemed to include the decanting power.

20
21 28-78-105. Application - Governing law.

22 This chapter applies to a trust created before, on, or after the
23 effective date of this chapter which:

24 (1) Has its principal place of administration in this state,
25 including a trust whose principal place of administration has been changed to
26 this state; or

27 (2) Provides by its trust instrument that it is governed by the
28 law of this state or is governed by the law of this state for the purpose of:

29 (A) Administration, including administration of a trust
30 whose governing law for purposes of administration has been changed to the
31 law of this state;

32 (B) Construction of terms of the trust; or

33 (C) Determining the meaning or effect of terms of the
34 trust.

35
36 28-78-106. Reasonable reliance.

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

6
7 28-78-107. Notice - Exercise of decanting power.

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

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

14 (c) Except as otherwise provided in subsection (f) of this section, an
15 authorized fiduciary shall give notice in a record of the intended exercise
16 of the decanting power not later than sixty (60) days before the exercise to:

17 (1) Each settlor of the first trust, if living or then in
18 existence;

19 (2) Each qualified beneficiary of the first trust;

20 (3) Each holder of a presently exercisable power of appointment
21 over any part or all of the first trust;

22 (4) Each person that currently has the right to remove or
23 replace the authorized fiduciary;

24 (5) Each other fiduciary of the first trust;

25 (6) Each fiduciary of the second trust; and

26 (7) The Attorney General, if § 28-78-114(b) applies.

27 (d) An authorized fiduciary is not required to give notice under
28 subsection (c) of this section to a:

29 (1) Qualified beneficiary who is a minor and has no
30 representative; or

31 (2) Person that is not known to the fiduciary or is known to the
32 fiduciary but cannot be located by the fiduciary after reasonable diligence.

33 (e) A notice under subsection (c) of this section shall:

34 (1) Specify the manner in which the authorized fiduciary intends
35 to exercise the decanting power;

36 (2) Specify the proposed effective date for exercise of the

1 power;

2 (3) Include a copy of the first-trust instrument; and

3 (4) Include a copy of all second-trust instruments.

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

7 (g) The receipt of notice, waiver of the notice period, or expiration
8 of the notice period does not affect the right of a person to file an
9 application under Arkansas Code § 28-78-109 asserting that:

10 (1) An attempted exercise of the decanting power is ineffective
11 because it did not comply with this chapter or was an abuse of discretion or
12 breach of fiduciary duty; or

13 (2) § 28-78-122 applies to the exercise of the decanting power.

14 (h) An exercise of the decanting power is not ineffective because of
15 the failure to give notice to one or more persons under subsection (c) of
16 this section if the authorized fiduciary acted with reasonable care to comply
17 with subsection (c) of this section.

18

19 28-78-108. Representation.

20 (a) Notice to a person with authority to represent and bind another
21 person under a first-trust instrument or § 28-73-301 et seq., has the same
22 effect as notice given directly to the person represented.

23 (b) Consent of or waiver by a person with authority to represent and
24 bind another person under a first-trust instrument or § 28-73-301 et seq., is
25 binding on the person represented unless the person represented objects to
26 the representation before the consent or waiver otherwise would become
27 effective.

28 (c) A person with authority to represent and bind another person under
29 a first-trust instrument or § 28-73-301 et seq., may file an application
30 under § 28-78-109 on behalf of the person represented.

31 (d) A settlor shall not represent or bind a beneficiary under this
32 chapter.

33

34 28-78-109. Court involvement.

35 (a) On application of an authorized fiduciary, a person entitled to
36 notice under § 28-78-107(c), a beneficiary, or with respect to a charitable

1 interest the Attorney General or other person that has standing to enforce
 2 the charitable interest, the court may:

3 (1) Provide instructions to the authorized fiduciary regarding
 4 whether a proposed exercise of the decanting power is permitted under this
 5 chapter and consistent with the fiduciary duties of the authorized fiduciary;

6 (2) Appoint a special fiduciary and authorize the special
 7 fiduciary to determine whether the decanting power should be exercised under
 8 this chapter and to exercise the decanting power;

9 (3) Approve an exercise of the decanting power;

10 (4) Determine that a proposed or attempted exercise of the
 11 decanting power is ineffective because:

12 (A) After applying § 28-78-122, the proposed or attempted
 13 exercise does not or did not comply with this chapter; or

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

16 (5) Determine the extent to which Arkansas Code § 28-78-122
 17 applies to a prior exercise of the decanting power;

18 (6) Provide instructions to the trustee regarding the
 19 application of § 28-78-122 to a prior exercise of the decanting power; or

20 (7) Order other relief to carry out the purposes of this chapter

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

22 (1) An increase in the fiduciary's compensation under § 28-78-
 23 116; or

24 (2) A modification under § 28-778-118 of a provision granting a
 25 person the right to remove or replace the fiduciary.

26
 27 28-78-110. Formalities.

28 (a) An exercise of the decanting power shall be made in a record
 29 signed by an authorized fiduciary.

30 (b) The signed record shall, directly or by reference to the notice
 31 required by § 28-78-107, identify the first trust and the second trust or
 32 trusts and state the property of the first trust being distributed to each
 33 second trust and the property, if any, that remains in the first trust.

34
 35 28-78-111. Decanting power under expanded distributive discretion.

36 (a) In this section:

1 (1)(A) "Noncontingent right" means a right that is not subject
2 to the exercise of discretion or the occurrence of a specified event that is
3 not certain to occur.

4 (B) "Noncontingent right" does not mean a right held by a
5 beneficiary if a person has discretion to distribute property subject to the
6 right to a person other than the beneficiary or the beneficiary's estate;

7 (2) "Presumptive remainder beneficiary" means a qualified
8 beneficiary other than a current beneficiary;

9 (3)(A) "Successor beneficiary" means a beneficiary that is not
10 a qualified beneficiary on the date the beneficiary's qualification is
11 determined.

12 (B) "Successor beneficiary" does not mean a person that is
13 a beneficiary only because the person holds a nongeneral power of
14 appointment; and

15 (4) "Vested interest" means a:

16 (A) Right to a mandatory distribution that is a
17 noncontingent right as of the date of the exercise of the decanting power;

18 (B) Current and noncontingent right, annually or more
19 frequently, to a mandatory distribution of income, a specified dollar amount,
20 or a percentage of value of some or all of the trust property;

21 (C) Current and noncontingent right, annually or more
22 frequently, to withdraw income, a specified dollar amount, or a percentage of
23 value of some or all of the trust property;

24 (D) Presently exercisable general power of appointment; or

25 (E) Right to receive an ascertainable part of the trust
26 property on the trust's termination which is not subject to the exercise of
27 discretion or to the occurrence of a specified event that is not certain to
28 occur.

29 (b) Subject to subsection (c) of this section and Arkansas Code § 28-
30 78-114, an authorized fiduciary that has expanded distributive discretion
31 over the principal of a first trust for the benefit of one or more current
32 beneficiaries may exercise the decanting power over the principal of the
33 first trust.

34 (c) Subject to § 28-78-113, in an exercise of the decanting power
35 under this section, a second trust shall not:

36 (1) Include as a current beneficiary a person that is not a

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

3 (2) Include as a presumptive remainder beneficiary or successor
4 beneficiary a person that is not a current beneficiary, presumptive remainder
5 beneficiary, or successor beneficiary of the first trust, except as otherwise
6 provided in subsection (d) of this section; or

7 (3) Reduce or eliminate a vested interest.

8 (d) Subject to subdivision (c)(3) of this section and § 28-78-114, in
9 an exercise of the decanting power under this section, a second trust may be
10 a trust created or administered under the law of any jurisdiction and may:

11 (1) Retain a power of appointment granted in the first trust;

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

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

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

23 (e)(1) A power of appointment described in subdivision (d)(1) through
24 (4) of this section may be general or nongeneral.

25 (2) The class of permissible appointees in favor of which the
26 power may be exercised may be broader than or different from the
27 beneficiaries of the first trust.

28 (f) If an authorized fiduciary has expanded distributive discretion
29 over part but not all of the principal of a first trust, the fiduciary may
30 exercise the decanting power under this section over that part of the
31 principal over which the authorized fiduciary has expanded distributive
32 discretion.

33
34 28-78-112. Decanting power under limited distributive discretion.

35 (a) In this section, "limited distributive discretion" means a
36 discretionary power of distribution that is limited to an ascertainable

1 standard or a reasonably definite standard.

2 (b) An authorized fiduciary that has limited distributive discretion
3 over the principal of the first trust for benefit of one or more current
4 beneficiaries may exercise the decanting power over the principal of the
5 first trust.

6 (c)(1) Under this section and subject to § 28-78-114, a second trust
7 may be created or administered under the law of any jurisdiction.

8 (2) Under this section, the second trusts, in the aggregate,
9 shall grant each beneficiary of the first trust beneficial interests which
10 are substantially similar to the beneficial interests of the beneficiary in
11 the first trust.

12 (d)(1) A power to make a distribution under a second trust for the
13 benefit of a beneficiary who is an individual is substantially similar to a
14 power under the first trust to make a distribution directly to the
15 beneficiary.

16 (2) A distribution is for the benefit of a beneficiary if the:

17 (A) Distribution is applied for the benefit of the
18 beneficiary;

19 (B) Beneficiary is under a legal disability or the trustee
20 reasonably believes the beneficiary is incapacitated, and the distribution is
21 made as permitted under the Arkansas Trust Code, § 28-73-101 et seq.; or

22 (C) Distribution is made as permitted under the terms of
23 the first-trust instrument and the second-trust instrument for the benefit of
24 the beneficiary.

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

30
31 28-78-113. Trust for beneficiary with disability.

32 (a) In this section:

33 (1) "Beneficiary with a disability" means a beneficiary of a
34 first trust who the special-needs fiduciary believes may qualify for
35 governmental benefits based on disability, whether or not the beneficiary
36 currently receives those benefits or is an individual who has been

1 adjudicated incompetent;

2 (2) "Governmental benefits" means financial aid or services from
3 a state, federal, or other public agency;

4 (3) "Special-needs fiduciary" means, with respect to a trust
5 that has a beneficiary with a disability:

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

9 (B) If no trustee or fiduciary has discretion under
10 subdivision (a)(3)(A) of this section, a trustee or other fiduciary, other
11 than a settlor, that has discretion to distribute part or all of the income
12 of the first trust to one or more current beneficiaries; or

13 (C) If no trustee or fiduciary has discretion under
14 subdivisions (a)(3)(A) and (B) of this section, a trustee or other fiduciary,
15 other than a settlor, that is required to distribute part or all of the
16 income or principal of the first trust to one or more current beneficiaries;
17 and

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

21 (b) A special-needs fiduciary may exercise the decanting power under §
22 28-78-111 over the principal of a first trust as if the fiduciary had
23 authority to distribute principal to a beneficiary with a disability subject
24 to expanded distributive discretion if:

25 (1) A second trust is a special-needs trust that benefits the
26 beneficiary with a disability; and

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

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

31 (1) Notwithstanding § 28-78-111(c)(2), the interest in the
32 second trust of a beneficiary with a disability may:

33 (A) Be a pooled trust as defined by Medicaid law for the
34 benefit of the beneficiary with a disability under 42 U.S.C. Section
35 1396p(d)(4)(C), as it existed on January 1, 2025; or

36 (B) Contain payback provisions complying with

1 reimbursement requirements of Medicaid law under 42 U.S.C. Section
 2 1396p(d)(4)(A), as it existed on January 1, 2025;

3 (2) Section 28-78-111(c)(3) does not apply to the interests of
 4 the beneficiary with a disability; and

5 (3) Except as affected by any change to the interests of the
 6 beneficiary with a disability, the second trust, or if there are two or more
 7 second trusts, the second trusts in the aggregate, shall grant each other
 8 beneficiary of the first trust beneficial interests in the second trusts
 9 which are substantially similar to the beneficiary's beneficial interests in
 10 the first trust.

11
 12 28-78-114. Protection of charitable interest.

13 (a) In this section:

14 (1) "Determinable charitable interest" means a charitable
 15 interest that is a right to a mandatory distribution currently, periodically,
 16 on the occurrence of a specified event, or after the passage of a specified
 17 time and which is unconditional or will be held solely for charitable
 18 purposes.

19 (2) "Unconditional" means not subject to the occurrence of a
 20 specified event that is not certain to occur, other than a requirement in a
 21 trust instrument that a charitable organization be in existence or qualify
 22 under a particular provision of the United States Internal Revenue Code of
 23 1986, as amended, on the date of the distribution, if the charitable
 24 organization meets the requirement on the date of determination.

25 (b) If a first trust contains a determinable charitable interest, the
 26 Attorney General has the rights of a qualified beneficiary and may represent
 27 and bind the charitable interest.

28 (c) If a first trust contains a charitable interest, the second trust
 29 or trusts shall not:

30 (1) Diminish the charitable interest;

31 (2) Diminish the interest of an identified charitable
 32 organization that holds the charitable interest;

33 (3) Alter any charitable purpose stated in the first-trust
 34 instrument; or

35 (4) Alter any condition or restriction related to the charitable
 36 interest.

1 (d) If there are two (2) or more second trusts, the second trusts
2 shall be treated as one trust for purposes of determining whether the
3 exercise of the decanting power diminishes the charitable interest or
4 diminishes the interest of an identified charitable organization for purposes
5 of subsection (c) of this section.

6 (e) If a first trust contains a determinable charitable interest, the
7 second trust or trusts that include a charitable interest pursuant to
8 subsection (c) of this section shall be administered under the law of this
9 state unless the:

10 (1) Attorney General, after receiving notice under § 28-78-107,
11 fails to object in a signed record delivered to the authorized fiduciary
12 within the notice period;

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

15 (3) Court approves the exercise of the decanting power.

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

18
19 27-78-115. Trust limitation on decanting.

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

22 (1) The decanting power; or

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

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

28 (1) The decanting power; or

29 (2) A power granted by state law to a fiduciary to distribute
30 part or all of the principal of the trust to another trust or to modify the
31 trust.

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

36 (d) Subject to subsections (a) and (b) of this section, an authorized

1 fiduciary may exercise the decanting power under this chapter even if the
2 first-trust instrument permits the authorized fiduciary or another person to
3 modify the first-trust instrument or to distribute part or all of the
4 principal of the first trust to another trust.

5 (e) If a first-trust instrument contains an express prohibition
6 described in subsection (a) of this section or an express restriction
7 described in subsection (b) of this section, the provision shall be included
8 in the second-trust instrument.

9
10 28-78-116. Change in compensation.

11 (a) If a first-trust instrument specifies an authorized fiduciary's
12 compensation, the fiduciary shall not exercise the decanting power to
13 increase the fiduciary's compensation above the specified compensation
14 unless:

15 (1) All qualified beneficiaries of the second trust consent to
16 the increase in a signed record; or

17 (2) The increase is approved by the court.

18 (b) If a first-trust instrument does not specify an authorized
19 fiduciary's compensation, the fiduciary shall not exercise the decanting
20 power to increase the fiduciary's compensation above the compensation
21 permitted by § 28-73-708 unless:

22 (1) All qualified beneficiaries of the second trust consent to
23 the increase in a signed record; or

24 (2) The increase is approved by the court.

25 (c) A change in an authorized fiduciary's compensation which is
26 incidental to other changes made by the exercise of the decanting power is
27 not an increase in the fiduciary's compensation for purposes of subsections
28 (a) and (b) of this section.

29
30 28-78-117. Relief from liability and indemnification.

31 (a) Except as otherwise provided in this section, a second-trust
32 instrument shall not relieve an authorized fiduciary from liability for
33 breach of trust to a greater extent than the first-trust instrument.

34 (b) A second-trust instrument may provide for indemnification of an
35 authorized fiduciary of the first trust or another person acting in a
36 fiduciary capacity under the first trust for any liability or claim that

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

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

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

11
12 28-78-118. Removal or replacement of authorized fiduciary.

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

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

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

21 (3) Court approves the modification and the modification grants
22 a substantially similar power to another person.

23
24 28-78-119. Tax-related limitations.

25 (a) In this section:

26 (1) "Grantor trust" means a trust as to which a settlor of a
27 first trust is considered the owner under 26 U.S.C. Sections 671 through 677,
28 as it existed on January 1, 2025, or 26 U.S.C. Section 679, as it existed on
29 January 1, 2025;

30 (2) "Internal Revenue Code" means the United States Internal
31 Revenue Code of 1986, as it existed on January 1, 2025;

32 (3) "Nongrantor trust" means a trust that is not a grantor
33 trust; and

34 (4) "Qualified benefits property" means property subject to the
35 minimum distribution requirements of 26 U.S.C. Section 401(a)(9), as it
36 existed on January 1, 2025, and any applicable regulations, or to any similar

1 requirements that refer to 26 U.S.C. Section 401(a)(9) or the regulations.

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

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

14 (2) If the first trust contains property that qualified, or
15 would have qualified but for provisions of this chapter other than this
16 section, for a charitable deduction for purposes of the income, gift, or
17 estate tax under the Internal Revenue Code or a state income, gift, estate,
18 or inheritance tax, the second-trust instrument shall not include or omit any
19 term that, if included in or omitted from the trust instrument for the trust
20 to which the property was transferred, would have prevented the transfer from
21 qualifying for the deduction, or would have reduced the amount of the
22 deduction, under the same provisions of the Internal Revenue Code or state
23 law under which the transfer qualified;

24 (3)(A) If the first trust contains property that qualified, or
25 would have qualified but for provisions of this chapter other than this
26 section, for the exclusion from the gift tax described in 26 U.S.C. Section
27 2503(b), as it existed on January 1, 20205, the second-trust instrument shall
28 not include or omit a term that, if included in or omitted from the trust
29 instrument for the trust to which the property was transferred, would have
30 prevented the transfer from qualifying under 26 U.S.C. Section 2503(b), as
31 amended.

32 (B) If the first trust contains property that qualified,
33 or would have qualified but for provisions of this chapter other than this
34 section, for the exclusion from the gift tax described in 26 U.S.C. Section
35 2503(b), as it existed on January 1, 2025, by application of 26 U.S.C.
36 Section 2503(c),as it existed on January 1, 2025, the second-trust instrument

1 shall not include or omit a term that, if included or omitted from the trust
2 instrument for the trust to which the property was transferred, would have
3 prevented the transfer from qualifying under 26 U.S.C. Section 2503(c), as it
4 existed on January 1, 2025;

5 (4)(A) If the property of the first trust includes shares of
6 stock in an S corporation, as defined in 26 U.S.C. Section 1361, as it
7 existed on January 1, 2025, and the first trust is, or but for provisions of
8 this chapter other than this section would be, a permitted shareholder under
9 any provision of 26 U.S.C. Section 1361, as it existed on January 1, 2025, an
10 authorized fiduciary may exercise the power with respect to part or all of
11 the S-corporation stock only if any second trust receiving the stock is a
12 permitted shareholder under 26 U.S.C. Section 1361(c)(2), as it existed on
13 January 1, 2025.

14 (B) If the property of the first trust includes shares of
15 stock in an S corporation and the first trust is, or but for provisions of
16 this chapter other than this section would be, a qualified subchapter-S trust
17 within the meaning of 26 U.S.C. Section 1361(d), as it existed on January 1,
18 2025, the second-trust instrument shall not include or omit a term that
19 prevents the second trust from qualifying as a qualified subchapter-S trust;

20 (5) If the first trust contains property that qualified, or would
21 have qualified but for provisions of this chapter other than this section,
22 for a zero inclusion ratio for purposes of the generation-skipping transfer
23 tax under 26 U.S.C. Section 2642(c), as it existed on January 1, 2025, the
24 second-trust instrument shall not include or omit a term that, if included in
25 or omitted from the first-trust instrument, would have prevented the transfer
26 to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C.
27 Section 2642(c), as it existed on January 1, 2025;

28 (6)(A) If the first trust is directly or indirectly the
29 beneficiary of qualified benefits property, the second-trust instrument shall
30 not include or omit any term that, if included in or omitted from the first-
31 trust instrument, would have increased the minimum distributions required
32 with respect to the qualified benefits property under 26 U.S.C. Section
33 401(a)(9), as it existed on January 1, 2025, and any applicable regulations,
34 or any similar requirements that refer to 26 U.S.C. Section 401(a)(9), as it
35 existed on January 1, 2025, or the regulations.

36 (B) If an attempted exercise of the decanting power

1 violates the preceding sentence, the trustee is deemed to have held the
2 qualified benefits property and any reinvested distributions of the property
3 as a separate share from the date of the exercise of the power and § 23-78-
4 122 applies to the separate share;

5 (7) If the first trust qualifies as a grantor trust because of
6 the application of 26 U.S.C. Section 672(f)(2)(A), as it existed on January
7 1, 2025, the second trust shall not include or omit a term that, if included
8 in or omitted from the first-trust instrument, would have prevented the first
9 trust from qualifying under 26 U.S.C. Section 672(f)(2)(A), as it existed on
10 January 1, 2025;

11 (8)(A) In subdivision(b)(8) of this section, "tax benefit" means
12 a federal or state tax deduction, exemption, exclusion, or other benefit not
13 otherwise listed in this section, except for a benefit arising from being a
14 grantor trust.

15 (B) Subject to subdivision (b)(9) of this section, a
16 second-trust instrument shall not include or omit a term that, if included in
17 or omitted from the first-trust instrument, would have prevented
18 qualification for a tax benefit if the:

19 (i) First-trust instrument expressly indicates an
20 intent to qualify for the benefit or the first-trust instrument clearly is
21 designed to enable the first trust to qualify for the benefit; and

22 (ii) Transfer of property held by the first trust or
23 the first trust qualified, or but for provisions of this other than this
24 chapter, would have qualified for the tax benefit;

25 (9) Subject to subdivision (b)(4) of this section except as
26 otherwise provided in:

27 (A) Subdivision (b)(7) of this section, the second trust
28 may be a nongrantor trust, even if the first trust is a grantor trust; and

29 (B) Subdivision (b)(10) of this section, the second trust
30 may be a grantor trust, even if the first trust is a nongrantor trust; and

31 (10) An authorized fiduciary shall not exercise the decanting
32 power if a settlor objects in a signed record delivered to the fiduciary
33 within the notice period and the first trust:

34 (A) And a second trust are both grantor trusts, in whole
35 or in part, the first trust grants the settlor or another person the power to
36 cause the first trust to cease to be a grantor trust, and the second trust

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

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

4 (i) Settlor has the power at all times to cause the
 5 second trust to cease to be a grantor trust; or

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

10
 11 28-78-120. Duration of second trust.

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

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

19
 20 28-78-121. Need to distribute not required.

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

25
 26 28-78-122. Saving provision.

27 (a) If exercise of the decanting power would be effective under this
 28 chapter except that the second-trust instrument in part does not comply with
 29 this chapter, the exercise of the power is effective and the following rules
 30 apply with respect to the principal of the second trust attributable to the
 31 exercise of the power:

32 (1) A provision in the second-trust instrument which is not
 33 permitted under this chapter is void to the extent necessary to comply with
 34 this chapter; and

35 (2) A provision required by this chapter to be in the second-
 36 trust instrument which is not contained in the instrument is deemed to be

1 included in the instrument to the extent necessary to comply with this
2 chapter.

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

7
8 28-78-123. Trust for care of animal.

9 (a) In this section:

10 (1) "Animal trust" means a trust or an interest in a trust
11 created to provide for the care of one or more animals; and

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

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

19 (c) A protector for an animal has the rights under this chapter of a
20 qualified beneficiary.

21 (d) Notwithstanding any other provision of this chapter, if a first
22 trust is an animal trust, in an exercise of the decanting power, the second
23 trust shall provide that trust property may be applied only to its intended
24 purpose for the period the first trust benefitted the animal.

25
26 28-78-124. Terms of second trust.

27 A reference in the Arkansas Trust Code, § 28-73-101 et seq., to a trust
28 instrument or terms of the trust includes a second-trust instrument and the
29 terms of the second trust.

30
31 28-78-125. Settlor.

32 (a) For purposes of law of this state other than this chapter and
33 subject to subsection (b) of this section, a settlor of a first trust is
34 deemed to be the settlor of the second trust with respect to the portion of
35 the principal of the first trust subject to the exercise of the decanting
36 power.

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

4
5 28-78-126. Later-discovered property.

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

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

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

22
23 28-78-127. Obligations.

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

27
28 28-78-128. Uniformity of application and construction.

29 In applying and construing this uniform act, consideration shall be
30 given to the need to promote uniformity of the law with respect to its
31 subject matter among states that enact it.

32
33 28-78-129. Relation to Electronic Signatures in Global and National
34 Commerce Act.

35 This chapter modifies, limits, or supersedes the Electronic Signatures
36 in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does

1 not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section
2 7001(c), or authorize electronic delivery of any of the notices described in
3 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

4
5 28-78-130. Severability.

6 If any provision of this chapter or its application to any person or
7 circumstance is held invalid, the invalidity does not affect other provisions
8 or applications of this chapter which can be given effect without the invalid
9 provision or application, and to this end the provisions of this chapter are
10 severable.

11
12 28-78-131. [Reserved.]

13
14 28-78-132. Effective date.

15 This chapter takes effect on and after January 1, 2026.

16
17
18 **APPROVED: 4/16/25**
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36