

ESTATE PLANNING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to estate planning.

Highlighted Provisions:

This bill:

- ▶ amends the rule against perpetuities for a new power of appointment;
- ▶ defines terms related to trusts;
- ▶ allows a trustee to exercise a decanting power in certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 22-3-203**, as last amended by Laws of Utah 2020, Chapter 348
- 22-3-303**, as last amended by Laws of Utah 2020, Chapter 348
- 22-3-304**, as last amended by Laws of Utah 2020, Chapter 348
- 75-2-1203**, as last amended by Laws of Utah 2013, Chapter 364
- 75-7-103**, as last amended by Laws of Utah 2020, Chapter 348

ENACTS:



28 [75-7-812.5](#), Utah Code Annotated 1953

29

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **22-3-203** is amended to read:

32 **22-3-203. Fiduciary's power to adjust.**

33 (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a
34 record, without court approval, may adjust between income and principal if the fiduciary
35 determines the exercise of the power to adjust will assist the fiduciary to administer the trust or
36 estate impartially.

37 (2) This section does not create a duty to exercise or consider the power to adjust under
38 Subsection (1) or to inform a beneficiary about the applicability of this section.

39 (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under
40 Subsection (1) is not liable to a person affected by the exercise or failure to exercise.

41 (4) In deciding whether and to what extent to exercise the power to adjust under
42 Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including
43 the relevant factors in Subsection [22-3-201\(5\)](#) and the application of Subsection [22-3-401\(9\)](#),
44 Section [22-3-408](#), and Section [22-3-413](#).

45 (5) A fiduciary may not exercise the power to make an adjustment under Subsection
46 (1) or the power to make a determination that an allocation is insubstantial under Section
47 [22-3-408](#) if:

48 (a) the adjustment or determination would reduce the amount payable to a current
49 income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the
50 adjustment is made to provide for a reasonable apportionment of the total return of the trust
51 between the current income beneficiary and successor beneficiaries;

52 (b) the adjustment or determination would change the amount payable to a beneficiary,
53 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

54 (c) the adjustment or determination would reduce an amount that is permanently set
55 aside for a charitable purpose under the terms of the trust, unless both income and principal are
56 set aside for the charitable purpose;

57 (d) possessing or exercising the power would cause a person to be treated as the owner
58 of all or part of the trust for federal income tax purposes;

59 (e) possessing or exercising the power would cause all or part of the value of the trust
60 assets to be included in the gross estate of an individual for federal estate tax purposes;

61 (f) possessing or exercising the power would cause an individual to be treated as
62 making a gift for federal gift tax purposes;

63 (g) the fiduciary is not an independent person;

64 (h) the trust is irrevocable and provides for income to be paid to the settlor and
65 possessing or exercising the power would cause the adjusted principal or income to be
66 considered an available resource or available income under a public-benefit program; or

67 (i) the trust is a unitrust under Part 3, Unitrust.

68 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

69 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise
70 the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or
71 co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

72 (b) (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:

73 (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may
74 appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;

75 (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed co-fiduciary
76 may exercise the power to adjust under Subsection (1); and

77 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.

78 (ii) (A) If the appointment of a co-fiduciary is not permitted by the terms of the trust or
79 by a provision of law outside this chapter, a fiduciary may not appoint a co-fiduciary.

80 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the terms
81 of the trust or by a provision of law outside this chapter, the co-fiduciary may not exercise the
82 power to adjust under Subsection (1).

83 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
84 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the
85 power to adjust will or may:

86 (a) cause a result described in Subsections (5)(a) through (f) or (h); or

87 (b) deprive the trust of a tax benefit or impose a tax burden not described in
88 Subsections (5)(a) through (f).

89 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the

90 power to adjust under Subsection (1):

91 (a) must be in a record;

92 (b) applies to the entire power to adjust, unless the release or delegation provides a
93 limitation, which may be a limitation to the power to adjust:

94 (i) from income to principal;

95 (ii) from principal to income;

96 (iii) for specified property; or

97 (iv) in specified circumstances;

98 (c) for a delegation, may be modified by a redelegation under this subsection by the
99 co-fiduciary to which the delegation is made; and

100 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides
101 a specified period, including a period measured by the life of an individual or the lives of more
102 than one individual.

103 (9) Terms of a trust that deny or limit the power to adjust between income and
104 principal do not affect the application of this section, unless the terms of the trust expressly
105 deny or limit the power to adjust under Subsection (1).

106 (10) The exercise of the power to adjust under Subsection (1) in any accounting period
107 may apply to the current accounting period, the immediately preceding accounting period, and
108 one or more subsequent accounting periods.

109 (11) A description of the exercise of the power to adjust under Subsection (1) shall be:

110 (a) included in a report, if any, sent to beneficiaries under Subsection [75-7-811\(3\)](#); or

111 (b) communicated at least annually to the qualified beneficiaries determined under

112 ~~[Subsection [75-7-103\(1\)\(h\)](#)]~~ [Section 75-7-103](#).

113 Section 2. Section **22-3-303** is amended to read:

114 **22-3-303. Authority of fiduciary.**

115 (1) A fiduciary, without court approval, by complying with Subsections (2) and (6),
116 may:

117 (a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust
118 policy for the trust providing:

119 (i) that, in administering the trust, the net income of the trust will be a unitrust amount
120 rather than net income determined without regard to this part; and

- 121 (ii) the percentage and method used to calculate the unitrust amount;
- 122 (b) change the percentage or method used to calculate a unitrust amount for a unitrust
123 if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a
124 unitrust policy providing changes in the percentage or method used to calculate the unitrust
125 amount; or
- 126 (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a
127 determination that, in administering the trust, the net income of the trust will be net income
128 determined without regard to this part rather than a unitrust amount.
- 129 (2) A fiduciary may take an action under Subsection (1) if:
- 130 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust
131 impartially;
- 132 (b) the fiduciary sends a notice in a record, in the manner required by Section
133 [22-3-304](#), describing and proposing to take the action;
- 134 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of
135 the trust which is:
- 136 (i) if an individual, living; or
137 (ii) if not an individual, in existence;
- 138 (d) at least one member of each class of the qualified beneficiaries determined under
139 [~~Subsection 75-7-103(1)(h)~~] [Section 75-7-103](#) receiving the notice under Subsection (2)(b) is:
- 140 (i) if an individual, legally competent;
141 (ii) if not an individual, in existence; or
142 (iii) represented in the manner provided in Subsection [22-3-304\(2\)](#); and
- 143 (e) the fiduciary does not receive, by the date specified in the notice under Subsection
144 [22-3-304\(4\)\(e\)](#), an objection in a record to the action proposed under Subsection (2)(b) from a
145 person to which the notice under Subsection (2)(b) is sent.
- 146 (3) (a) If a fiduciary receives, not later than the date stated in the notice under
147 Subsection [22-3-304\(4\)\(e\)](#), an objection in a record described in Subsection [22-3-304\(4\)\(d\)](#) to a
148 proposed action, the fiduciary or a beneficiary may request that the court:
- 149 (i) require the fiduciary to take the proposed action;
150 (ii) require the fiduciary to take the proposed action with modifications; or
151 (iii) prevent the proposed action.

152 (b) A person described in Subsection 22-3-304(1) may oppose the proposed action in
153 the proceeding under Subsection (3)(a), regardless of whether the person:

- 154 (i) consented under Subsection 22-3-304(3); or
- 155 (ii) objected under Subsection 22-3-304(4)(d).

156 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the
157 action proposed in the notice, the fiduciary shall notify each person described in Subsection
158 22-3-304(1) in a record of the decision not to take the action and the reasons for the decision.

159 (5) If a beneficiary requests in a record that a fiduciary take an action described in
160 Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving
161 the request, the beneficiary may request the court to direct the fiduciary to take the action
162 requested.

163 (6) In deciding whether and how to take an action authorized by Subsection (1), or
164 whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary
165 shall consider all factors relevant to the trust and the beneficiaries, including the relevant
166 factors in Subsection 22-3-201(5).

167 (7) For a reason described in Subsection 22-3-203(7), and in the manner described in
168 Subsection 22-3-203(8), a fiduciary may:

- 169 (a) release or delegate the power to convert an income trust to a unitrust under
170 Subsection (1)(a);
- 171 (b) change the percentage or method used to calculate a unitrust amount under
172 Subsection (1)(b); or
- 173 (c) convert a unitrust to an income trust under Subsection (1)(c).

174 Section 3. Section 22-3-304 is amended to read:

175 **22-3-304. Notice.**

176 (1) A fiduciary shall send a notice required by Subsection 22-3-303(2)(b) in a manner
177 authorized under Section 75-7-109 to:

- 178 (a) the qualified beneficiaries determined under [~~Subsection 75-7-103(1)(h)] Section
179 75-7-103;~~
- 180 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed
181 Trust Act, as trust director of the trust; and
- 182 (c) each person that is granted a power by the terms of the trust to appoint or remove a

183 trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the
184 person that exercises the power is not then serving as trustee or is a person described in
185 Subsection (1)(b).

186 (2) The representation provisions of Sections 75-7-301 through 75-7-305 apply to
187 notice under this section.

188 (3) (a) A person may consent in a record at any time to action proposed under
189 Subsection 22-3-303(2)(b).

190 (b) If a person required to receive a notice under Subsection (1) consents under
191 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the
192 notice.

193 (4) A notice required by Subsection 22-3-303(2)(b) shall include:

194 (a) the action proposed under Subsection 22-3-303(2)(b);

195 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy
196 adopted under Subsection 22-3-303(1)(a);

197 (c) for a change in the percentage or method used to calculate the unitrust amount, a
198 copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under
199 Subsection 22-3-303(1)(b);

200 (d) a statement that the person to which the notice is sent may object to the proposed
201 action by stating in a record the basis for the objection and sending or delivering the record to
202 the fiduciary;

203 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d),
204 which shall be at least 30 days after the date the notice is sent;

205 (f) the date on which the action is proposed to be taken and the date on which the
206 action is proposed to take effect;

207 (g) the name and contact information of the fiduciary; and

208 (h) the name and contact information of a person that may be contacted for additional
209 information.

210 Section 4. Section 75-2-1203 is amended to read:

211 **75-2-1203. Validity of nonvested property interest -- Validity of general power of**
212 **appointment subject to a condition precedent -- Validity of nongeneral or testamentary**
213 **power of appointment -- Effect of certain "later-of" type language.**

214 (1) A nonvested property interest is invalid unless within 1,000 years after the interest's
215 creation the interest vests or terminates.

216 (2) A general power of appointment not presently exercisable because of a condition
217 precedent is invalid unless within 1,000 years after the general power of appointment's creation
218 the power of appointment is irrevocably exercised or terminates.

219 (3) A nongeneral power of appointment or a general testamentary power of
220 appointment is invalid unless within 1,000 years after its creation the power of appointment is
221 irrevocably exercised or terminates.

222 (4) The language in a governing instrument is inoperative to the extent it produces a
223 period of time that exceeds 1,000 years after if, in measuring a period from the creation of a
224 trust or other property arrangement, the language:

- 225 (a) seeks to disallow the vesting or termination of any interest or trust beyond;
- 226 (b) seeks to postpone the vesting or termination of any interest or trust until; or
- 227 (c) seeks to operate in effect in any similar fashion upon, the later of:
 - 228 (i) the expiration of a period of time not exceeding 1,000 years; or
 - 229 (ii) the expiration of a period of time that exceeds or might exceed 1,000 years.

230 ~~[(5) If a nongeneral power of appointment is exercised to create a new presently~~
231 ~~exercisable general power of appointment, all property interests subject to that new presently~~
232 ~~exercisable general power of appointment are invalid unless, within 1,000 years after the~~
233 ~~creation of the new presently exercisable general power of appointment, the property interests~~
234 ~~that are subject to the new presently exercisable general power of appointment vest or~~
235 ~~terminate.]~~

236 ~~[(6) If a nongeneral power of appointment is exercised to create a new or successive~~
237 ~~nongeneral power of appointment or a new or successive testamentary general power of~~
238 ~~appointment, all property interests subject to the exercise of that new or successive nongeneral~~
239 ~~or testamentary general power of appointment are invalid unless, within 1,000 years from the~~
240 ~~time of creation of the original instrument or conveyance creating the original nongeneral~~
241 ~~power of appointment that is exercised to create a new or successive nongeneral or~~
242 ~~testamentary general power of appointment, the property interests that are subject to the new or~~
243 ~~successive nongeneral or testamentary general power of appointment vest or terminate.]~~

244 (5) If a power of appointment is exercised to create a new power of appointment, all

245 property interests subject to that new power of appointment are invalid unless the property
 246 interests that are subject to the new power of appointment vest or terminate within 1,000 years
 247 after the creation of the new power of appointment.

248 Section 5. Section **75-7-103** is amended to read:

249 **75-7-103. Definitions.**

250 (1) ~~[h]~~ As used in this chapter:

251 (a) "Action," with respect to an act of a trustee, includes a failure to act.

252 (b) "Beneficiary" means a person that:

253 (i) has a present or future beneficial interest in a trust, vested or contingent; or

254 (ii) in a capacity other than that of trustee, holds a power of appointment over trust
 255 property.

256 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable
 257 purpose described in Subsection [75-7-405\(1\)](#).

258 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or
 259 ordinance relating to protection of the environment.

260 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms
 261 of the trust.

262 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.

263 (g) "Power of appointment" means the same as that term is defined in Section
 264 [75-10-102](#).

265 ~~[(g)]~~ (h) "Power of withdrawal" means a presently exercisable general power of
 266 appointment other than a power exercisable only upon consent of the trustee or a person
 267 holding an adverse interest.

268 ~~[(h)]~~ (i) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
 269 qualification is determined:

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

271 (ii) would be a distributee or permissible distributee of trust income or principal if the
 272 trust terminated on that date.

273 ~~[(i)]~~ (j) "Resident estate" ~~[or "resident trust"]~~ means:

274 (i) an estate of a decedent who at death was domiciled in this state;

275 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a

276 decedent who at ~~[his]~~ the decedent's death was domiciled in this state; or

277 (iii) a trust administered in this state.

278 (k) "Resident trust" means a resident estate.

279 ~~[(j)]~~ (l) "Revocable," as applied to a trust, means revocable by the settlor without the
280 consent of the trustee or a person holding an adverse interest.

281 ~~[(k)]~~ (m) "Settlor" means a person, including a testator, who creates, or contributes
282 property to, a trust. If more than one person creates or contributes property to a trust, each
283 person is a settlor of the portion of the trust property attributable to that person's contribution
284 except to the extent another person has the power to revoke or withdraw that portion.

285 ~~[(l)]~~ (n) "Spendthrift provision" means a term of a trust which restrains both voluntary
286 and involuntary transfer or encumbrance of a beneficiary's interest.

287 ~~[(m)]~~ (o) "Terms of a trust" means:

288 (i) except as otherwise provided in Subsection ~~[(1)(m)(ii)]~~ (1)(o)(ii), the manifestation
289 of the settlor's intent regarding a trust's provisions as:

290 (A) expressed in the trust instrument; or

291 (B) established by other evidence that would be admissible in a judicial proceeding;

292 (ii) the trust's provisions as established, determined, or amended by:

293 (A) a trustee or trust director in accordance with the applicable law;

294 (B) court order; or

295 (C) a nonjudicial settlement agreement under Section [75-7-110](#).

296 ~~[(n)]~~ (p) "Trust instrument" means an instrument executed by the settlor that contains
297 terms of the trust, including any amendments thereto.

298 (2) Terms not specifically defined in this section have the meanings provided in
299 Section [75-1-201](#).

300 Section 6. Section **75-7-812.5** is enacted to read:

301 **75-7-812.5. Discretionary power -- Decanting a trust.**

302 (1) As used in this section:

303 (a) "Current income beneficiary" means the same as that term is defined in Section
304 [22-3-102](#).

305 (b) "Decanting power" means the power of a trustee as described in Subsection (2):

306 (i) to distribute income or principal from a first trust to a second trust; or

- 307 (ii) to modify the terms of a first trust.
- 308 (c) "First trust" means a trust over which a trustee exercises discretion to distribute
309 income or principal to, or for the benefit of, a beneficiary.
- 310 (d) "Income" means the same as that term is defined in Section [22-3-102](#).
- 311 (e) "General power to change the trustees" means a beneficiary may, whether alone or
312 in concert with other persons:
- 313 (i) name the beneficiary as a trustee; or
- 314 (ii) remove a trustee and replace that trustee with a new trustee who is:
- 315 (A) the beneficiary; or
- 316 (B) a related or subordinate party, as defined in Section 672(c) of the Internal Revenue
317 Code, of the beneficiary.
- 318 (f) "Principal" means the same as that term is defined in Section [22-3-102](#).
- 319 (g) "Restricted trustee" means a trustee of the first trust if:
- 320 (i) the trustee is also a beneficiary of the first trust; or
- 321 (ii) a beneficiary of the first trust holds a general power to change the trustees of the
322 first trust.
- 323 (h) "Second trust" means:
- 324 (i) a trust to which a distribution of income or principal from a first trust is made to the
325 trustee of the trust under Subsection (2)(a)(i); or
- 326 (ii) a trust that is modified under Subsection (2)(a)(ii).
- 327 (2) (a) If a trustee has discretion under the terms of a trust instrument to distribute
328 income or principal to, or for the benefit of, a beneficiary of a trust, the trustee may:
- 329 (i) distribute part or all of the income or principal to a trust governed by a trust
330 instrument that is separate from the trust instrument of the first trust; or
- 331 (ii) modify the terms of the trust instrument of the first trust.
- 332 (b) A trustee may not exercise the decanting power if the terms of the trust instrument
333 for the first trust expressly prohibit the trustee from:
- 334 (i) distributing part or all of the income or principal to a trust governed by a trust
335 instrument that is separate from the trust instrument of the first trust; or
- 336 (ii) modifying the terms of the trust instrument of the first trust.
- 337 (c) Before a trustee exercises the decanting power to modify the terms of the trust

338 instrument of a first trust, the trustee shall notify all beneficiaries of the trust, in writing, at least
339 20 days before the day on which the trustee exercises the decanting power.

340 (3) Before a trustee exercises the decanting power, the trustee shall determine whether
341 distribution or modification is necessary or desirable after taking into account:

342 (a) the purposes of the first trust;

343 (b) the terms and conditions of the second trust; and

344 (c) the consequences of the distribution.

345 (4) A trustee may only exercise the decanting power if the second trust has a

346 beneficiary that is a beneficiary of the first trust to or for whom:

347 (a) a trustee has discretion to distribute income or principal from the first trust; or

348 (b) a trustee may distribute income or principal in the future from the first trust at a

349 time, or upon the happening of an event, that is specified in the trust instrument of the first

350 trust.

351 (5) Except as provided in Subsection (6), a restricted trustee may not exercise the

352 decanting power if the distribution would have the effect of:

353 (a) benefitting the restricted trustee as a beneficiary of the first trust, unless the

354 distribution is limited to an ascertainable standard based on or related to health, education,

355 maintenance, or support;

356 (b) increasing the distributions that can be made from the second trust to a restricted

357 trustee, or to a beneficiary holding a general power to change the trustees of the first trust,

358 compared to the distributions that can be made to the restricted trustee, or to the beneficiary

359 holding a general power to change the trustees, under the first trust, unless the distribution is

360 limited to an ascertainable standard based on or related to health, education, maintenance, or

361 support; or

362 (c) removing restrictions on a discretionary distribution imposed by the trust

363 instrument of the first trust, unless the trust instrument of the second trust limits distributions

364 of income or principal from the second trust to:

365 (i) an ascertainable standard based on or related to the health, education, maintenance,

366 or support of a beneficiary; or

367 (ii) a trust described in 42 U.S.C. Sec. 1396p(d)(4).

368 (6) Subsection (5) limits a restricted trustee's exercise of the decanting power only if:

369 (a) at least one restricted trustee is a United States citizen or domiciliary under the
370 Internal Revenue Code;

371 (b) at least one beneficiary holding a general power to change the trustees of the first
372 trust is a United States citizen or domiciliary under the Internal Revenue Code; or

373 (c) the first trust owns property that would be subject to United States estate or gift
374 taxes if owned free of the trust by:

375 (i) the restricted trustee of the first trust if there is a restricted trustee of the first trust;
376 or

377 (ii) the beneficiary holding a general power to change the trustees of the first trust if
378 there is a beneficiary holding a general power to change the trustees of the first trust.

379 (7) If a trust contribution has been treated as a gift qualifying for the exclusion from the
380 gift tax described in Section 2503(b) of the Internal Revenue Code, the trust instrument for the
381 second trust shall provide that the beneficiary's remainder interest must vest no later than the
382 day on which the remainder interest would have vested under the terms of the trust instrument
383 for the first trust.

384 (8) A trustee's exercise of the decanting power as described in Subsection (2):

385 (a) may not reduce an income interest of a current income beneficiary of:

386 (i) a trust for which a marital deduction has been taken for federal tax purposes under
387 Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under a
388 comparable state law;

389 (ii) a charitable remainder trust under Section 664 of the Internal Revenue Code; or

390 (iii) a grantor retained annuity or unitrust trust under Section 2702 of the Internal
391 Revenue Code;

392 (b) does not apply to property of a trust that is subject to a power of withdrawal held by
393 a beneficiary of the trust to whom, or for the benefit of whom, the trustee has authority to
394 distribute income or principal, unless after the distribution of income or principal under
395 Subsection (4) the beneficiary's power of withdrawal is unchanged with respect to the property
396 of a trust;

397 (c) is not prohibited by:

398 (i) a spendthrift clause in the first trust; or

399 (ii) a clause in the trust instrument of the first trust that prohibits amendment or

400 revocation of the trust;

401 (d) is an exercise of a power of appointment; and

402 (e) may not be exercised in a manner that would cause the decanting power to be a

403 general power of appointment as described in Section 2041 or 2514 of the Internal Revenue

404 Code.

405 (9) (a) This section does not preclude the trust instrument of a second trust from

406 granting a power of appointment to a beneficiary of the second trust that is a beneficiary of the

407 first trust.

408 (b) A power of appointment described in Subsection (9)(a) may include the power to

409 appoint trust property to the holder of the power of appointment, the holder's creditors, the

410 holder's estate, the creditors of the holder's estate, or any other person regardless of whether

411 that person is a beneficiary of the second trust.

412 (10) This section applies to a trust administered under the laws of this state, including a

413 trust whose governing jurisdiction is transferred to this state.

414 **Section 7. Effective date.**

415 This bill takes effect on May 1, 2024.