

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 902

Introduced by Pansing Brooks, 28; Kolterman, 24; Stinner, 48.

Read first time January 09, 2020

Committee:

- 1 A BILL FOR AN ACT relating to trusts; to amend section 76-902, Reissue
- 2 Revised Statutes of Nebraska; to adopt the Uniform Trust Decanting
- 3 Act; to change tax provisions for property transferred under the
- 4 act; to provide severability; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 29 of this act shall be known and may be
2 cited as the Uniform Trust Decanting Act.

3 Sec. 2. In the Uniform Trust Decanting Act:

4 (1) Appointive property means the property or property interest
5 subject to a power of appointment.

6 (2) Ascertainable standard has the same meaning as in section
7 30-3803.

8 (3) Authorized fiduciary means:

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

12 (B) a special fiduciary appointed under section 9 of this act; or

13 (C) a special-needs fiduciary under section 13 of this act.

14 (4) Beneficiary means a person that:

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

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

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

20 (5) Charitable interest means an interest in a trust which:

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

23 (B) benefits only charitable organizations and, if the interest were
24 held by an identified charitable organization, would make the
25 organization a qualified beneficiary; or

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

29 (6) Charitable organization means:

30 (A) a person, other than an individual, organized and operated
31 exclusively for charitable purposes; or

1 (B) a government or governmental subdivision, agency, or
2 instrumentality, to the extent it holds funds exclusively for a
3 charitable purpose.

4 (7) Charitable purpose has the same meaning as the description of a
5 charitable trust in section 30-3831.

6 (8) Court means the court in this state having jurisdiction in
7 matters relating to trusts.

8 (9) Current beneficiary means a beneficiary that on the date the
9 beneficiary's qualification is determined is a distributee or permissible
10 distributee of trust income or principal. The term includes the holder of
11 a presently exercisable general power of appointment but does not include
12 a person that is a beneficiary only because the person holds any other
13 power of appointment.

14 (10) Decanting power or the decanting power means the power of an
15 authorized fiduciary under the act to distribute property of a first
16 trust to one or more second trusts or to modify the terms of the first
17 trust.

18 (11) Expanded distributive discretion means a discretionary power of
19 distribution that is not limited to an ascertainable standard or a
20 reasonably definite standard.

21 (12) First trust means a trust over which an authorized fiduciary
22 may exercise the decanting power.

23 (13) First-trust instrument means the trust instrument for a first
24 trust.

25 (14) General power of appointment means a power of appointment
26 exercisable in favor of a powerholder, the powerholder's estate, a
27 creditor of the powerholder, or a creditor of the powerholder's estate.

28 (15) Jurisdiction has the same meaning as in section 30-3803.

29 (16) Person means an individual, estate, business or nonprofit
30 entity, public corporation, government or governmental subdivision,
31 agency, or instrumentality, or other legal entity.

1 (17) Power of appointment means a power that enables a powerholder
2 acting in a nonfiduciary capacity to designate a recipient of an
3 ownership interest in or another power of appointment over the appointive
4 property. The term does not include a power of attorney.

5 (18) Powerholder means a person in which a donor creates a power of
6 appointment.

7 (19) Presently exercisable power of appointment means a power of
8 appointment exercisable by the powerholder at the relevant time. The
9 term:

10 (A) includes a power of appointment exercisable only after the
11 occurrence of a specified event, the satisfaction of an ascertainable
12 standard, or the passage of a specified time only after:

13 (i) the occurrence of the specified event;

14 (ii) the satisfaction of the ascertainable standard; or

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

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

18 (20) Qualified beneficiary has the same meaning as in section
19 30-3803.

20 (21) Reasonably definite standard means a clearly measurable
21 standard under which a holder of a power of distribution is legally
22 accountable within the meaning of 26 U.S.C. 674(b)(5)(A), as such section
23 existed on the effective date of this act, and any applicable
24 regulations.

25 (22) Record means information that is inscribed on a tangible medium
26 or that is stored in an electronic or other medium and is retrievable in
27 perceivable form.

28 (23) Second trust means:

29 (A) a first trust after modification under this act; or

30 (B) a trust to which a distribution of property from a first trust
31 is or may be made under the act.

1 (24) Second-trust instrument means the trust instrument for a second
2 trust.

3 (25) Settlor, except as otherwise provided in section 25 of this
4 act, has the same meaning as in section 30-3803.

5 (26) Sign means, with present intent to authenticate or adopt a
6 record:

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

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

10 (27) State has the same meaning as in section 30-3803.

11 (28) Terms of the trust means:

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

15 (i) expressed in the trust instrument; or

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

18 (B) the trust's provisions as established, determined, or amended
19 by:

20 (i) a trustee or other person in accordance with applicable law;

21 (ii) a court order; or

22 (iii) a nonjudicial settlement agreement under section 30-3811.

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

26 Sec. 3. (a) Except as otherwise provided in subsections (b) and (c)
27 of this section, the Uniform Trust Decanting Act applies to an express
28 trust that is irrevocable or revocable by the settlor only with the
29 consent of the trustee or a person holding an adverse interest.

30 (b) The act does not apply to a trust held solely for charitable
31 purposes.

1 (c) Subject to section 15 of this act, a trust instrument may
2 restrict or prohibit exercise of the decanting power.

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

8 (e) The act does not affect the ability of a settlor to provide in a
9 trust instrument for the distribution of the trust property or
10 appointment in further trust of the trust property or for modification of
11 the trust instrument.

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

15 (b) The Uniform Trust Decanting Act does not create or imply a duty
16 to exercise the decanting power or to inform beneficiaries about the
17 applicability of the act.

18 (c) Except as otherwise provided in a first-trust instrument, for
19 purposes of the act and section 30-3866 and subsection (a) of section
20 38-3867, the terms of the first trust are deemed to include the decanting
21 power.

22 Sec. 5. The Uniform Trust Decanting Act applies to a trust created
23 before, on, or after the effective date of this act which:

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

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

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

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

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

3 Sec. 6. A trustee or other person that reasonably relies on the
4 validity of a distribution of part or all of the property of a trust to
5 another trust, or a modification of a trust, under the Uniform Trust
6 Decanting Act, law of this state other than the act, or the law of
7 another jurisdiction is not liable to any person for any action or
8 failure to act as a result of the reliance.

9 Sec. 7. (a) In this section, a notice period begins on the day
10 notice is given under subsection (c) of this section and ends fifty-nine
11 days after the day notice is given.

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

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

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

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

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

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

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

26 (6) each fiduciary of the second trust;

27 (7) each person acting as an advisor or protector of the first
28 trust;

29 (8) each person holding an adverse interest who has the power to
30 consent to the revocation of the first trust; and

31 (9) the Attorney General, if subsection (b) of section 14 of this

1 act applies.

2 (d) An authorized fiduciary is not required to give notice under
3 subsection (c) of this section to a person that is not known to the
4 fiduciary or is known to the fiduciary but cannot be located by the
5 fiduciary after reasonable diligence.

6 (e) A notice under subsection (c) of this section must:

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

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

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

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

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

15 (g) The receipt of notice, waiver of the notice period, or
16 expiration of the notice period does not affect the right of a person to
17 file an application under section 9 of this act asserting that:

18 (1) an attempted exercise of the decanting power is ineffective
19 because it did not comply with the act or was an abuse of discretion or
20 breach of fiduciary duty; or

21 (2) section 22 of this act applies to the exercise of the decanting
22 power.

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

27 Sec. 8. (a) Notice to a person with authority to represent and bind
28 another person under a first-trust instrument or sections 30-3822 to
29 30-3826 has the same effect as notice given directly to the person
30 represented.

31 (b) Consent of or waiver by a person with authority to represent and

1 bind another person under a first-trust instrument or sections 30-3822 to
2 30-3826 is binding on the person represented unless the person
3 represented objects to the representation before the consent or waiver
4 otherwise would become effective.

5 (c) A person with authority to represent and bind another person
6 under a first-trust instrument or sections 30-3822 to 30-3826 may file an
7 application under section 9 of this act on behalf of the person
8 represented.

9 (d) A settlor may not represent or bind a beneficiary for purposes
10 of the Uniform Trust Decanting Act.

11 Sec. 9. (a) On application of an authorized fiduciary, a person
12 entitled to notice under subsection (c) of section 7 of this act, a
13 beneficiary, or with respect to a charitable interest the Attorney
14 General or other person that has standing to enforce the charitable
15 interest, the court may:

16 (1) provide instructions to the authorized fiduciary regarding
17 whether a proposed exercise of the decanting power is permitted under the
18 Uniform Trust Decanting Act and consistent with the fiduciary duties of
19 the authorized fiduciary;

20 (2) appoint a special fiduciary and authorize the special fiduciary
21 to determine whether the decanting power should be exercised under the
22 act and to exercise the decanting power;

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

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

26 (A) after applying section 22 of this act, the proposed or attempted
27 exercise does not or did not comply with the act; or

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

30 (5) determine the extent to which section 22 of this act applies to
31 a prior exercise of the decanting power;

1 (6) provide instructions to the trustee regarding the application of
2 section 22 of this act to a prior exercise of the decanting power; or
3 (7) order other relief to carry out the purposes of the act.

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

6 (1) an increase in the fiduciary's compensation under section 16 of
7 this act; or

8 (2) a modification under section 18 of this act of a provision
9 granting a person the right to remove or replace the fiduciary.

10 Sec. 10. An exercise of the decanting power must be made in a
11 record signed by an authorized fiduciary. The signed record must,
12 directly or by reference to the notice required by section 7 of this act,
13 identify the first trust and the second trust or trusts and state the
14 property of the first trust being distributed to each second trust and
15 the property, if any, that remains in the first trust.

16 Sec. 11. (a) In this section:

17 (1) Noncontingent right means a right that is not subject to the
18 exercise of discretion or the occurrence of a specified event that is not
19 certain to occur. The term does not include a right held by a beneficiary
20 if any person has discretion to distribute property subject to the right
21 to any person other than the beneficiary or the beneficiary's estate.

22 (2) Presumptive remainder beneficiary means a qualified beneficiary
23 other than a current beneficiary.

24 (3) Successor beneficiary means a beneficiary that is not a
25 qualified beneficiary on the date the beneficiary's qualification is
26 determined. The term does not include a person that is a beneficiary only
27 because the person holds a nongeneral power of appointment.

28 (4) Vested interest means:

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

31 (B) a current and noncontingent right, annually or more frequently,

1 to a mandatory distribution of income, a specified dollar amount, or a
2 percentage of value of some or all of the trust property;

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

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

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

11 (b) Subject to subsection (c) of this section and section 14 of this
12 act, an authorized fiduciary that has expanded distributive discretion
13 over the principal of a first trust for the benefit of one or more
14 current beneficiaries may exercise the decanting power over the principal
15 of the first trust.

16 (c) Subject to section 13 of this act, in an exercise of the
17 decanting power under this section, a second trust may not:

18 (1) include as a current beneficiary a person that is not a current
19 beneficiary of the first trust, except as otherwise provided in
20 subsection (d) of this section;

21 (2) include as a presumptive remainder beneficiary or successor
22 beneficiary a person that is not a current beneficiary, presumptive
23 remainder beneficiary, or successor beneficiary of the first trust,
24 except as otherwise provided in subsection (d) of this section; or

25 (3) reduce or eliminate a vested interest.

26 (d) Subject to subdivision (3) of subsection (c) of this section and
27 section 14 of this act, in an exercise of the decanting power under this
28 section, a second trust may be a trust created or administered under the
29 law of any jurisdiction and may:

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

31 (2) omit a power of appointment granted in the first trust, other

1 than a presently exercisable general power of appointment;

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

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

11 (e) A power of appointment described in subdivisions (1) through (4)
12 of subsection (d) of this section may be general or nongeneral. The class
13 of permissible appointees in favor of which the power may be exercised
14 may be broader than or different from the beneficiaries of the first
15 trust.

16 (f) If an authorized fiduciary has expanded distributive discretion
17 over part but not all of the principal of a first trust, the fiduciary
18 may exercise the decanting power under this section over that part of the
19 principal over which the authorized fiduciary has expanded distributive
20 discretion.

21 Sec. 12. (a) In this section, limited distributive discretion means
22 a discretionary power of distribution that is limited to an ascertainable
23 standard or a reasonably definite standard.

24 (b) An authorized fiduciary that has limited distributive discretion
25 over the principal of the first trust for benefit of one or more current
26 beneficiaries may exercise the decanting power over the principal of the
27 first trust.

28 (c) Under this section and subject to section 14 of this act, a
29 second trust may be created or administered under the law of any
30 jurisdiction. Under this section, the second trusts, in the aggregate,
31 must grant each beneficiary of the first trust beneficial interests which

1 are substantially similar to the beneficial interests of the beneficiary
2 in the first trust.

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

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

8 (2) the beneficiary is under a legal disability or the trustee
9 reasonably believes the beneficiary is incapacitated, and the
10 distribution is made as permitted under the Nebraska Uniform Trust Code;
11 or

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

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

20 Sec. 13. (a) In this section:

21 (1) Beneficiary with a disability means a beneficiary of a first
22 trust who the special-needs fiduciary believes may qualify for
23 governmental benefits based on disability, whether or not the beneficiary
24 currently receives those benefits or is an individual who has been
25 adjudicated incapacitated.

26 (2) Governmental benefits means financial aid or services from a
27 state, federal, or other public agency.

28 (3) Special-needs fiduciary means, with respect to a trust that has
29 a beneficiary with a disability:

30 (A) a trustee or other fiduciary, other than a settlor, that has
31 discretion to distribute part or all of the principal of a first trust to

1 one or more current beneficiaries;

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

6 (C) if no trustee or fiduciary has discretion under subdivisions (3)
7 (A) and (B) of this subsection, a trustee or other fiduciary, other than
8 a settlor, that is required to distribute part or all of the income or
9 principal of the first trust to one or more current beneficiaries.

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

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

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

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

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

23 (1) Notwithstanding subdivision (c)(2) of section 11 of this act,
24 the interest in the second trust of a beneficiary with a disability may:

25 (A) be a pooled trust as defined by medicaid law for the benefit of
26 the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as such
27 section existed on the effective date of this act; or

28 (B) contain payback provisions complying with reimbursement
29 requirements of medicaid law under 42 U.S.C. 1396p(d)(4)(A), as such
30 section existed on the effective date of this act.

31 (2) Subdivision (c)(3) of section 11 of this act does not apply to

1 the interests of the beneficiary with a disability.

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

8 Sec. 14. (a) In this section:

9 (1) Determinable charitable interest means a charitable interest
10 that is a right to a mandatory distribution currently, periodically, on
11 the occurrence of a specified event, or after the passage of a specified
12 time and which is unconditional or will be held solely for charitable
13 purposes.

14 (2) Unconditional means not subject to the occurrence of a specified
15 event that is not certain to occur, other than a requirement in a trust
16 instrument that a charitable organization be in existence or qualify
17 under a particular provision of the Internal Revenue Code of 1986, as
18 amended, on the date of the distribution, if the charitable organization
19 meets the requirement on the date of determination.

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

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

25 (1) diminish the charitable interest;

26 (2) diminish the interest of an identified charitable organization
27 that holds the charitable interest;

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

30 (4) alter any condition or restriction related to the charitable
31 interest.

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

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

10 (1) the Attorney General, after receiving notice under section 7 of
11 this act, fails to object in a signed record delivered to the authorized
12 fiduciary within the notice period;

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

16 (3) the court approves the exercise of the decanting power.

17 (f) The Uniform Trust Decanting Act does not limit the powers and
18 duties of the Attorney General under law of this state other than the
19 act.

20 Sec. 15. (a) An authorized fiduciary may not exercise the decanting
21 power to the extent the first-trust instrument expressly prohibits
22 exercise of:

23 (1) the decanting power; or

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

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

29 (1) the decanting power; or

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

1 trust.

2 (c)(1) An authorized fiduciary who is a current beneficiary of the
3 first trust or a beneficiary to which the net income or principal of the
4 first trust would be distributed if the first trust were terminated may
5 not exercise the decanting power under this act in a manner to eliminate
6 or restrict a spendthrift clause or a clause restraining the voluntary or
7 involuntary transfer of a beneficiary's interest in the first trust.

8 (2) Subject to subdivision (c)(1) of this section, a general
9 prohibition of the amendment or revocation of a first trust, a
10 spendthrift clause, or a clause restraining the voluntary or involuntary
11 transfer of a beneficiary's interest does not preclude exercise of the
12 decanting power.

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

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

22 Sec. 16. (a) If a first-trust instrument specifies an authorized
23 fiduciary's compensation, the fiduciary may not exercise the decanting
24 power to increase the fiduciary's compensation above the specified
25 compensation unless:

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

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

29 (b) If a first-trust instrument does not specify an authorized
30 fiduciary's compensation, the fiduciary may not exercise the decanting
31 power to increase the fiduciary's compensation above the compensation

1 permitted by the Nebraska Uniform Trust Code unless:

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

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

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

9 Sec. 17. (a) Except as otherwise provided in this section, a
10 second-trust instrument may not relieve an authorized fiduciary from
11 liability for breach of trust to a greater extent than the first-trust
12 instrument.

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

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

20 (d) Subject to subsection (c) of this section, a second-trust
21 instrument may divide and reallocate fiduciary powers among fiduciaries,
22 including one or more trustees, distribution advisors, investment
23 advisors, trust protectors, or other persons, and relieve a fiduciary
24 from liability for an act or failure to act of another fiduciary as
25 permitted by law of this state other than this act.

26 Sec. 18. An authorized fiduciary may not exercise the decanting
27 power to modify a provision in a first-trust instrument granting another
28 person power to remove or replace the fiduciary unless:

29 (1) the person holding the power consents to the modification in a
30 signed record and the modification applies only to the person;

31 (2) the person holding the power and the qualified beneficiaries of

1 the second trust consent to the modification in a signed record and the
2 modification grants a substantially similar power to another person; or
3 (3) the court approves the modification and the modification grants
4 a substantially similar power to another person.

5 Sec. 19. (a) In this section:

6 (1) Grantor trust means a trust as to which a settlor of a first
7 trust is considered the owner under 26 U.S.C. 671 to 677 or 26 U.S.C.
8 679, as such sections existed on the effective date of this act.

9 (2) Internal Revenue Code means the Internal Revenue Code of 1986,
10 as amended.

11 (3) Nongrantor trust means a trust that is not a grantor trust.

12 (4) Qualified benefits property means property subject to the
13 minimum distribution requirements of 26 U.S.C. 401(a)(9) and any
14 applicable regulations, or to any similar requirements that refer to 26
15 U.S.C. 401(a)(9) or the regulations, as such section and regulations
16 existed on the effective date of this act.

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

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

29 (2) If the first trust contains property that qualified, or would
30 have qualified but for provisions of the Uniform Trust Decanting Act
31 other than this section, for a charitable deduction for purposes of the

1 income, gift, or estate tax under the Internal Revenue Code or a state
2 income, gift, estate, or inheritance tax, the second-trust instrument
3 must not include or omit any term that, if included in or omitted from
4 the trust instrument for the trust to which the property was transferred,
5 would have prevented the transfer from qualifying for the deduction, or
6 would have reduced the amount of the deduction, under the same provisions
7 of the Internal Revenue Code or state law under which the transfer
8 qualified.

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

27 (4) If the property of the first trust includes shares of stock in
28 an S corporation, as defined in 26 U.S.C. 1361, as such section existed
29 on the effective date of this act, and the first trust is, or but for
30 provisions of this act other than this section would be, a permitted
31 shareholder under any provision of 26 U.S.C. 1361, as such section

1 existed on the effective date of this act, an authorized fiduciary may
2 exercise the power with respect to part or all of the S-corporation stock
3 only if any second trust receiving the stock is a permitted shareholder
4 under 26 U.S.C. 1361(c)(2), as such section existed on the effective date
5 of this act. If the property of the first trust includes shares of stock
6 in an S corporation and the first trust is, or but for provisions of this
7 act other than this section would be, a qualified subchapter-S trust
8 within the meaning of 26 U.S.C. 1361(d), as such section existed on the
9 effective date of this act, the second-trust instrument must not include
10 or omit a term that prevents the second trust from qualifying as a
11 qualified subchapter-S trust.

12 (5) If the first trust contains property that qualified, or would
13 have qualified but for provisions of this act other than this section,
14 for a zero inclusion ratio for purposes of the generation-skipping
15 transfer tax under 26 U.S.C. 2642(c), as such section existed on the
16 effective date of this act, the second-trust instrument must not include
17 or omit a term that, if included in or omitted from the first-trust
18 instrument, would have prevented the transfer to the first trust from
19 qualifying for a zero inclusion ratio under 26 U.S.C. 2642(c), as such
20 section existed on the effective date of this act.

21 (6) If the first trust is directly or indirectly the beneficiary of
22 qualified benefits property, the second-trust instrument may not include
23 or omit any term that, if included in or omitted from the first-trust
24 instrument, would have increased the minimum distributions required with
25 respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as
26 such section existed on the effective date of this act, and any
27 applicable regulations, or any similar requirements that refer to 26
28 U.S.C. 401(a)(9), as such section existed on the effective date of this
29 act, or the regulations. If an attempted exercise of the decanting power
30 violates the preceding sentence, the trustee is deemed to have held the
31 qualified benefits property and any reinvested distributions of the

1 property as a separate share from the date of the exercise of the power
2 and section 22 of this act applies to the separate share.

3 (7) If the first trust qualifies as a grantor trust because of the
4 application of 26 U.S.C. 672(f)(2)(A), as such section existed on the
5 effective date of this act, the second trust may not include or omit a
6 term that, if included in or omitted from the first-trust instrument,
7 would have prevented the first trust from qualifying under 26 U.S.C.
8 672(f)(2)(A), as such section existed on the effective date of this act.

9 (8) In this subdivision, tax benefit means a federal or state tax
10 deduction, exemption, exclusion, or other benefit not otherwise listed in
11 this section, except for a benefit arising from being a grantor trust.
12 Subject to subdivision (9) of this subsection, a second-trust instrument
13 may not include or omit a term that, if included in or omitted from the
14 first-trust instrument, would have prevented qualification for a tax
15 benefit if:

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

19 (B) the transfer of property held by the first trust or the first
20 trust qualified, or but for provisions of this act other than this
21 section, would have qualified for the tax benefit.

22 (9) Subject to subdivision (4) of this subsection:

23 (A) except as otherwise provided in subdivision (7) of this
24 subsection, the second trust may be a nongrantor trust, even if the first
25 trust is a grantor trust; and

26 (B) except as otherwise provided in subdivision (10) of this
27 subsection, the second trust may be a grantor trust, even if the first
28 trust is a nongrantor trust.

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

1 (A) the first trust and a second trust are both grantor trusts, in
2 whole or in part, the first trust grants the settlor or another person
3 the power to cause the first trust to cease to be a grantor trust, and
4 the second trust does not grant an equivalent power to the settlor or
5 other person; or

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

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

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

14 Sec. 20. (a) Subject to subsection (b) of this section, a second
15 trust may have a duration that is the same as or different from the
16 duration of the first trust.

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

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

26 Sec. 22. (a) If exercise of the decanting power would be effective
27 under the Uniform Trust Decanting Act except that the second-trust
28 instrument in part does not comply with the act, the exercise of the
29 power is effective and the following rules apply with respect to the
30 principal of the second trust attributable to the exercise of the power:

31 (1) A provision in the second-trust instrument which is not

1 permitted under the act is void to the extent necessary to comply with
2 the act.

3 (2) A provision required by the act to be in the second-trust
4 instrument which is not contained in the instrument is deemed to be
5 included in the instrument to the extent necessary to comply with the
6 act.

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

11 Sec. 23. (a) In this section:

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

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

17 (b) The decanting power may be exercised over an animal trust that
18 has a protector to the extent the trust could be decanted under the
19 Uniform Trust Decanting Act if each animal that benefits from the trust
20 were an individual, if the protector consents in a signed record to the
21 exercise of the power.

22 (c) A protector for an animal has the rights under the act of a
23 qualified beneficiary.

24 (d) Notwithstanding any other provision of the act, if a first trust
25 is an animal trust, in an exercise of the decanting power, the second
26 trust must provide that trust property may be applied only to its
27 intended purpose for the period the first trust benefitted the animal.

28 Sec. 24. A reference in the Nebraska Uniform Trust Code to a trust
29 instrument or terms of the trust includes a second-trust instrument and
30 the terms of the second trust.

31 Sec. 25. (a) For purposes of law of this state other than the

1 Uniform Trust Decanting Act and subject to subsection (b) of this
2 section, a settlor of a first trust is deemed to be the settlor of the
3 second trust with respect to the portion of the principal of the first
4 trust subject to the exercise of the decanting power.

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

8 Sec. 26. (a) Except as otherwise provided in subsection (c) of this
9 section, if exercise of the decanting power was intended to distribute
10 all the principal of the first trust to one or more second trusts, later-
11 discovered property belonging to the first trust and property paid to or
12 acquired by the first trust after the exercise of the power is part of
13 the trust estate of the second trust or trusts.

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

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

24 Sec. 27. A debt, liability, or other obligation enforceable against
25 property of a first trust is enforceable to the same extent against the
26 property when held by the second trust after exercise of the decanting
27 power.

28 Sec. 28. In applying and construing the Uniform Trust Decanting
29 Act, consideration must be given to the need to promote uniformity of the
30 law with respect to its subject matter among states that enact it.

31 Sec. 29. This act modifies, limits, or supersedes the federal

1 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001
2 et seq., but does not modify, limit, or supersede section 101(c) of that
3 act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the
4 notices described in section 103(b) of that act, 15 U.S.C. 7003(b), as
5 such sections existed on the effective date of this act.

6 Sec. 30. Section 76-902, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 76-902 The tax imposed by section 76-901 shall not apply to:

9 (1) Deeds recorded prior to November 18, 1965;

10 (2) Deeds to property transferred by or to the United States of
11 America, the State of Nebraska, or any of their agencies or political
12 subdivisions;

13 (3) Deeds which secure or release a debt or other obligation;

14 (4) Deeds which, without additional consideration, confirm, correct,
15 modify, or supplement a deed previously recorded but which do not extend
16 or limit existing title or interest;

17 (5)(a) Deeds between spouses, between ex-spouses for the purpose of
18 conveying any rights to property acquired or held during the marriage, or
19 between parent and child, without actual consideration therefor, and (b)
20 deeds to or from a family corporation, partnership, or limited liability
21 company when all the shares of stock of the corporation or interest in
22 the partnership or limited liability company are owned by members of a
23 family, or a trust created for the benefit of a member of that family,
24 related to one another within the fourth degree of kindred according to
25 the rules of civil law, and their spouses, for no consideration other
26 than the issuance of stock of the corporation or interest in the
27 partnership or limited liability company to such family members or the
28 return of the stock to the corporation in partial or complete liquidation
29 of the corporation or deeds in dissolution of the interest in the
30 partnership or limited liability company. In order to qualify for the
31 exemption for family corporations, partnerships, or limited liability

1 companies, the property shall be transferred in the name of the
2 corporation or partnership and not in the name of the individual
3 shareholders, partners, or members;

4 (6) Tax deeds;

5 (7) Deeds of partition;

6 (8) Deeds made pursuant to mergers, consolidations, sales, or
7 transfers of the assets of corporations pursuant to plans of merger or
8 consolidation filed with the office of Secretary of State. A copy of such
9 plan filed with the Secretary of State shall be presented to the register
10 of deeds before such exemption is granted;

11 (9) Deeds made by a subsidiary corporation to its parent corporation
12 for no consideration other than the cancellation or surrender of the
13 subsidiary's stock;

14 (10) Cemetery deeds;

15 (11) Mineral deeds;

16 (12) Deeds executed pursuant to court decrees;

17 (13) Land contracts;

18 (14) Deeds which release a reversionary interest, a condition
19 subsequent or precedent, a restriction, or any other contingent interest;

20 (15) Deeds of distribution executed by a personal representative
21 conveying to devisees or heirs property passing by testate or intestate
22 succession;

23 (16) Transfer on death deeds or revocations of transfer on death
24 deeds;

25 (17) Certified or authenticated death certificates;

26 (18) Deeds transferring property located within the boundaries of an
27 Indian reservation if the grantor or grantee is a reservation Indian;

28 (19) Deeds transferring property into a trust if the transfer of the
29 same property would be exempt if the transfer was made directly from the
30 grantor to the beneficiary or beneficiaries under the trust. No such
31 exemption shall be granted unless the register of deeds is presented with

1 a signed statement certifying that the transfer of the property is made
2 under such circumstances as to come within one of the exemptions
3 specified in this section and that evidence supporting the exemption is
4 maintained by the person signing the statement and is available for
5 inspection by the Department of Revenue;

6 (20) Deeds transferring property from a trustee to a beneficiary of
7 a trust;

8 (21) Deeds which convey property held in the name of any partnership
9 or limited liability company not subject to subdivision (5) of this
10 section to any partner in the partnership or member of the limited
11 liability company or to his or her spouse;

12 (22) Leases;

13 (23) Easements;

14 (24) Deeds which transfer title from a trustee to a beneficiary
15 pursuant to a power of sale exercised by a trustee under a trust deed;~~or~~

16 (25) Deeds transferring property, without actual consideration
17 therefor, to a nonprofit organization that is exempt from federal income
18 tax under section 501(c)(3) of the Internal Revenue Code and is not a
19 private foundation as defined in section 509(a) of the Internal Revenue
20 Code; or -

21 (26) Deeds transferring property pursuant to the Uniform Trust
22 Decanting Act.

23 Sec. 31. If any section in this act or any part of any section is
24 declared invalid or unconstitutional, the declaration shall not affect
25 the validity or constitutionality of the remaining portions.

26 Sec. 32. Original section 76-902, Reissue Revised Statutes of
27 Nebraska, is repealed.