

ASSEMBLY BILL NO. 197—ASSEMBLYMEN MILLER; COHEN,  
OHRENSCHALL AND YEAGER

PREFILED FEBRUARY 13, 2017

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Trust Decanting Act.  
(BDR 13-715)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trusts; enacting the Uniform Trust Decanting Act; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law provides for the transfer of the assets of a trust to another trust under certain circumstances, commonly known as decanting or the decanting power. (NRS 163.556) This bill repeals provisions of existing law governing such transfers and instead enacts the Uniform Trust Decanting Act.

**Sections 33 and 35** of this bill set forth the types of trusts to which the Uniform Act applies. Under **section 33**, the Uniform Act applies to all express trusts that are irrevocable or that are revocable by the settlor of the trust only with the consent of the trustee or a person holding an adverse interest. **Section 33** further provides that the Uniform Act does not apply to charitable trusts and does not prohibit an instrument creating a trust from limiting or prohibiting the decanting power. **Section 35** provides that the Uniform Act applies to a trust created before, on or after October 1, 2017, which has its principal place of administration in this State or is governed by the laws of this State.

**Section 34** of this bill requires a trustee to act in accordance with the trustee’s fiduciary duty in exercising the decanting power.

**Sections 37-43** of this bill set forth the procedures for exercising the decanting power. **Section 37** authorizes a trustee to exercise the decanting power without the consent of any person and without court approval, subject to certain exceptions. **Sections 37 and 38** further require certain notice of the intent to exercise the decanting power to be provided to a settlor, each beneficiary and certain other persons, unless an exception to provide notice applies. **Section 39** sets forth the authority of a court with respect to the exercise of the decanting power, including, without limitation, authorizing a court to provide certain instructions to a trustee, appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised, approve the exercise of the decanting power, provide certain instructions to a trustee and take certain other actions.

**Section 40** requires the decanting power to be exercised in a record signed by the



28 trustee or other fiduciary exercising the power. **Sections 41 and 42** set forth the  
29 decanting power of trustees and other fiduciaries who have different types of  
30 discretion to make distributions from a trust. **Section 43** governs the exercise of the  
31 decanting power by a trustee or fiduciary for a trust that has a beneficiary with a  
32 disability.

33 **Sections 44-49** of this bill enact certain limitations on the decanting power.  
34 **Section 44** enacts limits on the decanting power applicable to certain charitable  
35 trusts. **Section 45** authorizes certain trust instruments to limit the decanting power.  
36 **Section 46** restricts the exercise of the decanting power to increase the  
37 compensation of the trustee or other fiduciary. **Section 47** restricts the exercise of  
38 the decanting power to relieve the trustee or other fiduciary from certain liabilities.  
39 **Section 48** restricts the exercise of the decanting power to modify a provision  
40 governing the removal or replacement of a trustee or other fiduciary. **Section 49**  
41 limits the exercise of the decanting power for the purpose of certain provisions of  
42 the federal Internal Revenue Code.

43 **Section 51** of this bill authorizes a trustee or other fiduciary to exercise the  
44 decanting power even if the trustee or other fiduciary would not have made a  
45 distribution to a current beneficiary under the distribution standard set forth in the  
46 trust instrument.

47 **Section 52** of this bill authorizes a defective exercise of the decanting power to  
48 be effective under certain circumstances.

49 **Section 53** of this bill provides for the exercise of the decanting power with  
50 respect to certain trusts for the care of animals.

51 **Section 55** enacts provisions for determining the identity of the settlor of a trust  
52 into which assets have been transferred from another trust.

53 **Section 56** enacts provisions for determining the ownership of property  
54 belonging to a trust from which assets are transferred into another trust after the  
55 assets of that first trust have been transferred to the second trust. **Section 57** of this  
56 bill provides that debts and liabilities enforceable against the property of the first  
57 trust are enforceable to the same extent against the property when that property is  
58 held by the second trust after the exercise of the decanting power.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 163 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 59, inclusive, of this  
3 act.

4 **Sec. 2.** *Sections 2 to 59, inclusive, of this act may be cited as*  
5 *the Uniform Trust Decanting Act.*

6 **Sec. 3.** *As used in sections 2 to 59, inclusive, of this act, the*  
7 *words and terms defined in sections 4 to 32, inclusive, of this act*  
8 *have the meanings ascribed to them in those sections.*

9 **Sec. 4.** *“Appointive property” means the property or property*  
10 *interest subject to a power of appointment.*

11 **Sec. 5.** *“Ascertainable standard” means a standard relating*  
12 *to an individual’s health, education, support or maintenance*  
13 *within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the*  
14 *Internal Revenue Code, 26 U.S.C. § 2041(b)(1)(A) or 2514(c)(1),*



1 *and any regulations of the United States Treasury promulgated*  
2 *thereunder.*

3 **Sec. 6.** *“Authorized fiduciary” means:*

4 *1. A trustee or other fiduciary, other than a settlor, that has*  
5 *discretion to distribute or direct a trustee to distribute part or all of*  
6 *the principal of the first trust to one or more current beneficiaries;*

7 *2. A special fiduciary appointed under section 39 of this act;*  
8 *or*

9 *3. A special-needs fiduciary under section 43 of this act.*

10 **Sec. 7.** *“Beneficiary” means a person that:*

11 *1. Has a present or future, vested or contingent, beneficial*  
12 *interest in a trust;*

13 *2. Holds a power of appointment over trust property; or*

14 *3. Is an identified charitable organization that will or may*  
15 *receive distributions under the terms of the trust.*

16 **Sec. 8.** *“Charitable interest” means an interest in a trust*  
17 *which:*

18 *1. Is held by an identified charitable organization and makes*  
19 *the organization a qualified beneficiary;*

20 *2. Benefits only charitable organizations and, if the interest*  
21 *were held by an identified charitable organization, would make the*  
22 *organization a qualified beneficiary; or*

23 *3. Is held solely for charitable purposes and, if the interest*  
24 *were held by an identified charitable organization, would make the*  
25 *organization a qualified beneficiary.*

26 **Sec. 9.** *“Charitable organization” means:*

27 *1. A person, other than an individual, organized and operated*  
28 *exclusively for charitable purposes; or*

29 *2. A government or governmental subdivision, agency, or*  
30 *instrumentality, to the extent it holds funds exclusively for a*  
31 *charitable purpose.*

32 **Sec. 10.** *“Charitable purpose” has the meaning ascribed to it*  
33 *in NRS 164.645.*

34 **Sec. 11.** *“Court” means the district court.*

35 **Sec. 12.** *“Current beneficiary” means a beneficiary that on*  
36 *the date the beneficiary’s qualification is determined is a*  
37 *distributee or permissible distributee of trust income or principal.*  
38 *The term includes the holder of a presently exercisable general*  
39 *power of appointment but does not include a person that is a*  
40 *beneficiary only because the person holds any other power of*  
41 *appointment.*

42 **Sec. 13.** *“Decanting power” or “the decanting power” means*  
43 *the power of an authorized fiduciary under sections 2 to 59,*  
44 *inclusive, of this act to distribute property of a first trust to one or*  
45 *more second trusts or to modify the terms of the first trust.*



1     **Sec. 14.** *“Expanded distributive discretion” means a*  
2 *discretionary power of distribution that is not limited to an*  
3 *ascertainable standard or a reasonably definite standard.*

4     **Sec. 15.** *“First trust” means a trust over which an authorized*  
5 *fiduciary may exercise the decanting power.*

6     **Sec. 16.** *“First-trust instrument” means the trust instrument*  
7 *for a first trust.*

8     **Sec. 17.** *“General power of appointment” means a power of*  
9 *appointment exercisable in favor of a powerholder, the*  
10 *powerholder’s estate, a creditor of the powerholder or a creditor of*  
11 *the powerholder’s estate.*

12     **Sec. 18.** *“Jurisdiction,” with respect to a geographic area,*  
13 *includes a state or country.*

14     **Sec. 19.** *“Person” has the meaning ascribed to it in*  
15 *NRS 162A.080.*

16     **Sec. 20.** *“Power of appointment” means a power that enables*  
17 *a powerholder acting in a nonfiduciary capacity to designate a*  
18 *recipient of an ownership interest in or another power of*  
19 *appointment over the appointive property. The term does not*  
20 *include a power of attorney.*

21     **Sec. 21.** *“Powerholder” means a person in which a donor*  
22 *creates a power of appointment.*

23     **Sec. 22.** *“Presently exercisable power of appointment”*  
24 *means a power of appointment exercisable by the powerholder at*  
25 *the relevant time. The term:*

26     1. *Includes a power of appointment exercisable only after the*  
27 *occurrence of a specified event, the satisfaction of an*  
28 *ascertainable standard or the passage of a specified time only*  
29 *after:*

30     (a) *The occurrence of the specified event;*

31     (b) *The satisfaction of the ascertainable standard; or*

32     (c) *The passage of the specified time; and*

33     2. *Does not include a power exercisable only at the*  
34 *powerholder’s death.*

35     **Sec. 23.** *“Qualified beneficiary” means a beneficiary that on*  
36 *the date the beneficiary’s qualification is determined:*

37     1. *Is a distributee or permissible distributee of trust income or*  
38 *principal;*

39     2. *Would be a distributee or permissible distributee of trust*  
40 *income or principal if the interests of the distributees described in*  
41 *subsection 1 terminated on that date without causing the trust to*  
42 *terminate; or*

43     3. *Would be a distributee or permissible distributee of trust*  
44 *income or principal if the trust terminated on that date.*



1       **Sec. 24.** *“Reasonably definite standard” means a clearly*  
2 *measurable standard under which a holder of a power of*  
3 *distribution is legally accountable within the meaning of 26 U.S.C.*  
4 *§ 674(b)(5)(A) and any applicable regulations of the United States*  
5 *Treasury promulgated thereunder.*

6       **Sec. 25.** *“Record” has the meaning ascribed to it in*  
7 *NRS 162A.130.*

8       **Sec. 26.** *“Second trust” means:*

9       1. *A first trust after modification under sections 2 to 59,*  
10 *inclusive, of this act; or*

11       2. *A trust to which a distribution of property from a first trust*  
12 *is or may be made under sections 2 to 59, inclusive, of this act.*

13       **Sec. 27.** *“Second-trust instrument” means the trust*  
14 *instrument for a second trust.*

15       **Sec. 28.** *“Settlor,” except as otherwise provided in section 55*  
16 *of this act, means a person, including a testator, that creates or*  
17 *contributes property to a trust. If more than one person creates or*  
18 *contributes property to a trust, each person is a settlor of the*  
19 *portion of the trust property attributable to the person’s*  
20 *contribution except to the extent another person has power to*  
21 *revoke or withdraw that portion.*

22       **Sec. 29.** *“Sign” has the meaning ascribed to it in*  
23 *NRS 162A.140.*

24       **Sec. 30.** *“State” means a state of the United States, the*  
25 *District of Columbia, Puerto Rico, the United States Virgin*  
26 *Islands or any territory or insular possession subject to the*  
27 *jurisdiction of the United States.*

28       **Sec. 31.** *“Terms of the trust” means the manifestation of the*  
29 *settlor’s intent regarding a trust’s provisions as expressed in the*  
30 *trust instrument, as may be established by other evidence that*  
31 *would be admissible in a judicial proceeding, or as may be*  
32 *established by court order or nonjudicial settlement agreement.*

33       **Sec. 32.** *“Trust instrument” means a record executed by the*  
34 *settlor to create a trust or by any person to create a second trust*  
35 *which contains some or all of the terms of the trust, including any*  
36 *amendments.*

37       **Sec. 33.** 1. *Except as otherwise provided in subsections 2*  
38 *and 3, sections 2 to 59, inclusive, of this act apply to an express*  
39 *trust that is irrevocable or revocable by the settlor only with the*  
40 *consent of the trustee or a person holding an adverse interest.*

41       2. *Sections 2 to 59, inclusive, of this act do not apply to a trust*  
42 *held solely for charitable purposes.*

43       3. *Subject to section 45 of this act, a trust instrument may*  
44 *restrict or prohibit exercise of the decanting power.*



1       4. Sections 2 to 59, inclusive, of this act do not limit the power  
2 of a trustee, powerholder or other person to distribute or appoint  
3 property in further trust or to modify a trust under the trust  
4 instrument, law of this State other than sections 2 to 59, inclusive,  
5 of this act, common law, a court order or a nonjudicial settlement  
6 agreement.

7       5. Sections 2 to 59, inclusive, of this act do not affect the  
8 ability of a settlor to provide in a trust instrument for the  
9 distribution of the trust property or appointment in further trust of  
10 the trust property or for modification of the trust instrument.

11       Sec. 34. 1. In exercising the decanting power, an  
12 authorized fiduciary shall act in accordance with its fiduciary  
13 duties, including the duty to act in accordance with the purposes  
14 of the first trust.

15       2. Sections 2 to 59, inclusive, of this act do not create or imply  
16 a duty to exercise the decanting power or to inform beneficiaries  
17 about the applicability of sections 2 to 59, inclusive, of this act.

18       3. Except as otherwise provided in a first-trust instrument, for  
19 purposes of NRS 164.710 and 164.715 and sections 2 to 59,  
20 inclusive, of this act, the terms of the first trust are deemed to  
21 include the decanting power.

22       Sec. 35. Sections 2 to 59, inclusive, of this act apply to a trust  
23 created before, on or after October 1, 2017, that:

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  
28 law of this State or is governed by the law of this State for the  
29 purpose of:

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

33       (b) Construction of terms of the trust; or

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

35       Sec. 36. A trustee or other person that reasonably relies on  
36 the validity of a distribution of part or all of the property of a trust to  
37 another trust, or a modification of a trust, under sections 2 to  
38 59, inclusive, of this act, law of this State other than sections 2 to  
39 59, inclusive, of this act or the law of another jurisdiction is not  
40 liable to any person for any action or failure to act as a result of  
41 the reliance.

42       Sec. 37. 1. In this section, a notice period begins on the day  
43 notice is given under subsection 3 and ends 59 days after the day  
44 notice is given.



1       2. *Except as otherwise provided in sections 2 to 59, inclusive,*  
2 *of this act, an authorized fiduciary may exercise the decanting*  
3 *power without the consent of any person and without court*  
4 *approval.*

5       3. *Except as otherwise provided in subsection 6, an*  
6 *authorized fiduciary shall give notice in a record of the intended*  
7 *exercise of the decanting power not later than 60 days before the*  
8 *exercise to:*

9       (a) *Each settlor of the first trust, if living or then in existence;*

10       (b) *Each qualified beneficiary of the first trust;*

11       (c) *Each holder of a presently exercisable power of*  
12 *appointment over any part or all of the first trust;*

13       (d) *Each person that currently has the right to remove or*  
14 *replace the authorized fiduciary;*

15       (e) *Each other fiduciary of the first trust;*

16       (f) *Each fiduciary of the second trust; and*

17       (g) *The Attorney General, if subsection 1 of section 44 of this*  
18 *act applies.*

19       4. *An authorized fiduciary is not required to give notice*  
20 *under subsection 3 to a qualified beneficiary who is a minor and*  
21 *has no representative or to a person that is not known to the*  
22 *fiduciary or is known to the fiduciary but cannot be located by the*  
23 *fiduciary after reasonable diligence.*

24       5. *A notice under subsection 3 must:*

25       (a) *Specify the manner in which the authorized fiduciary*  
26 *intends to exercise the decanting power;*

27       (b) *Specify the proposed effective date for exercise of the*  
28 *power;*

29       (c) *Include a copy of the first-trust instrument; and*

30       (d) *Include a copy of all second-trust instruments.*

31       6. *The decanting power may be exercised before expiration of*  
32 *the notice period under subsection 1 if all persons entitled to*  
33 *receive notice waive the period in a signed record.*

34       7. *The receipt of notice, waiver of the notice period or*  
35 *expiration of the notice period does not affect the right of a person*  
36 *to file an application under section 39 of this act asserting that:*

37       (a) *An attempted exercise of the decanting power is ineffective*  
38 *because it did not comply with sections 2 to 59, inclusive, of this*  
39 *act or was an abuse of discretion or breach of fiduciary duty; or*

40       (b) *Section 52 of this act applies to the exercise of the*  
41 *decanting power.*

42       8. *An exercise of the decanting power is not ineffective*  
43 *because of the failure to give notice to one or more persons under*  
44 *subsection 3 if the authorized fiduciary acted with reasonable care*  
45 *to comply with subsection 3.*





1     **Sec. 38. 1.** *Notice to a person with authority to represent*  
2 *and bind another person under a first-trust instrument or this title*  
3 *has the same effect as notice given directly to the person*  
4 *represented.*

5     **2.** *Consent of or waiver by a person with authority to*  
6 *represent and bind another person under a first-trust instrument*  
7 *or this title is binding on the person represented unless the person*  
8 *represented objects to the representation before the consent or*  
9 *waiver otherwise would become effective.*

10    **3.** *A person with authority to represent and bind another*  
11 *person under a first-trust instrument or this title may file an*  
12 *application under section 39 of this act on behalf of the person*  
13 *represented.*

14    **4.** *A settlor may not represent or bind a beneficiary under*  
15 *sections 2 to 59, inclusive, of this act.*

16     **Sec. 39. 1.** *On application of an authorized fiduciary, a*  
17 *person entitled to notice under subsection 3 of section 37 of this*  
18 *act, a beneficiary, or with respect to a charitable interest the*  
19 *Attorney General or other person that has standing to enforce the*  
20 *charitable interest, the court may:*

21     **(a)** *Provide instructions to the authorized fiduciary regarding*  
22 *whether a proposed exercise of the decanting power is permitted*  
23 *under sections 2 to 59, inclusive, of this act and consistent with the*  
24 *fiduciary duties of the authorized fiduciary;*

25     **(b)** *Appoint a special fiduciary and authorize the special*  
26 *fiduciary to determine whether the decanting power should be*  
27 *exercised under sections 2 to 59, inclusive, of this act and to*  
28 *exercise the decanting power;*

29     **(c)** *Approve an exercise of the decanting power;*

30     **(d)** *Determine that a proposed or attempted exercise of the*  
31 *decanting power is ineffective because:*

32        **(1)** *After applying section 52 of this act, the proposed or*  
33 *attempted exercise does not or did not comply with sections 2 to*  
34 *59, inclusive, of this act; or*

35        **(2)** *The proposed or attempted exercise would be or was an*  
36 *abuse of the fiduciary's discretion or a breach of fiduciary duty;*

37     **(e)** *Determine the extent to which section 52 of this act applies*  
38 *to a prior exercise of the decanting power;*

39     **(f)** *Provide instructions to the trustee regarding the application*  
40 *of section 52 of this act to a prior exercise of the decanting power;*  
41 *or*

42     **(g)** *Order other relief to carry out the purposes of sections 2 to*  
43 *59, inclusive, of this act.*

44    **2.** *On application of an authorized fiduciary, the court may*  
45 *approve:*





1 (a) *An increase in the fiduciary's compensation under section*  
2 *46 of this act; or*

3 (b) *A modification under section 48 of this act of a provision*  
4 *granting a person the right to remove or replace the fiduciary.*

5 **Sec. 40.** *An exercise of the decanting power must be made in*  
6 *a record signed by an authorized fiduciary. The signed record*  
7 *must, directly or by reference to the notice required by section 37*  
8 *of this act, identify the first trust and the second trust or trusts and*  
9 *state the property of the first trust being distributed to each second*  
10 *trust and the property, if any, that remains in the first trust.*

11 **Sec. 41.** 1. *Subject to subsection 2 and section 44 of this*  
12 *act, an authorized fiduciary that has expanded distributive*  
13 *discretion over the principal of a first trust for the benefit of one*  
14 *or more current beneficiaries may exercise the decanting power*  
15 *over the principal of the first trust.*

16 2. *Subject to section 43 of this act, in an exercise of the*  
17 *decanting power under this section, a second trust may not:*

18 (a) *Include as a current beneficiary a person that is not a*  
19 *current beneficiary of the first trust, except as otherwise provided*  
20 *in subsection 3;*

21 (b) *Include as a presumptive remainder beneficiary or*  
22 *successor beneficiary a person that is not a current beneficiary,*  
23 *presumptive remainder beneficiary or successor beneficiary of the*  
24 *first trust, except as otherwise provided in subsection 3; or*

25 (c) *Reduce or eliminate a vested interest.*

26 3. *Subject to paragraph (c) of subsection 2 and section 44 of*  
27 *this act, in an exercise of the decanting power under this section, a*  
28 *second trust may be a trust created or administered under the law*  
29 *of any jurisdiction and may:*

30 (a) *Retain a power of appointment granted in the first trust;*

31 (b) *Omit a power of appointment granted in the first trust,*  
32 *other than a presently exercisable general power of appointment;*

33 (c) *Create or modify a power of appointment if the*  
34 *powerholder is a current beneficiary of the first trust and the*  
35 *authorized fiduciary has expanded distributive discretion to*  
36 *distribute principal to the beneficiary; and*

37 (d) *Create or modify a power of appointment if the*  
38 *powerholder is a presumptive remainder beneficiary or successor*  
39 *beneficiary of the first trust, but the exercise of the power may*  
40 *take effect only after the powerholder becomes, or would have*  
41 *become if then living, a current beneficiary.*

42 4. *A power of appointment described in paragraphs (a) to (d),*  
43 *inclusive, of subsection 3 may be general or nongeneral. The class*  
44 *of permissible appointees in favor of which the power may be*



1 *exercised may be broader than or different from the beneficiaries*  
2 *of the first trust.*

3 5. *If an authorized fiduciary has expanded distributive*  
4 *discretion over part but not all of the principal of a first trust, the*  
5 *fiduciary may exercise the decanting power under this section over*  
6 *that part of the principal over which the authorized fiduciary has*  
7 *expanded distributive discretion.*

8 6. *As used in this section:*

9 (a) *“Noncontingent right” means a right that is not subject to*  
10 *the exercise of discretion or the occurrence of a specified event*  
11 *that is not certain to occur. The term does not include a right held*  
12 *by a beneficiary if any person has discretion to distribute property*  
13 *subject to the right to any person other than the beneficiary or the*  
14 *beneficiary’s estate.*

15 (b) *“Presumptive remainder beneficiary” means a qualified*  
16 *beneficiary other than a current beneficiary.*

17 (c) *“Successor beneficiary” means a beneficiary that is not a*  
18 *qualified beneficiary on the date the beneficiary’s qualification is*  
19 *determined. The term does not include a person that is a*  
20 *beneficiary only because the person holds a nongeneral power of*  
21 *appointment.*

22 (d) *“Vested interest” means:*

23 (1) *A right to a mandatory distribution that is a*  
24 *noncontingent right as of the date of the exercise of the decanting*  
25 *power;*

26 (2) *A current and noncontingent right, annually or more*  
27 *frequently, to a mandatory distribution of income, a specified*  
28 *dollar amount, or a percentage of value of some or all of the trust*  
29 *property;*

30 (3) *A current and noncontingent right, annually or more*  
31 *frequently, to withdraw income, a specified dollar amount, or a*  
32 *percentage of value of some or all of the trust property;*

33 (4) *A presently exercisable general power of appointment;*  
34 *or*

35 (5) *A right to receive an ascertainable part of the trust*  
36 *property on the trust’s termination that is not subject to the*  
37 *exercise of discretion or to the occurrence of a specified event that*  
38 *is not certain to occur.*

39 **Sec. 42. 1.** *An authorized fiduciary that has limited*  
40 *distributive discretion over the principal of the first trust for*  
41 *benefit of one or more current beneficiaries may exercise the*  
42 *decanting power over the principal of the first trust.*

43 2. *Under this section and subject to section 44 of this act, a*  
44 *second trust may be created or administered under the law of any*  
45 *jurisdiction. Under this section, the second trusts, in the*



1 *aggregate, must grant each beneficiary of the first trust beneficial*  
2 *interests that are substantially similar to the beneficial interests of*  
3 *the beneficiary in the first trust.*

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

9 (a) *The distribution is applied for the benefit of the*  
10 *beneficiary;*

11 (b) *The beneficiary is under a legal disability or the trustee*  
12 *reasonably believes the beneficiary is incapacitated and the*  
13 *distribution is made as permitted under this title; or*

14 (c) *The distribution is made as permitted under the terms of*  
15 *the first-trust instrument and the second-trust instrument for the*  
16 *benefit of the beneficiary.*

17 4. *If an authorized fiduciary has limited distributive*  
18 *discretion over part but not all of the principal of a first trust, the*  
19 *fiduciary may exercise the decanting power under this section over*  
20 *that part of the principal over which the authorized fiduciary has*  
21 *limited distributive discretion.*

22 5. *As used in this section, "limited distributive discretion"*  
23 *means a discretionary power of distribution that is limited to an*  
24 *ascertainable standard or a reasonably definite standard.*

25 **Sec. 43. 1.** *A special-needs fiduciary may exercise the*  
26 *decanting power under section 41 of this act over the principal of*  
27 *a first trust as if the fiduciary had authority to distribute principal*  
28 *to a beneficiary with a disability subject to expanded distributive*  
29 *discretion if:*

30 (a) *A second trust is a special-needs trust that benefits the*  
31 *beneficiary with a disability; and*

32 (b) *The special-needs fiduciary determines that exercise of the*  
33 *decanting power will further the purposes of the first trust.*

34 2. *In an exercise of the decanting power under this section,*  
35 *the following rules apply:*

36 (a) *Notwithstanding paragraph (b) of subsection 2 of section*  
37 *41 of this act, the interest in the second trust of a beneficiary with*  
38 *a disability may:*

39 (1) *Be a pooled trust as defined by Medicaid law for the*  
40 *benefit of the beneficiary with a disability under 42 U.S.C. §*  
41 *1396p(d)(4)(C); or*

42 (2) *Contain payback provisions complying with*  
43 *reimbursement requirements of Medicaid law under 42 U.S.C. §*  
44 *1396p(d)(4)(A).*



1 (b) Paragraph (c) of subsection 2 of section 41 of this act does  
2 not apply to the interests of the beneficiary with a disability.

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

9 3. As used in this section:

10 (a) "Beneficiary with a disability" means a beneficiary of a  
11 first trust who the special-needs fiduciary believes may qualify for  
12 governmental benefits based on disability, whether or not the  
13 beneficiary currently receives those benefits or is an individual  
14 who has been adjudicated incompetent.

15 (b) "Governmental benefits" means financial aid or services  
16 from a state, federal or other public agency.

17 (c) "Special-needs fiduciary" means, with respect to a trust  
18 that has a beneficiary with a disability:

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

22 (2) If no trustee or fiduciary has discretion under  
23 subparagraph (1), a trustee or other fiduciary, other than a settlor,  
24 that has discretion to distribute part or all of the income of the  
25 first trust to one or more current beneficiaries; or

26 (3) If no trustee or fiduciary has discretion under  
27 subparagraphs (1) and (2), a trustee or other fiduciary, other than  
28 a settlor, that is required to distribute part or all of the income or  
29 principal of the first trust to one or more current beneficiaries.

30 (d) "Special-needs trust" means a trust the trustee believes  
31 would not be considered a resource for purposes of determining  
32 whether a beneficiary with a disability is eligible for governmental  
33 benefits.

34 **Sec. 44. 1.** If a first trust contains a determinable  
35 charitable interest, the Attorney General has the rights of a  
36 qualified beneficiary and may represent and bind the charitable  
37 interest.

38 2. If a first trust contains a charitable interest, the second  
39 trust or trusts may not:

40 (a) Diminish the charitable interest;

41 (b) Diminish the interest of an identified charitable  
42 organization that holds the charitable interest;

43 (c) Alter any charitable purpose stated in the first-trust  
44 instrument; or



1       (d) *Alter any condition or restriction related to the charitable*  
2 *interest.*

3       3. *If there are two or more second trusts, the second trusts*  
4 *shall be treated as one trust for purposes of determining whether*  
5 *the exercise of the decanting power diminishes the charitable*  
6 *interest or diminishes the interest of an identified charitable*  
7 *organization for purposes of subsection 2.*

8       4. *If a first trust contains a determinable charitable interest,*  
9 *the second trust or trusts that include a charitable interest*  
10 *pursuant to subsection 2 must be administered under the law of*  
11 *this State unless:*

12       (a) *The Attorney General, after receiving notice under section*  
13 *37 of this act, fails to object in a signed record delivered to the*  
14 *authorized fiduciary within the notice period;*

15       (b) *The Attorney General consents in a signed record to the*  
16 *second trust or trusts being administered under the law of another*  
17 *jurisdiction; or*

18       (c) *The court approves the exercise of the decanting power.*

19       5. *Sections 2 to 59, inclusive, of this act do not limit the*  
20 *powers and duties of the Attorney General under law of this State*  
21 *other than sections 2 to 59, inclusive, of this act.*

22       6. *As used in this section:*

23       (a) *“Determinable charitable interest” means a charitable*  
24 *interest that is a right to a mandatory distribution currently,*  
25 *periodically, on the occurrence of a specified event, or after the*  
26 *passage of a specified time and that is unconditional or will be*  
27 *held solely for charitable purposes.*

28       (b) *“Unconditional” means not subject to the occurrence of a*  
29 *specified event that is not certain to occur, other than a*  
30 *requirement in a trust instrument that a charitable organization be*  
31 *in existence or qualify under a particular provision of the United*  
32 *States Internal Revenue Code of 1986 on the date of the*  
33 *distribution, if the charitable organization meets the requirement*  
34 *on the date of determination.*

35       **Sec. 45. 1.** *An authorized fiduciary may not exercise the*  
36 *decanting power to the extent the first-trust instrument expressly*  
37 *prohibits exercise of:*

38       (a) *The decanting power; or*

39       (b) *A power granted by state law to the fiduciary to distribute*  
40 *part or all of the principal of the trust to another trust or to modify*  
41 *the trust.*

42       2. *Exercise of the decanting power is subject to any*  
43 *restriction in the first-trust instrument that expressly applies to*  
44 *exercise of:*

45       (a) *The decanting power; or*



1       ***(b) A power granted by state law to a fiduciary to distribute***  
2 ***part or all of the principal of the trust to another trust or to modify***  
3 ***the trust.***

4       ***3. A general prohibition of the amendment or revocation of a***  
5 ***first trust, a spendthrift clause or a clause restraining the***  
6 ***voluntary or involuntary transfer of a beneficiary's interest does***  
7 ***not preclude exercise of the decanting power.***

8       ***4. Subject to subsections 1 and 2, an authorized fiduciary***  
9 ***may exercise the decanting power under sections 2 to 59,***  
10 ***inclusive, of this act even if the first-trust instrument permits the***  
11 ***authorized fiduciary or another person to modify the first-trust***  
12 ***instrument or to distribute part or all of the principal of the first***  
13 ***trust to another trust.***

14       ***5. If a first-trust instrument contains an express prohibition***  
15 ***described in subsection 1 or an express restriction described in***  
16 ***subsection 2, the provision must be included in the second-trust***  
17 ***instrument.***

18       **Sec. 46. 1. If a first-trust instrument specifies an**  
19 ***authorized fiduciary's compensation, the fiduciary may not***  
20 ***exercise the decanting power to increase the fiduciary's***  
21 ***compensation above the specified compensation unless:***

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

24       ***(b) The increase is approved by the court.***

25       ***2. If a first-trust instrument does not specify an authorized***  
26 ***fiduciary's compensation, the fiduciary may not exercise the***  
27 ***decanting power to increase the fiduciary's compensation above***  
28 ***the compensation permitted by this title unless:***

29       ***(a) All qualified beneficiaries of the second trust consent to the***  
30 ***increase in a signed record; or***

31       ***(b) The increase is approved by the court.***

32       ***3. A change in an authorized fiduciary's compensation that is***  
33 ***incidental to other changes made by the exercise of the decanting***  
34 ***power is not an increase in the fiduciary's compensation for***  
35 ***purposes of subsections 1 and 2.***

36       **Sec. 47. 1. Except as otherwise provided in this section, a**  
37 ***second-trust instrument may not relieve an authorized fiduciary***  
38 ***from liability for breach of trust to a greater extent than the first-***  
39 ***trust instrument.***

40       ***2. A second-trust instrument may provide for indemnification***  
41 ***of an authorized fiduciary of the first trust or another person***  
42 ***acting in a fiduciary capacity under the first trust for any liability***  
43 ***or claim that would have been payable from the first trust if the***  
44 ***decanting power had not been exercised.***



1       3. *A second-trust instrument may not reduce fiduciary*  
2 *liability in the aggregate.*

3       4. *Subject to subsection 3, a second-trust instrument may*  
4 *divide and reallocate fiduciary powers among fiduciaries,*  
5 *including one or more trustees, distribution advisors, investment*  
6 *advisors, trust protectors or other persons, and relieve a fiduciary*  
7 *from liability for an act or failure to act of another fiduciary as*  
8 *permitted by law of this State other than sections 2 to 59, inclusive,*  
9 *of this act.*

10       **Sec. 48.** *An authorized fiduciary may not exercise the*  
11 *decanting power to modify a provision in a first-trust instrument*  
12 *granting another person power to remove or replace the fiduciary*  
13 *unless:*

14       1. *The person holding the power consents to the modification*  
15 *in a signed record and the modification applies only to the person;*

16       2. *The person holding the power and the qualified*  
17 *beneficiaries of the second trust consent to the modification in a*  
18 *signed record and the modification grants a substantially similar*  
19 *power to another person; or*

20       3. *The court approves the modification and the modification*  
21 *grants a substantially similar power to another person.*

22       **Sec. 49.** 1. *An exercise of the decanting power is subject to*  
23 *the following limitations:*

24       (a) *If a first trust contains property that qualified, or would*  
25 *have qualified but for provisions of sections 2 to 59, inclusive, of*  
26 *this act other than this section, for a marital deduction for*  
27 *purposes of the gift or estate tax under the Internal Revenue Code*  
28 *or a state gift, estate or inheritance tax, the second-trust*  
29 *instrument must not include or omit any term that, if included in*  
30 *or omitted from the trust instrument for the trust to which the*  
31 *property was transferred, would have prevented the transfer from*  
32 *qualifying for the deduction, or would have reduced the amount of*  
33 *the deduction, under the same provisions of the Internal Revenue*  
34 *Code or state law under which the transfer qualified.*

35       (b) *If the first trust contains property that qualified, or would*  
36 *have qualified but for provisions of sections 2 to 59, inclusive, of*  
37 *this act other than this section, for a charitable deduction for*  
38 *purposes of the income, gift or estate tax under the Internal*  
39 *Revenue Code or a state income, gift, estate or inheritance tax, the*  
40 *second-trust instrument must not include or omit any term that, if*  
41 *included in or omitted from the trust instrument for the trust to*  
42 *which the property was transferred, would have prevented the*  
43 *transfer from qualifying for the deduction, or would have reduced*  
44 *the amount of the deduction, under the same provisions of the*





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

3 *(c) If the first trust contains property that qualified, or would*  
4 *have qualified but for provisions of sections 2 to 59, inclusive, of*  
5 *this act other than this section, for the exclusion from the gift tax*  
6 *described in 26 U.S.C. § 2503(b), the second-trust instrument must*  
7 *not include or omit a term that, if included in or omitted from the*  
8 *trust instrument for the trust to which the property was*  
9 *transferred, would have prevented the transfer from qualifying*  
10 *under 26 U.S.C. § 2503(b). If the first trust contains property that*  
11 *qualified, or would have qualified but for provisions of sections 2*  
12 *to 59, inclusive, of this act other than this section, for the*  
13 *exclusion from the gift tax described in 26 U.S.C. § 2503(b) by*  
14 *application of 26 U.S.C. § 2503(c), the second-trust instrument*  
15 *must not include or omit a term that, if included or omitted from*  
16 *the trust instrument for the trust to which the property was*  
17 *transferred, would have prevented the transfer from qualifying*  
18 *under 26 U.S.C. § 2503(c).*

19 *(d) If the property of the first trust includes shares of stock in*  
20 *an S corporation, as defined in 26 U.S.C. § 1361, and the first*  
21 *trust is, or but for provisions of sections 2 to 59, inclusive, of this*  
22 *act other than this section would be, a permitted shareholder*  
23 *under any provision of 26 U.S.C. § 1361, an authorized fiduciary*  
24 *may exercise the power with respect to part or all of the S*  
25 *corporation stock only if any second trust receiving the stock is a*  
26 *permitted shareholder under 26 U.S.C. § 1361(c)(2). If the*  
27 *property of the first trust includes shares of stock in an S*  
28 *corporation and the first trust is, or but for provisions of sections 2*  
29 *to 59, inclusive, of this act other than this section would be, a*  
30 *qualified subchapter S trust within the meaning of 26 U.S.C. §*  
31 *1361(d), the second-trust instrument must not include or omit a*  
32 *term that prevents the second trust from qualifying as a qualified*  
33 *subchapter S trust.*

34 *(e) If the first trust contains property that qualified, or would*  
35 *have qualified but for provisions of sections 2 to 59, inclusive, of*  
36 *this act other than this section, for a zero inclusion ratio for*  
37 *purposes of the generation-skipping transfer tax under 26 U.S.C. §*  
38 *2642(c), the second-trust instrument must not include or omit a*  
39 *term that, if included in or omitted from the first-trust instrument,*  
40 *would have prevented the transfer to the first trust from qualifying*  
41 *for a zero inclusion ratio under 26 U.S.C. § 2642(c).*

42 *(f) If the first trust is directly or indirectly the beneficiary of*  
43 *qualified benefits property, the second-trust instrument may not*  
44 *include or omit any term that, if included in or omitted from the*  
45 *first-trust instrument, would have increased the minimum*



1 *distributions required with respect to the qualified benefits*  
2 *property under 26 U.S.C. § 401(a)(9) and any applicable*  
3 *regulations of the United States Treasury promulgated thereunder,*  
4 *or any similar requirements that refer to 26 U.S.C. § 401(a)(9) or*  
5 *the regulations. If an attempted exercise of the decanting power*  
6 *violates the preceding sentence, the trustee is deemed to have held*  
7 *the qualified benefits property and any reinvested distributions*  
8 *of the property as a separate share from the date of the exercise of*  
9 *the power and section 52 of this act applies to the separate share.*

10 (g) *If the first trust qualifies as a grantor trust because of the*  
11 *application of 26 U.S.C. § 672(f)(2)(A), the second trust may not*  
12 *include or omit a term that, if included in or omitted from the first-*  
13 *trust instrument, would have prevented the first trust from*  
14 *qualifying under 26 U.S.C. § 672(f)(2)(A).*

15 (h) *Subject to paragraph (i), a second-trust instrument may not*  
16 *include or omit a term that, if included in or omitted from the first-*  
17 *trust instrument, would have prevented qualification for a tax*  
18 *benefit if:*

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

22 (2) *The transfer of property held by the first trust or the*  
23 *first trust qualified, or but for provisions of sections 2 to 59,*  
24 *inclusive, of this act other than this section, would have qualified*  
25 *for the tax benefit.*

26 ↪ *As used in this paragraph, “tax benefit” means a federal or*  
27 *state tax deduction, exemption, exclusion or other benefit not*  
28 *otherwise listed in this section, except for a benefit arising from*  
29 *being a grantor trust.*

30 (i) *Subject to paragraph (d):*

31 (1) *Except as otherwise provided in paragraph (g), the*  
32 *second trust may be a nongrantor trust, even if the first trust is a*  
33 *grantor trust; and*

34 (2) *Except as otherwise provided in paragraph (j), the*  
35 *second trust may be a grantor trust, even if the first trust is a*  
36 *nongrantor trust.*

37 (j) *An authorized fiduciary may not exercise the decanting*  
38 *power if a settlor objects in a signed record delivered to the*  
39 *fiduciary within the notice period and:*

40 (1) *The first trust and a second trust are both grantor*  
41 *trusts, in whole or in part, the first trust grants the settlor or*  
42 *another person the power to cause the second trust to cease to be a*  
43 *grantor trust, and the second trust does not grant an equivalent*  
44 *power to the settlor or other person; or*



1           (2) *The first trust is a nongrantor trust and a second trust is*  
2 *a grantor trust, in whole or in part, with respect to the settlor,*  
3 *unless:*

4           (I) *The settlor has the power at all times to cause the*  
5 *second trust to cease to be a grantor trust; or*

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

10        2. *As used in this section:*

11        (a) *“Grantor trust” means a trust as to which a settlor of a first*  
12 *trust is considered the owner under 26 U.S.C. §§ 671 to 677,*  
13 *inclusive, or 26 U.S.C. § 679.*

14        (b) *“Internal Revenue Code” means the United States Internal*  
15 *Revenue Code of 1986.*

16        (c) *“Nongrantor trust” means a trust that is not a grantor*  
17 *trust.*

18        (d) *“Qualified benefits property” means property subject to the*  
19 *minimum distribution requirements of 26 U.S.C. § 401(a)(9), and*  
20 *any applicable regulations of the United States Treasury*  
21 *promulgated thereunder, or to any similar requirements that refer*  
22 *to 26 U.S.C. § 401(a)(9) or the regulations.*

23        **Sec. 50.** 1. *Subject to subsection 2, a second trust may have*  
24 *a duration that is the same as or different from the duration of the*  
25 *first trust.*

26        2. *To the extent that property of a second trust is attributable*  
27 *to property of the first trust, the property of the second trust is*  
28 *subject to any rules governing maximum perpetuity, accumulation*  
29 *or suspension of the power of alienation which apply to property*  
30 *of the first trust.*

31        **Sec. 51.** *An authorized fiduciary may exercise the decanting*  
32 *power whether or not under the first trust’s discretionary*  
33 *distribution standard the fiduciary would have made or could have*  
34 *been compelled to make a discretionary distribution of principal at*  
35 *the time of the exercise.*

36        **Sec. 52.** 1. *If exercise of the decanting power would be*  
37 *effective under sections 2 to 59, inclusive, of this act, except that*  
38 *the second-trust instrument in part does not comply with sections 2*  
39 *to 59, inclusive, of this act, the exercise of the power is effective*  
40 *and the following rules apply with respect to the principal of the*  
41 *second trust attributable to the exercise of the power:*

42        (a) *A provision in the second-trust instrument that is not*  
43 *permitted under sections 2 to 59, inclusive, of this act is void to the*  
44 *extent necessary to comply with sections 2 to 59, inclusive, of this*  
45 *act.*



1       ***(b) A provision required by sections 2 to 59, inclusive, of this***  
2 ***act to be in the second-trust instrument that is not contained in the***  
3 ***instrument is deemed to be included in the instrument to the extent***  
4 ***necessary to comply with this sections 2 to 59, inclusive, of this***  
5 ***act.***

6       ***2. If a trustee or other fiduciary of a second trust determines***  
7 ***that subsection 1 applies to a prior exercise of the decanting***  
8 ***power, the fiduciary shall take corrective action consistent with the***  
9 ***fiduciary's duties.***

10       ***Sec. 53. 1. The decanting power may be exercised over an***  
11 ***animal trust that has a protector to the extent the trust could be***  
12 ***decanted under sections 2 to 59, inclusive, of this act if each***  
13 ***animal that benefits from the trust were an individual, if the***  
14 ***protector consents in a signed record to the exercise of the power.***

15       ***2. A protector for an animal has the rights under sections 2 to***  
16 ***59, inclusive, of this act of a qualified beneficiary.***

17       ***3. Notwithstanding any other provision of sections 2 to 59,***  
18 ***inclusive, of this act, if a first trust is an animal trust, in an***  
19 ***exercise of the decanting power, the second trust must provide that***  
20 ***trust property may be applied only to its intended purpose for the***  
21 ***period the first trust benefitted the animal.***

22       ***4. As used in this section:***

23       ***(a) "Animal trust" means a trust or an interest in a trust***  
24 ***created to provide for the care of one or more animals.***

25       ***(b) "Protector" means a person appointed in an animal trust to***  
26 ***enforce the trust on behalf of the animal or, if no such person is***  
27 ***appointed in the trust, a person appointed by the court for that***  
28 ***purpose.***

29       ***Sec. 54. A reference in this title to a trust instrument or***  
30 ***terms of the trust includes a second-trust instrument and the terms***  
31 ***of the second trust.***

32       ***Sec. 55. 1. For purposes of law of this State other than***  
33 ***sections 2 to 59, inclusive, of this act and subject to subsection 2, a***  
34 ***settlor of a first trust is deemed to be the settlor of the second trust***  
35 ***with respect to the portion of the principal of the first trust subject***  
36 ***to the exercise of the decanting power.***

37       ***2. In determining settlor intent with respect to a second trust,***  
38 ***the intent of a settlor of the first trust, a settlor of the second trust,***  
39 ***and the authorized fiduciary may be considered.***

40       ***Sec. 56. 1. Except as otherwise provided in subsection 3, if***  
41 ***exercise of the decanting power was intended to distribute all the***  
42 ***principal of the first trust to one or more second trusts, later-***  
43 ***discovered property belonging to the first trust and property paid***  
44 ***to or acquired by the first trust after the exercise of the power is***  
45 ***part of the trust estate of the second trust or trusts.***



1       2. *Except as otherwise provided in subsection 3, if exercise of*  
2 *the decanting power was intended to distribute less than all the*  
3 *principal of the first trust to one or more second trusts, later-*  
4 *discovered property belonging to the first trust or property paid to*  
5 *or acquired by the first trust after exercise of the power remains*  
6 *part of the trust estate of the first trust.*

7       3. *An authorized fiduciary may provide in an exercise of the*  
8 *decanting power or by the terms of a second trust for disposition of*  
9 *later-discovered property belonging to the first trust or property*  
10 *paid to or acquired by the first trust after exercise of the power.*

11       **Sec. 57.** *A debt, liability or other obligation enforceable*  
12 *against property of a first trust is enforceable to the same extent*  
13 *against the property when held by the second trust after exercise*  
14 *of the decanting power.*

15       **Sec. 58.** *In applying and construing the Uniform Trust*  
16 *Decanting Act, consideration must be given to the need to promote*  
17 *uniformity of the law with respect to its subject matter among*  
18 *states that enact it.*

19       **Sec. 59.** *Sections 2 to 59, inclusive, of this act modify, limit*  
20 *or supersede the Electronic Signatures in Global and National*  
21 *Commerce Act, 15 U.S.C. § 7001 et seq., but do not modify, limit*  
22 *or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or*  
23 *authorize electronic delivery of any of the notices described in*  
24 *Section 103(b) of that act, 15 U.S.C. § 7003(b).*

25       **Sec. 60.** NRS 163.553 is hereby amended to read as follows:

26       163.553 As used in NRS 163.553 to ~~163.556,~~ 163.5559,  
27 inclusive, unless the context otherwise requires, the words and terms  
28 defined in NRS 163.5533 to 163.5547, inclusive, have the meanings  
29 ascribed to them in those sections.

30       **Sec. 61.** NRS 163.5548 is hereby amended to read as follows:

31       163.5548 For the purposes of NRS 163.553 to ~~163.556,~~  
32 163.5559, inclusive, a fiduciary is a “directed fiduciary” with  
33 respect to any action that the fiduciary:

- 34       1. Has no power to take under the terms of the governing  
35 instrument;  
36       2. Is mandated by the governing instrument and for which the  
37 fiduciary has no discretion to act otherwise; and  
38       3. Is directed to take or prohibited from taking by a directing  
39 trust adviser.

40       **Sec. 62.** NRS 164.725 is hereby amended to read as follows:

41       164.725 1. As used in this section, “action” includes a course  
42 of action and a decision on whether or not to take action.

43       2. A trustee may provide a notice of proposed action regarding  
44 any matter governed by NRS ~~163.556 or~~ 164.700 to 164.925,  
45 inclusive. Except as otherwise provided in the trust instrument, a



1 trustee, trust protector or trust adviser may provide a notice of  
2 proposed action regarding any aspect of the trust administration of  
3 the trust within his or her scope of authority.

4 3. If a trustee, trust protector or trust adviser provides a notice  
5 of proposed action, the trustee, trust protector or trust adviser shall  
6 mail the notice of proposed action to every adult beneficiary who, at  
7 the time the notice is provided, receives, or is entitled to receive,  
8 income under the trust or who would be entitled to receive a  
9 distribution of principal if the trust were terminated. A notice of  
10 proposed action need not be provided to a person who consents in  
11 writing to the proposed action. A consent to a proposed action may  
12 be executed before or after the proposed action is taken.

13 4. The notice of proposed action must state:

14 (a) That the notice is provided pursuant to this section;

15 (b) The name and mailing address of the trustee;

16 (c) The name and telephone number of a person with whom to  
17 communicate for additional information regarding the proposed  
18 action;

19 (d) A description of the proposed action and an explanation of  
20 the reason for taking the action;

21 (e) The time within which objection to the proposed action may  
22 be made, which must be not less than 30 days after the notice of  
23 proposed action is mailed; and

24 (f) The date on or after which the proposed action is to be taken  
25 or is to be effective.

26 5. A beneficiary may object to the proposed action by mailing  
27 a written objection to the person providing notice of the proposed  
28 action at the address and within the time stated in the notice.

29 6. If no beneficiary entitled to receive notice of a proposed  
30 action objects to the proposed action and the other requirements of  
31 this section are met, the trustee is not liable to any present or future  
32 beneficiary with respect to that proposed action.

33 7. If the trustee, trust protector or trust adviser received a  
34 written objection to the proposed action within the period specified  
35 in the notice, the trustee, trust protector or trust adviser or a  
36 beneficiary may petition the court for an order to take the action as  
37 proposed, take the action with modification or deny the proposed  
38 action. A beneficiary who failed to object to the proposed action is  
39 not estopped from opposing the proposed action. The burden is on a  
40 beneficiary to prove that the proposed action should not be taken or  
41 should be modified. If the trustee, trust protector or trust adviser  
42 takes the proposed action as approved by the court, the trustee, trust  
43 protector or trust adviser is not liable to any beneficiary with respect  
44 to that action.



1 8. If the trustee, trust protector or trust adviser decides not to  
2 take a proposed action for which notice has been provided, the  
3 trustee, trust protector or trust adviser shall notify the beneficiaries  
4 of his or her decision not to take the proposed action and the reasons  
5 for the decision. The trustee, trust protector or trust adviser is not  
6 liable to any present or future beneficiary with respect to the  
7 decision not to take the proposed action. A beneficiary may petition  
8 the court for an order to take the action as proposed. The burden is  
9 on the beneficiary to prove that the proposed action should be taken.

10 9. If the proposed action for which notice has been proved is an  
11 adjustment to principal and income pursuant to NRS 164.795 or  
12 164.796, the sole remedy a court may order, pursuant to subsections  
13 7 and 8, is to make the adjustment, to make the adjustment with a  
14 modification or to order the adjustment not to be made.

15 **Sec. 63.** NRS 166.170 is hereby amended to read as follows:

16 166.170 1. A person may not bring an action with respect to  
17 a transfer of property to a spendthrift trust:

18 (a) If the person is a creditor when the transfer is made, unless  
19 the action is commenced within:

20 (1) Two years after the transfer is made; or

21 (2) Six months after the person discovers or reasonably  
22 should have discovered the transfer,  
23 ↪ whichever is later.

24 (b) If the person becomes a creditor after the transfer is made,  
25 unless the action is commenced within 2 years after the transfer is  
26 made.

27 2. A person shall be deemed to have discovered a transfer at  
28 the time a public record is made of the transfer, including, without  
29 limitation, the conveyance of real property that is recorded in the  
30 office of the county recorder of the county in which the property is  
31 located or the filing of a financing statement pursuant to chapter 104  
32 of NRS.

33 3. A creditor may not bring an action with respect to transfer of  
34 property to a spendthrift trust unless a creditor can prove by clear  
35 and convincing evidence that the transfer of property was a  
36 fraudulent transfer pursuant to chapter 112 of NRS or that the  
37 transfer violates a legal obligation owed to the creditor under a  
38 contract or a valid court order that is legally enforceable by that  
39 creditor. In the absence of such clear and convincing proof, the  
40 property transferred is not subject to the claims of the creditor. Proof  
41 by one creditor that a transfer of property was fraudulent or  
42 wrongful does not constitute proof as to any other creditor and proof  
43 of a fraudulent or wrongful transfer of property as to one creditor  
44 shall not invalidate any other transfer of property.





1 4. If property transferred to a spendthrift trust is conveyed to  
2 the settlor or to a beneficiary for the purpose of obtaining a loan  
3 secured by a mortgage or deed of trust on the property and then  
4 reconveyed to the trust, for the purpose of subsection 1, the transfer  
5 is disregarded and the reconveyance relates back to the date the  
6 property was originally transferred to the trust. The mortgage or  
7 deed of trust on the property shall be enforceable against the trust.

8 5. A person may not bring a claim against an adviser to the  
9 settlor or trustee of a spendthrift trust unless the person can show by  
10 clear and convincing evidence that the adviser acted in violation of  
11 the laws of this State, knowingly and in bad faith, and the adviser's  
12 actions directly caused the damages suffered by the person.

13 6. A person other than a beneficiary or settlor may not bring a  
14 claim against a trustee of a spendthrift trust unless the person can  
15 show by clear and convincing evidence that the trustee acted in  
16 violation of the laws of this State, knowingly and in bad faith, and  
17 the trustee's actions directly caused the damages suffered by the  
18 person. As used in this subsection, "trustee" includes a cotrustee, if  
19 any, and a predecessor trustee.

20 7. If more than one transfer is made to a spendthrift trust:

21 (a) The subsequent transfer to the spendthrift trust must be  
22 disregarded for the purpose of determining whether a person may  
23 bring an action pursuant to subsection 1 with respect to a prior  
24 transfer to the spendthrift trust; and

25 (b) Any distribution to a beneficiary from the spendthrift trust  
26 shall be deemed to have been made from the most recent transfer  
27 made to the spendthrift trust.

28 8. Notwithstanding any other provision of law, no action of any  
29 kind, including, without limitation, an action to enforce a judgment  
30 entered by a court or other body having adjudicative authority, may  
31 be brought at law or in equity against the trustee of a spendthrift  
32 trust if, as of the date the action is brought, an action by a creditor  
33 with respect to a transfer to the spendthrift trust would be barred  
34 pursuant to this section.

35 9. For purposes of this section, if a trustee exercises his or her  
36 discretion or authority to distribute trust income or principal to or  
37 for a beneficiary of the spendthrift trust, by appointing the property  
38 of the original spendthrift trust in favor of a second spendthrift trust  
39 for the benefit of one or more of the beneficiaries as authorized by  
40 ~~NRS 163.556.~~ *sections 2 to 59, inclusive, of this act*, the time of  
41 the transfer for purposes of this section shall be deemed to have  
42 occurred on the date the settlor of the original spendthrift trust  
43 transferred assets into the original spendthrift trust, regardless of the  
44 fact that the property of the original spendthrift trust may have been  
45 transferred to a second spendthrift trust.



- 1        10. As used in this section:  
2        (a) "Adviser" means any person, including, without limitation,  
3        an accountant, attorney or investment adviser, who gives advice  
4        concerning or was involved in the creation of, transfer of property  
5        to, or administration of the spendthrift trust or who participated in  
6        the preparation of accountings, tax returns or other reports related to  
7        the trust.  
8        (b) "Creditor" has the meaning ascribed to it in subsection 4 of  
9        NRS 112.150.  
10       **Sec. 64.** NRS 163.556 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**163.556 Circumstances under which trustee is authorized to appoint property of one testamentary trust or irrevocable trust to another trust.**

1. Except as otherwise provided in this section, unless the terms of a testamentary instrument or irrevocable trust provide otherwise, a trustee with discretion or authority to distribute trust income or principal to or for a beneficiary of the trust may exercise such discretion or authority by appointing the property subject to such discretion or authority in favor of a second trust as provided in this section.

2. The second trust to which a trustee appoints property of the first trust may only have as beneficiaries one or more of the beneficiaries of the original trust:

(a) To or for whom a distribution of income or principal may be made from the original trust;

(b) To or for whom a distribution of income or principal may be made in the future from the original trust at a time or upon the happening of an event specified under the first trust; or

(c) Both paragraphs (a) and (b).

➔ For purposes of this subsection, a permissible appointee of a power of appointment exercised by a beneficiary of the second trust is not considered a beneficiary of the second trust.

3. A trustee may not appoint property of the original trust to a second trust if:

(a) Appointing the property will reduce any income interest of any income beneficiary of the original trust if the original trust is:

(1) A trust for which a marital deduction has been taken for federal or state income, gift or estate tax purposes;



(2) A trust for which a charitable deduction has been taken for federal or state income, gift or estate tax purposes; or

(3) A grantor-retained annuity trust or unitrust under 27 C.F.R. § 25.2702-3(b) and (c).

➔ As used in this paragraph, “unitrust” has the meaning ascribed to it in NRS 164.700.

(b) The property to be appointed is subject to a power of withdrawal which is held by a beneficiary of the original trust and may be executed at the time of the proposed appointment, unless after the exercise of such appointment, the beneficiary of the original trust’s power of withdrawal is unchanged with respect to the trust property.

(c) Property specifically allocated for one beneficiary of the original trust is no longer allocated for that beneficiary under either or both trusts, unless the beneficiary consents in writing.

(d) Property held for the benefit of one or more beneficiaries under both the original and the second trust has a lower value than the value of the property held for the benefit of the same beneficiaries under only the original trust, unless:

(1) The benefit provided is limited to a specific amount or periodic payments of a specific amount; and

(2) The value of the property held in either or both trusts for the benefit of one or more beneficiaries is actuarially adequate to provide the benefit.

(e) A contribution made to the original trust qualified for a gift tax exclusion as described in section 2503(b) of the Internal Revenue Code, 26 U.S.C. § 2503(b), by reason of the application of section 2503(c) of the Internal Revenue Code, 26 U.S.C. § 2503(c), unless the second trust provides that the beneficiary’s remainder interest must vest not later than the date upon which such interest would have vested under the terms of the original trust.

4. A trustee who is a beneficiary of the original trust may not exercise the authority to appoint property of the original trust to a second trust if:

(a) Under the terms of the original trust or pursuant to law governing the administration of the original trust:

(1) The trustee does not have discretion to make distributions to himself or herself;

(2) The trustee’s discretion to make distributions to himself or herself is limited by an ascertainable standard, and under the terms of the second trust, the trustee’s discretion to make distributions to himself or herself is not limited by the same ascertainable standard; or

(3) The trustee’s discretion to make distributions to himself or herself can only be exercised with the consent of a cotrustee or a



person holding an adverse interest and under the terms of the second trust the trustee's discretion to make distributions to himself or herself is not limited by an ascertainable standard and may be exercised without consent; or

(b) Under the terms of the original trust or pursuant to law governing the administration of the original trust, the trustee of the original trust does not have discretion to make distributions that will discharge the trustee's legal support obligations but under the second trust the trustee's discretion is not limited.

5. Notwithstanding the provisions of subsection 1, a trustee who may be removed by the beneficiary or beneficiaries of the original trust and replaced with a trustee that is related to or subordinate, as described in section 672 of the Internal Revenue Code, 26 U.S.C. § 672(c), to a beneficiary, may not exercise the authority to appoint property of the original trust to a second trust to the extent that the exercise of the authority by such trustee would have the effect of increasing the distributions that can be made from the second trust to such beneficiary or group of beneficiaries that held the power to remove the trustee of the original trust and replace such trustee with a related or subordinate person, unless the distributions that may be made from the second trust to such beneficiary or group of beneficiaries described in paragraph (a) of subsection 4 are limited by an ascertainable standard.

6. The provisions of subsections 4 and 5 do not prohibit a trustee who is not a beneficiary of the original trust or who may not be removed by the beneficiary or beneficiaries and replaced with a trustee that is related to or subordinate to a beneficiary from exercising the authority to appoint property of the original trust to a second trust pursuant to the provisions of subsection 1.

7. Before appointing property pursuant to subsection 1, a trustee may give notice of a proposed action pursuant to NRS 164.725 or may petition a court for approval pursuant to NRS 153.031, 164.015 or 164.725. Any notice of a proposed action or a petition for a court's approval must include the trustee's opinion of how the appointment of property will affect the trustee's compensation and the administration of other trust expenses.

8. The trust instrument of the second trust may:

(a) Grant a general or limited power of appointment to one or more of the beneficiaries of the second trust who are beneficiaries of the original trust.

(b) Provide that, at a time or occurrence of an event specified in the trust instrument, the remaining trust assets in the second trust must be held for the beneficiaries of the original trust upon terms and conditions that are substantially identical to the terms and conditions of the original trust.



9. The power to appoint the property of the original trust pursuant to subsection 1 must be exercised by a writing, signed by the trustee and filed with the records of the trust.

10. The exercise of the power to invade principal of the original trust pursuant to subsection 1 is considered the exercise of a power of appointment, other than power to appoint the property to the trustee, the trustee's creditors, the trustee's estate or the creditors of the trustee's estate and the provisions of NRS 111.1031 apply to such power of appointment.

11. The provisions of this section do not abridge the right of any trustee who has the power to appoint property which arises under any other law.

12. The provisions of this section do not impose upon a trustee a duty to exercise the power to appoint property pursuant to subsection 1.

13. The power to appoint property to another trust pursuant to subsection 1 is not a power to amend the trust and a trustee is not prohibited from appointing property to another trust pursuant to subsection 1 if the original trust is irrevocable or provides that it may not be amended.

14. A trustee's power to appoint property to another trust pursuant to subsection 1 is not limited by the existence of a spendthrift provision in the original trust.

15. A trustee exercising any power granted pursuant to this section may designate himself or herself or any other person permitted to act as a trustee as the trustee of the second trust.

16. The trustee of a second trust, resulting from the exercise of the power to appoint property to another trust pursuant to subsection 1, may also exercise the powers granted pursuant to this section with respect to the second trust.

17. For the purposes of this section, "second trust" means an irrevocable trust that receives trust income or principal appointed by the trustee of the original trust, and may be established by any person, including, without limitation, a new trust created by the trustee, acting in that capacity, of the original trust. If the trustee of the original trust establishes the second trust, then for purposes of creating the new second trust, the requirement of NRS 163.008 that the instrument be signed by the settlor shall be deemed to be satisfied by the signature of the trustee of the second original trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument.

18. As used in this section, "ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, 26 U.S.C. § 2041(b)(1)(A)



or 2514(c)(1), and any regulations of the United States Treasury promulgated thereunder.

19. This section applies to a trust that is governed by, sitused in or administered under the laws of this State, whether the trust is initially governed by, sitused in or administered under the laws of this State pursuant to the terms of the trust instrument or whether the governing law, situs or administration of the trust is moved to this State from another state or foreign jurisdiction.

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