

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1205

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AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 30-4-3-29.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2022]: **Sec. 29.3. (a) The power to appoint a successor trustee under a governing instrument or under section 33 of this chapter includes:**

- (1) the power to appoint multiple successor trustees; and
- (2) the power to allocate trustee powers to one (1) or more trustees.

**(b) A trustee to whom powers:**

- (1) have been exclusively allocated under subsection (a) must be a fiduciary only with respect to the powers allocated; and
- (2) have not been allocated under subsection (a) is not liable for the actions of a trustee to whom the powers, duties, and responsibilities are allocated.

**(c) The rules governing the rights, powers, duties, and liabilities of a governing instrument under this chapter apply to a trustee appointed under this section unless expressly limited by the terms of a governing instrument.**

SECTION 2. IC 30-4-3-36 IS REPEALED [EFFECTIVE JULY 1, 2022]. **Sec. 36. (a) Unless a trust expressly provides otherwise, a trustee who has discretion under the terms of a trust (referred to in this**

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section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust instrument as long as:

- (1) the beneficiaries of the second trust are the same as the beneficiaries of the first trust;
- (2) the second trust does not reduce any income, annuity, or unitrust interest in the assets of the first trust; and
- (3) if any contributions to the first trust qualified for a marital or charitable deduction for purposes of the federal income, gift, or estate taxes, the second trust does not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for a deduction or reduced the amount of a deduction.

(b) The exercise of a power to invade principal under subsection (a) must be by an instrument that is:

- (1) in writing;
- (2) signed and acknowledged by the trustee; and
- (3) filed with the records of the first trust.

(c) The exercise of a power to invade principal under subsection (a) is considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate. The exercise of the power does not extend the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the first trust.

(d) The trustee shall notify in writing all qualified beneficiaries of the first trust at least sixty (60) days before the effective date of the trustee's exercise of the power to invade principal under subsection (a) of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power satisfies the trustee's notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal may be exercised immediately. The trustee's notice under this subsection does not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal, except as otherwise provided by this article.

(e) The exercise of the power to invade principal under subsection



(a) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amending or revoking the trust:

(f) This section is not intended to create or imply a duty to exercise a power to invade principal. No inference of impropriety may be made as a result of a trustee not exercising the power to invade principal conferred under subsection (a):

(g) This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law:

SECTION 3. IC 30-4-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

**Chapter 10. Uniform Trust Decanting Act**

**Sec. 1. (a) This chapter applies to a trust created before, on, or after July 1, 2022, that:**

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

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

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

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

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

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

**(c) This chapter does not:**

**(1) apply to a trust held solely for charitable purposes;**

**(2) limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust;**

**(3) limit the power to modify a trust under the trust instrument, law of this state other than this chapter, common law, a court order, or a nonjudicial settlement agreement; or**

**(4) affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument. Such provisions in the**



trust instrument shall control over any applicable provision of this chapter.

(d) Subject to section 45 of this chapter, a trust instrument may restrict or prohibit exercise of the decanting power.

Sec. 2. As used in this chapter, "appointive property" means the property or property interest subject to a power of appointment.

Sec. 3. As used in this chapter, "ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance as defined by 26 U.S.C. 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1) and applicable regulations.

Sec. 4. As used in this chapter, "authorized fiduciary" means:

- (1) a trustee, trust director, or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one
  - (1) or more current beneficiaries;
  - (2) a special fiduciary appointed under section 39 of this chapter; or
  - (3) a special-needs fiduciary under section 43 of this chapter.

Sec. 5. As used in this chapter, "beneficiary" means a person that:

- (1) has a present or future, vested or contingent, beneficial interest in a trust;
- (2) holds a power of appointment over trust property; or
- (3) is an identified charitable organization that may receive distributions under the terms of the trust.

Sec. 6. As used in this chapter, "beneficiary with disability" means a beneficiary who is determined, in the exercise of an authorized fiduciary's discretion, to have one (1) of the following conditions:

- (1) Dementia, memory loss, Parkinson's disease, or other progressive condition that, currently or in the future, may impair the ability of the beneficiary to provide self care or manage the beneficiary's assets.
- (2) A physical or mental condition or infirmity due to age, cognitive impairment, addiction, or disease that impairs the beneficiary's ability to provide self care or manage the beneficiary's assets.
- (3) The susceptibility of the beneficiary, at any age, to financial exploitation, as defined in IC 23-19-4.1, IC 30-5-5-6.5, or FINRA Rule 2165 approved by the United States Securities and Exchange Commission.
- (4) A condition requiring essential medical treatment or



prescription medication that the beneficiary cannot reasonably provide for from the beneficiary's resources outside the trust assets.

(5) A condition related directly or indirectly to the disability of a beneficiary described in subdivisions (1) through (4) with respect to which the settlor of the trust has expressed the settlor's intent.

**Sec. 7.** As used in this chapter, "charitable interest" means an interest in a trust that:

- (1) is held by an identified charitable organization and makes the organization a qualified beneficiary;
- (2) benefits only a charitable organization and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or
- (3) is held solely for a charitable purpose and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

**Sec. 8.** As used in this chapter, "charitable organization" means:

- (1) a person, other than an individual, organized and operated exclusively for a charitable purpose; or
- (2) a government or governmental subdivision, agency, or instrumentality to the extent it holds funds exclusively for a charitable purpose.

**Sec. 9.** As used in this chapter, "charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or a purpose that is beneficial to the community.

**Sec. 10.** As used in this chapter, "court" has the meaning set forth in IC 30-4-1-2(6).

**Sec. 11.** As used in this chapter, "current beneficiary" means a beneficiary who, on the date that the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

**Sec. 12.** As used in this chapter, "decanting power" means the power of an authorized fiduciary under this chapter to:

- (1) distribute property of a first trust to one (1) or more second trusts; or
- (2) to modify the terms of the first trust.

**Sec. 13.** As used in this chapter, "designated representative" has



the meaning set forth in IC 30-4-1-2(8).

**Sec. 14.** As used in this chapter, "expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

**Sec. 15.** As used in this chapter, "first trust" means a trust over which an authorized fiduciary may exercise the decanting power.

**Sec. 16.** As used in this chapter, "first-trust instrument" means the trust instrument for a first trust.

**Sec. 17.** As used in this chapter, "general power of appointment" means a power of appointment exercisable in favor of:

- (1) a powerholder;
- (2) a powerholder's estate;
- (3) a creditor of the powerholder; or
- (4) a creditor of the powerholder's estate.

**Sec. 18.** As used in this chapter, "jurisdiction" means a geographic area, including a state or country.

**Sec. 19.** As used in this chapter, "person" means:

- (1) an individual;
- (2) a corporation;
- (3) a business trust;
- (4) an estate;
- (5) a trust;
- (6) a partnership;
- (7) a limited liability company;
- (8) an association;
- (9) a joint venture;
- (10) a government;
- (11) a governmental subdivision;
- (12) an agency or instrumentality;
- (13) a public corporation; or
- (14) any other legal or commercial entity.

**Sec. 20.** As used in this chapter, "power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

**Sec. 21.** As used in this chapter, "powerholder" means a person in which a donor creates a power of appointment.

**Sec. 22. (a)** As used in this chapter, "presently exercisable power of appointment" means a power of appointment exercisable by the



powerholder at the relevant time.

(b) The term includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time.

(c) The term does not include a power exercisable only at the powerholder's death.

Sec. 23. As used in this chapter, "qualified beneficiary" has the meaning set forth in IC 30-4-1-2(19).

Sec. 24. As used in this chapter, "reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. 674(b)(5)(A) and applicable regulations.

Sec. 25. As used in this chapter, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 26. As used in this chapter, "second trust" means:

- (1) a first trust after modification under this chapter; or
- (2) a trust to which a distribution of property from a first trust is or may be made under this chapter.

Sec. 27. As used in this chapter, "second-trust instrument" means the trust instrument for a second trust.

Sec. 28. (a) As used in this chapter, except as provided in section 55 of this chapter, "settlor" has the meaning set forth in IC 30-4-1-2(21).

(b) If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to the person's contribution except to the extent another person has power to revoke or withdraw that portion.

Sec. 29. As used in this chapter, "sign" means with present intent to authenticate or adopt a record to:

- (1) execute or adopt a tangible symbol; or
- (2) attach to or logically associate with the record of an electronic symbol, sound, or process.

Sec. 30. As used in this chapter, "state" means:

- (1) a state of the United States;
- (2) the District of Columbia;
- (3) Puerto Rico;
- (4) the United States Virgin Islands; or
- (5) a territory or insular possession subject to the jurisdiction of the United States.

Sec. 31. As used in this chapter, "terms of the trust" has the



meaning set forth in IC 30-4-1-2(22).

**Sec. 32.** As used in this chapter, "trust instrument" has the meaning set forth in IC 30-4-1-2(25). The term includes a written document executed by the settlor to create a trust or by a person to create a second trust that contains some or all of the terms of the trust, including any amendments.

**Sec. 33. (a)** Except as provided in this chapter, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

**(b)** An authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust in exercising the decanting power.

**(c)** This chapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this chapter.

**(d)** Except as provided in a first-trust instrument, the terms of the first trust are deemed to include the decanting power.

**Sec. 34.** A trustee or person that reasonably relies on:

- (1)** the validity of a distribution of the property of a trust to another trust; or
  - (2)** a modification of a trust under this chapter, law of this state other than this article, or the law of another jurisdiction;
- is not liable to any person for any action or failure to act as a result of the reliance.

**Sec. 35. (a)** Except as provided in subsection (c), an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than sixty (60) days before the exercise of the decanting power to:

- (1)** each settlor of the first trust, if living or then in existence;
- (2)** each qualified beneficiary of the first trust, including the designated representative, if any, or other representative under IC 30-4-6-10.5 of a qualified beneficiary who:
  - (A)** is a minor or an incapacitated person;
  - (B)** is unborn;
  - (C)** is unknown; or
  - (D)** cannot be located after a reasonably diligent search;
- (3)** each holder of a presently exercisable power of appointment in the first trust;
- (4)** each person that currently has the right to remove or replace the authorized fiduciary;
- (5)** each fiduciary of the first trust;
- (6)** each fiduciary of the second trust; and





(7) the attorney general, if section 44(c) of this chapter applies.

(b) A notice period under subsection (a) begins on the day that the notice is given and ends fifty-nine (59) days later.

(c) An authorized fiduciary is not required to give notice under subsection (a) to a person that:

- (1) is not known to the fiduciary;
- (2) is known to the fiduciary but cannot be located by the fiduciary after a reasonably diligent search; or
- (3) has no representative under IC 30-4-6-10.5.

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

**Sec. 36. A notice under section 35 of this chapter must:**

- (1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;
- (2) specify the proposed effective date for the exercise of the decanting power;
- (3) include a copy of the first-trust instrument; and
- (4) include a copy of the second-trust instrument.

**Sec. 37. (a) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file a petition under section 39 of this chapter asserting that:**

- (1) an exercise of the decanting power:
  - (A) is ineffective because it did not comply with this chapter;
  - (B) was an abuse of discretion; or
  - (C) was a breach of a fiduciary duty; or
- (2) section 52 of this chapter applies to the exercise of the decanting power.

(b) An exercise of the decanting power is not ineffective because of the failure to give notice to one (1) or more persons under section 35 of this chapter if the authorized fiduciary acted with reasonable care to comply with section 35 of this chapter.

**Sec. 38. (a) Notice to a person with authority to represent and bind another person under a first-trust instrument or this article has the same effect as notice given directly to the person represented.**

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or this article is binding on the person represented unless the person represented objects to the representation before the consent or



waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or this article may file a petition under section 39 of this chapter on behalf of the person represented.

(d) A settlor may not represent or bind a beneficiary under this chapter.

**Sec. 39. (a)** Upon a petition by an authorized fiduciary, a beneficiary, or a person entitled to notice under section 35 of this chapter or with respect to a charitable interest by the attorney general or other person that has standing to enforce the charitable interest, the court may:

(1) provide instructions to the authorized fiduciary about whether a proposed exercise of the decanting power is permitted under this chapter and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the exercise of the decanting power is proper under this chapter and to exercise the decanting power;

(3) approve an exercise of the decanting power;

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

(A) after applying section 52 of this chapter, the proposed or attempted exercise does not comply with this chapter;  
or

(B) the proposed or attempted exercise is an abuse of the fiduciary's discretion or a breach of a fiduciary duty;

(5) determine the extent section 52 of this chapter applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of section 52 of this chapter to a prior exercise of the decanting power; or

(7) order relief to carry out the purposes of this chapter.

(b) Upon a petition by an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under section 46 of this chapter; or

(2) a modification under section 48 of this chapter of a provision granting a person the right to remove or replace the fiduciary.

**Sec. 40.** An exercise of the decanting power must be made in a



record signed by an authorized fiduciary. The signed record must:

- (1) directly or indirectly reference the notice required by section 35 of this chapter;
- (2) identify the first trust and the second trust;
- (3) identify and state the property of the first trust being distributed to each second trust; and
- (4) identify the property that remains in the first trust.

Sec. 41. (a) As used in this section, "noncontingent right" means a right that is not subject to the:

- (1) exercise of discretion; or
- (2) occurrence of a specified event that is not certain to occur.

The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right of any person other than the beneficiary or the beneficiary's estate.

(b) As used in this section, "presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(c) As used in this section, "successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(d) As used in this section, "vested interest" means a:

- (1) right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;
- (2) current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;
- (3) current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;
- (4) presently exercisable general power of appointment; or
- (5) right to receive an ascertainable part of the trust property on the trust's termination that is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(e) Subject to subsection (f) and section 44 of this chapter, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one (1) or more current beneficiaries may exercise the decanting power over the principal of the first trust.



**(f) Subject to section 43 of this chapter, an exercise of the decanting power under this section must not:**

- (1) except as provided in subsection (g), include as a current beneficiary a person that is not a current beneficiary of the first trust;**
- (2) except as provided in subsection (g), include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust; or**
- (3) reduce or eliminate a vested interest.**

**(g) Subject to subsection (f)(3) and section 44 of this chapter, in an exercise of the decanting power under this subsection, a second trust may be a trust created or administered under the law of any jurisdiction and may:**

- (1) retain a power of appointment granted in the first trust;**
- (2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;**
- (3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and**
- (4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become a current beneficiary.**

**(h) A power of appointment described in subsections (g)(1) through (g)(4) may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.**

**(i) If an authorized fiduciary has expanded distributive discretion over part of the principal of a first trust, the fiduciary may exercise the decanting power under this section over the principal that the authorized fiduciary has expanded distributive discretion.**

**Sec. 42. (a) As used in this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.**



(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for the benefit of one (1) or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to section 44 of this chapter, a second trust may be created or administered under the law of any jurisdiction. A second trust must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.

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

- (1) the distribution is applied for the benefit of the beneficiary;
- (2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated and the distribution is made as permitted under this article; or
- (3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion of the principal of a first trust, the fiduciary may only exercise the decanting power under this section over the principal that the authorized fiduciary has limited distributive discretion.

Sec. 43. (a) This section applies to any trust that has a beneficiary with a disability, without limitation, whenever a special-needs fiduciary for the trust determines that the beneficiary with a disability may qualify for governmental benefits based on a disability, whether the beneficiary currently receives those benefits or has been adjudicated to be an incapacitated person under IC 29-3.

(b) As used in this section, "governmental benefits" means financial aid or services from a state, federal, or other public agency.

(c) As used in this section, "special-needs fiduciary" means:

- (1) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;
- (2) if no trustee or fiduciary has discretion under subdivision (1), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first



trust to one (1) or more current beneficiaries; or  
 (3) if no trustee or fiduciary has discretion under subdivisions (1) and (2), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one (1) or more current beneficiaries;

with respect to a trust that has a beneficiary with a disability.

(d) As used in this section, "special-needs trust" means a trust that the trustee reasonably believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(e) A special-needs fiduciary may exercise the decanting power under section 41 of this chapter over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

- (1) a second trust is a special-needs trust or other trust that benefits the beneficiary with a disability; and
- (2) the special-needs fiduciary determines that an exercise of the decanting power will further the purposes of the first trust.

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

(1) Except as provided in section 41(f)(2) of this chapter, the interest in the second trust of a beneficiary with a disability may:

- (A) be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as amended and in effect on July 1, 2022; or
- (B) contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. 1396p(d)(4)(A), as amended and in effect on July 1, 2022.

(2) Section 41(f)(3) of this chapter does not apply to the interests of the beneficiary with a disability.

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



the first trust.

**Sec. 44. (a)** As used in this section, "determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and that is unconditional or will be held solely for charitable purposes.

**(b)** As used in this section, "unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986, as amended and in effect on July 1, 2022, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

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

**(d)** If a first trust contains a charitable interest, the second trust must not:

- (1)** diminish the charitable interest;
- (2)** diminish the interest of an identified charitable organization that holds the charitable interest;
- (3)** alter any charitable purpose stated in the first-trust instrument; or
- (4)** alter any condition or restriction related to the charitable interest.

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

**(f)** If a first trust contains a determinable charitable interest, the second trust that includes a charitable interest pursuant to subsection (c) must be administered under the law of this state unless:

- (1)** the attorney general, after receiving notice under section 35 of this chapter, fails to object in a signed record delivered to the authorized fiduciary within the notice period;
- (2)** the attorney general consents in a signed record to the second trust being administered under the law of another jurisdiction; or
- (3)** the court approves the exercise of the decanting power.



(g) This chapter does not limit the powers and duties of the attorney general under the laws of this state other than this chapter.

**Sec. 45. (a)** An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

- (1) the decanting power; or
- (2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

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

- (1) the decanting power; or
- (2) a power granted by state law to a fiduciary to distribute the principal of the trust to another trust or to modify the trust.

(c) The decanting power of an authorized fiduciary is not precluded by:

- (1) a general prohibition of the amendment or revocation of a first trust;
- (2) a spendthrift clause; or
- (3) a clause restraining the voluntary or involuntary transfer of a beneficiary's interest.

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

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

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

- (1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or
- (2) the increase is approved by the court.

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





the compensation permitted by this article unless:

- (1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or
- (2) the increase is approved by the court.

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

Sec. 47. (a) Except as otherwise provided in this section, a second-trust instrument must not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

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

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

(d) Subject to subsection (c), a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one (1) or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by the laws of this state other than this chapter.

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

- (1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;
- (2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or
- (3) the court approves the modification and the modification grants a substantially similar power to another person.

Sec. 49. (a) As used in this section, "grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. 671 through 677, as amended and in effect on July 1, 2022, or 26 U.S.C. 679, as amended and in effect on July 1, 2022.

(b) As used in this section, "Internal Revenue Code" means the



**United States Internal Revenue Code of 1986, as amended and in effect on July 1, 2022.**

**(c) As used in this section "nongrantor trust" means a trust that is not a grantor trust.**

**(d) As used in this section, "qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. 401(a)(9), as amended and in effect on July 1, 2022, and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. 401(a)(9) or the regulations.**

**(e) An exercise of the decanting power is subject to the following limitations:**

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

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

**(3) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have**



prevented the transfer from qualifying under 26 U.S.C. 2503(b), as amended and in effect on July 1, 2022. If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as amended and in effect on July 1, 2022, by application of 26 U.S.C. 2503(c), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(c), as amended and in effect on July 1, 2022.

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. 1361, as amended and in effect on July 1, 2022, and the first trust is, or but for provisions of this chapter other than this section would be, a permitted shareholder under any provision of 26 U.S.C. 1361, as amended and in effect on July 1, 2022, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. 1361(c)(2), as amended and in effect on July 1, 2022. If the property of the first trust includes shares of stock in an S corporation and the first trust is or, but for provisions of this chapter other than this section, would be a qualified subchapter S trust within the meaning of 26 U.S.C. 1361(d), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a zero (0) inclusion ratio for purposes of the generation skipping transfer tax under 26 U.S.C. 2642(c), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero (0) inclusion ratio under 26 U.S.C. 2642(c), as amended and in effect on July 1, 2022.

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted



from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as amended and in effect on July 1, 2022, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. 401(a)(9), as amended and in effect on July 1, 2022, or the regulations. If an attempted exercise of the decanting power violates this subdivision, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and section 52 of this chapter applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. 672(f)(2)(A), as amended and in effect on July 1, 2022, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. 672(f)(2)(A), as amended and in effect on July 1, 2022.

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

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

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

(9) Subject to subdivision (4):

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

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

(10) An authorized fiduciary may not exercise the decanting



power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

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

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

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

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

**Sec. 50. (a)** Subject to subsection (b), a second trust may have a duration that is the same as or different from the duration of the first trust.

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

**Sec. 51.** An authorized fiduciary may exercise the decanting power whether under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

**Sec. 52. (a)** If exercise of the decanting power would be effective under this chapter except that the second-trust instrument in part does not comply with this chapter, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument that is not permitted under this chapter is void to the extent necessary to comply with this chapter.

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



extent necessary to comply with this chapter.

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

Sec. 53. (a) As used in this section, "animal trust" means a trust or an interest in a trust created to provide for the care of one (1) or more animals.

(b) As used in this section, "protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

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

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

(e) If a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

Sec. 54. A reference in this article to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

Sec. 55. (a) For purposes of law of this state other than this chapter and subject to subsection (b), a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

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

Sec. 56. (a) Except as provided in subsection (c), if exercise of the decanting power was intended to distribute all of the principal of the first trust to one (1) or more second trusts, later discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust.

(b) Except as provided in subsection (c), if exercise of the decanting power was intended to distribute less than all of the



principal of the first trust to one (1) or more second trusts, later discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

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

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

**Sec. 58.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Sec. 59.** This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 as amended and in effect on July 1, 2022, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. 7001(c) as amended and in effect on July 1, 2022, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. 7003(b) as amended and in effect on July 1, 2022.

**Sec. 60.** If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 4. IC 34-30-2-132.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 132.7. IC 30-4-10-34 (Concerning a trustee who reasonably relies on a distribution or modification of a trust that transfers property to a second trust and does not act).**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1205 — Concur**

