

SENATE No. 977

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the Massachusetts Uniform Trust Decanting Act.

PETITION OF:

NAME:

Barry R. Finegold

DISTRICT/ADDRESS:

Second Essex and Middlesex

SENATE No. 977

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 977) of Barry R. Finegold for legislation relative to the Massachusetts Uniform Trust Decanting Act. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 964 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to the Massachusetts Uniform Trust Decanting Act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Article 1 of Chapter 203E of the General Laws is hereby amended by
2 striking out Section 103, as appearing in the 2020 Official Edition, and inserting in place thereof
3 the following section:-

4 Section 103. Definitions.

5 In this chapter the following words shall, unless the context clearly requires otherwise,
6 have the following meanings:-

7 “Action”, with respect to an act of a trustee, includes a failure to act.

8 “Ascertainable standard”, a standard relating to an individual’s health, education, support
9 or maintenance.

10 “Beneficiary”, a person who has a present or future beneficial interest in a trust, vested or
11 contingent.

12 “Charitable trust”, a trust, or portion of a trust, created for a charitable purpose described
13 in subsection (a) of section 405.

14 “Environmental law”, a federal, state or local law, rule, regulation or ordinance relating
15 to protection of the environment.

16 “Interests of the beneficiaries”, the beneficial interests provided in the terms of the trust.

17 “Jurisdiction”, a geographic area, including a state or country.

18 “Person”, an individual, corporation, business trust, estate, trust, partnership, limited
19 liability company, association, joint venture, government, governmental subdivision, agency or
20 instrumentality, public corporation or any other legal or commercial entity.

21 “Property”, anything that may be the subject of ownership, whether real, personal, legal,
22 equitable or any interest therein.

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

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

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

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

31 “Revocable”, a trust that is revocable by the settlor without the consent of the trustee or a
32 person holding an adverse interest.

33 “Settlor”, a person, including a testator, who creates or contributes property to a trust. If
34 more than one person creates or contributes property to a trust, each person is a settlor of the
35 portion of the trust property attributable to that person’s contribution except to the extent another
36 person has the power to revoke or withdraw that portion.

37 “Spendthrift provision”, a term of a trust which restrains transfer of a beneficiary’s
38 interest.

39 “State”, a state of the United States, the District of Columbia, Puerto Rico, the United
40 States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
41 United States, including an Indian tribe or band recognized by federal law or formally
42 acknowledged by a state.

43 “Terms of a trust”:

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

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

50 “Trust instrument”, an instrument that contains terms of the trust, including any
51 amendments thereto.

52 “Trustee”, an original, additional or successor trustee or a co-trustee.

53 SECTION 2. Said Article 1 of Chapter 203E of the General Laws is hereby further
54 amended by striking out section 110, as so appearing, and inserting in place thereof the following
55 section:-

56 Section 110. Others treated as qualified beneficiaries

57 (a) Whenever notice to qualified beneficiaries of a trust is required under this chapter, the
58 trustee shall also give notice to any other beneficiary who has sent the trustee a request for
59 notice.

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

64 (1) is a distributee or permissible distributee of trust income or principal;

65 (2) would be a distributee or permissible distributee of trust income or principal upon the
66 termination of the interests of other distributees or permissible distributees then receiving or
67 eligible to receive distributions; or

68 (3) would be a distributee or permissible distributee of trust income or principal if the
69 trust terminated on that date.

70 (c) A person appointed to enforce a trust created for the care of an animal or other non-
71 charitable purpose, as provided in sections 408 and 409, shall have the rights of a qualified
72 beneficiary under this chapter.

73 SECTION 3. Said Chapter 203E of the General Laws is hereby further amended by
74 inserting after Article 8 the following article:-

75 ARTICLE 9

76 MASSACHUSETTS UNIFORM TRUST DECANTING ACT

77 Section 901. Short title

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

80 Section 902. Definitions

81 In this article the following words shall, unless the context clearly requires otherwise,
82 have the following meanings:-

83 “Appointive property”, the property or property interest subject to a power of
84 appointment.

85 “Authorized fiduciary”:

86 (i) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or
87 direct a trustee to distribute part or all of the principal of the first trust to one or more current
88 beneficiaries;

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

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

91 “Beneficiary”, for purposes of this article, includes an identified charitable organization
92 that will or may receive distributions under the terms of the trust.

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

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

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

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

101 “Current beneficiary”:

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

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

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

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

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

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

112 “General power of appointment”, a power of appointment exercisable in favor of a
113 powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the
114 powerholder’s estate.

115 “Power of appointment”, a power (other than a power of attorney) that enables a
116 powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in
117 or another power of appointment over the appointive property.

118 “Powerholder”, a person in which a donor creates a power of appointment.

119 “Presently exercisable power of appointment”, a power of appointment exercisable by the
120 powerholder at the relevant time. The term:

121 (i) includes a power of appointment exercisable only after the occurrence of a specified
122 event, the satisfaction of an ascertainable standard, or the passage of a specified time only after
123 (a) the occurrence of the specified event, (b) the satisfaction of the ascertainable standard, or (c)
124 the passage of the specified time; and

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

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

129 “Record” means information that is inscribed on a tangible medium or that is stored in an
130 electronic or other medium and is retrievable in perceivable form.

131 “Second trust”:

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

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

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

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

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

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

140 Section 903. Scope

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

144 (b) This article does not apply to a trust held solely for charitable purposes described in
145 subsection (a) of section 405.

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

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

152 (e) This article does not affect the ability of a settlor to provide in a trust instrument for
153 the distribution of the trust property or appointment in further trust of the trust property or for
154 modification of the trust instrument.

155 Section 904. Fiduciary duty

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

159 (b) This article does not create or imply a duty to exercise the decanting power or to
160 inform beneficiaries about the applicability of this article.

161 (c) Except as otherwise provided in a first-trust instrument, for purposes of this article
162 and sections 801 and 802(a), the terms of the first trust are deemed to include the decanting
163 power.

164 Section 905. Application; governing law

165 This article applies to a trust created before, on, or after the effective date of this article
166 which has its principal place of administration in the commonwealth.

167 Section 906. Reasonable reliance

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

172 Section 907. Notice; exercise of decanting power

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

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

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

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

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

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

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

- 185 (5) each other fiduciary of the first trust;
- 186 (6) each fiduciary of the second trust; and
- 187 (7) the attorney general, if subsection (b) of section 914 applies.

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

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

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

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

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

196 (4) include a copy of all second-trust instruments.

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

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

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

203 (2) section 922 applies to the exercise of the decanting power.

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

207 Section 908. [Reserved]

208 Section 909. Court involvement

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

212 (1) provide instructions to the authorized fiduciary regarding whether a proposed exercise
213 of the decanting power is permitted under this article and consistent with the fiduciary duties of
214 the authorized fiduciary;

215 (2) appoint a special fiduciary and authorize the special fiduciary to determine whether
216 the decanting power should be exercised under this article and to exercise the decanting power;

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

218 (4) determine that a proposed or attempted exercise of the decanting power is ineffective
219 because:

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

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

224 (5) determine the extent to which section 922 applies to a prior exercise of the decanting
225 power;

226 (6) provide instructions to the trustee regarding the application of section 922 to a prior
227 exercise of the decanting power; or

228 (7) order other relief to carry out the purposes of this article.

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

230 (1) an increase in the fiduciary's compensation under section 916;

231 (2) a modification of fiduciary liability under section 917; or

232 (3) a modification under section 918 of a provision granting a person the right to remove
233 or replace the fiduciary.

234 Section 910. Formalities

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

239 Section 911. Decanting power under expanded distributive discretion

240 (a) In this section:

241 (1) "Noncontingent right" means a right that is not subject to the exercise of discretion or
242 the occurrence of a specified event that is not certain to occur. The term does not include a right

243 held by a beneficiary if any person has discretion to distribute property subject to the right to any
244 person other than the beneficiary or the beneficiary's estate.

245 (2) "Presumptive remainder beneficiary" means a qualified beneficiary other than a
246 current beneficiary.

247 (3) "Successor beneficiary" means a beneficiary who is not a qualified beneficiary on the
248 date the beneficiary's qualification is determined.

249 (4) "Vested interest" means:

250 (A) a right to a mandatory distribution that is a noncontingent right as of the date of the
251 exercise of the decanting power;

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

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

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

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

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

264 (c) Subject to section 913, in an exercise of the decanting power under this section, a
265 second trust may not:

266 (1) include as a current beneficiary a person who is not a current beneficiary of the first
267 trust or include as a current beneficiary with respect to trust principal a person who is a current
268 beneficiary of the first trust only with respect to trust income, except as otherwise provided in
269 subsection (d);

270 (2) include as a presumptive remainder beneficiary or successor beneficiary a person who
271 is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the
272 first trust, except as otherwise provided in subsection (d); or

273 (3) reduce or eliminate a vested interest.

274 (d) Subject to subsection (c)(3) and section 914, in an exercise of the decanting power
275 under this section, a second trust may be a trust created or administered under the law of any
276 jurisdiction and may:

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

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

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

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

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

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

294 Section 912. Decanting power under limited distributive discretion

295 (a) In this section, “limited distributive discretion” means a discretionary power of
296 distribution that is limited to an ascertainable standard or a reasonably definite standard.

297 (b) An authorized fiduciary who has limited distributive discretion over the principal of
298 the first trust for the benefit of one or more current beneficiaries may exercise the decanting
299 power over the principal of the first trust.

300 (c) Under this section and subject to section 914, a second trust may be created or
301 administered under the law of any jurisdiction. Under this section, the second trusts, in the
302 aggregate, must grant each beneficiary of the first trust beneficial interests which are
303 substantially similar to the beneficial interests of the beneficiary in the first trust.

304 (d) A power to make a distribution under a second trust for the benefit of a beneficiary
305 who is an individual is substantially similar to a power under the first trust to make a distribution
306 directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

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

308 (2) the beneficiary is under a legal disability or the trustee reasonably believes the
309 beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

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

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

315 Section 913. Trust for beneficiary with disability

316 (a) In this section:

317 (1) “Beneficiary with a disability” means a beneficiary of a first trust who the special-
318 needs fiduciary believes may qualify for governmental benefits based on disability, whether or
319 not the beneficiary currently receives those benefits or is an individual who has been adjudicated
320 incompetent.

321 (2) “Governmental benefits” means financial aid or services from a state, federal, or other
322 public agency.

323 (3) “Special-needs fiduciary” means, with respect to a trust that has a beneficiary with a
324 disability:

325 (A) a trustee or other fiduciary, other than a settlor, who has discretion to distribute part
326 or all of the principal of a first trust to one or more current beneficiaries;

327 (B) if no trustee or fiduciary has discretion under subsection (A), a trustee or other
328 fiduciary, other than a settlor, who has discretion to distribute part or all of the income of the first
329 trust to one or more current beneficiaries; or

330 (C) if no trustee or fiduciary has discretion under subsections (A) and (B), a trustee or
331 other fiduciary, other than a settlor, who is required to distribute part or all of the income or
332 principal of the first trust to one or more current beneficiaries.

333 (4) “Special-needs trust” means a trust the trustee believes would not be considered a
334 resource for purposes of determining whether a beneficiary with a disability is eligible for any
335 governmental benefit.

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

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

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

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

344 (1) Notwithstanding subsection (c)(2) of section 911, the interest in the second trust of a
345 beneficiary with a disability may:

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

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

350 (2) Subsection (c)(3) of section 911 does not apply to the interests of the beneficiary with
351 a disability.

352 (3) Except as affected by any change to the interests of the beneficiary with a disability,
353 the second trust, or if there are two or more second trusts, the second trusts in the aggregate,
354 must grant each other beneficiary of the first trust beneficial interests in the second trusts which
355 are substantially similar to the beneficiary's beneficial interests in the first trust.

356 Section 914. Protection of charitable interest

357 (a) In this section:

358 (1) "Determinable charitable interest" means a charitable interest that is a right to a
359 mandatory distribution currently, periodically, on the occurrence of a specified event, or after the

360 passage of a specified time and which is unconditional or will be held solely for charitable
361 purposes described in subsection (a) of section 405.

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

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

369 (c) This article does not limit the powers and duties of the attorney general under law of
370 the commonwealth other than this article.

371 Section 915. Trust limitation on decanting

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

374 (1) the decanting power; or

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

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

379 (1) the decanting power; or

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

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

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

389 (e) If a first-trust instrument contains an express prohibition described in subsection (a) or
390 an express restriction described in subsection (b), the provision must be included in the second-
391 trust instrument.

392 Section 916. Change in compensation

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

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

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

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

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

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

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

408 Section 917. Relief from liability and indemnification

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

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

416 (c) Except as approved by the court, a second-trust instrument may not reduce fiduciary
417 liability in the aggregate.

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

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

423 Section 918. Removal or replacement of authorized fiduciary

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

426 (a) the person holding the power consents to the modification in a signed record and the
427 modification applies only to the person;

428 (b) the person holding the power and the qualified beneficiaries of the second trust
429 consent to the modification in a signed record and the modification grants a substantially similar
430 power to another person; or

431 (c) the court approves the modification and the modification grants a substantially similar
432 power to another person.

433 Section 919. Tax-related limitations

434 (a) In this section:

435 (1) “Grantor trust” means a trust as to which a settlor of a first trust is considered the
436 owner under sections 671 through 677 or section 679 of the Internal Revenue Code.

437 (2) “Internal Revenue Code” means the Internal Revenue Code of the United States as
438 amended and as then in effect, and references to a specific provision of the Internal Revenue
439 Code are intended to include a successor provision of the same general effect.

440 (3) “Nongrantor trust” means a trust that is not a grantor trust.

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

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

445 (1) If a first trust contains property that qualified, or would have qualified but for
446 provisions of this article other than this section, for a marital deduction for purposes of the gift or
447 estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-
448 trust instrument must not include or omit any term that, if included in or omitted from the trust
449 instrument for the trust to which the property was transferred, would have prevented the transfer
450 from qualifying for the deduction, or would have reduced the amount of the deduction, under the
451 same provisions of the Internal Revenue Code or state law under which the transfer qualified.

452 (2) If the first trust contains property that qualified, or would have qualified but for
453 provisions of this article other than this section, for a charitable deduction for purposes of the
454 income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or
455 inheritance tax, the second-trust instrument must not include or omit any term that, if included in
456 or omitted from the trust instrument for the trust to which the property was transferred, would
457 have prevented the transfer from qualifying for the deduction, or would have reduced the amount
458 of the deduction, under the same provisions of the Internal Revenue Code or state law under
459 which the transfer qualified.

460 (3) If the first trust contains property that qualified, or would have qualified but for
461 provisions of this article other than this section, for the exclusion from the gift tax described in

462 section 2503(b) of the Internal Revenue Code, the second-trust instrument must not include or
463 omit a term that, if included in or omitted from the trust instrument for the trust to which the
464 property was transferred, would have prevented the transfer from qualifying under such section.
465 If the first trust contains property that qualified, or would have qualified but for provisions of this
466 article other than this section, for the exclusion from the gift tax described in section 2503(b) of
467 the Internal Revenue Code by application of section 2503(c) of the Internal Revenue Code, the
468 second-trust instrument must not include or omit a term that, if included or omitted from the trust
469 instrument for the trust to which the property was transferred, would have prevented the transfer
470 from qualifying under section 2503(c) of the Internal Revenue Code.

471 (4) If the property of the first trust includes shares of stock in an S corporation, as defined
472 in section 1361 of the Internal Revenue Code and the first trust is, or but for provisions of this
473 article other than this section would be, a permitted shareholder under any provision of section
474 1361 of the Internal Revenue Code, an authorized fiduciary may exercise the power with respect
475 to part or all of the S corporation stock only if any second trust receiving the stock is a permitted
476 shareholder under section 1361(c)(2) of the Internal Revenue Code. If the property of the first
477 trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this
478 article other than this section would be, a qualified subchapter S trust within the meaning of
479 section 1361(d) of the Internal Revenue Code, the second-trust instrument must not include or
480 omit a term that prevents the second trust from qualifying as a qualified subchapter S trust.

481 (5) If the first trust contains property that qualified, or would have qualified but for
482 provisions of this article other than this section, for a zero inclusion ratio for purposes of the
483 generation-skipping transfer tax under section 2642(c) of the Internal Revenue Code, the second-
484 trust instrument must not include or omit a term that, if included in or omitted from the first-trust

485 instrument, would have prevented the transfer to the first trust from qualifying for a zero
486 inclusion ratio under such section.

487 (6) If the first trust is directly or indirectly the beneficiary of qualified benefits property,
488 the second-trust instrument may not include or omit any term that, if included in or omitted from
489 the first-trust instrument, would have increased the minimum distributions required with respect
490 to the qualified benefits property under section 401(a)(9) of the Internal Revenue Code and any
491 applicable regulations, or any similar requirements that refer thereto. If an attempted exercise of
492 the decanting power violates the preceding sentence, the trustee is deemed to have held the
493 qualified benefits property and any reinvested distributions of the property as a separate share
494 from the date of the exercise of the power and section 922 applies to the separate share.

495 (7) If the first trust qualifies as a grantor trust because of the application of section
496 672(f)(2)(A) of the Internal Revenue Code, the second trust may not include or omit a term that,
497 if included in or omitted from the first-trust instrument, would have prevented the first trust from
498 qualifying under such section.

499 (8) In this subsection, “tax benefit” means a federal or state tax deduction, exemption,
500 exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from
501 being a grantor trust. Subject to subsection (9), a second-trust instrument may not include or omit
502 a term that, if included in or omitted from the first-trust instrument, would have prevented
503 qualification for a tax benefit if:

504 (A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the
505 first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

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

508 (9) Subject to subsection (4):

509 (A) except as otherwise provided in subsection (7), the second trust may be a nongrantor
510 trust, even if the first trust is a grantor trust; and

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

512 Section 920. Duration of second trust

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

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

518 Section 921. Need to distribute not required

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

522 Section 922. Saving provision

523 (a) If exercise of the decanting power would be effective under this article except that the
524 second-trust instrument in part does not comply with this article, the exercise of the power is

525 effective and the following rules apply with respect to the principal of the second trust
526 attributable to the exercise of the power:

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

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

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

535 Section 923. Trust for care of an animal

536 (a) In this section:

537 (1) "Animal trust" means a trust or an interest in a trust described in section 408.

538 (2) "Protector" means the person who may enforce the intended use of the principal or
539 income of an animal trust under subsection (f) of section 408.

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

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

546 Section 924. Terms of second trust

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

549 Section 925. Settlor

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

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

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

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

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

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

567 Section 927. Obligations

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

571 SECTION 4. This act shall take effect on January 1, 2024.