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SENATE BILL 5012

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Pedersen, Padden, Frockt, Fain, Mullet, and Kuderer; by request of Washington State Bar Association and Uniform Law Commission

Prefiled 12/21/16. Read first time 01/09/17. Referred to Committee on Law & Justice.

1            AN ACT Relating to the distribution of a Washington trust's  
2 assets to another trust; and adding a new chapter to Title 11 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.**    DEFINITIONS. The definitions in this  
5 section apply throughout this chapter unless the context clearly  
6 requires otherwise.

7            (1) "Ascertainable standard" means a standard relating to an  
8 individual's health, education, support, or maintenance within the  
9 meaning of Title 26 U.S.C. Sec. 2041(b)(1)(A) or 2514(c)(1) of the  
10 federal internal revenue code and any applicable regulations, as  
11 amended, as of the effective date of this section.

12            (2) "Charitable interest" means an interest in a trust that:

13            (a) Is held by an expressly identified charitable organization  
14 and makes the organization a qualified beneficiary;

15            (b) Benefits charitable organizations and, if the interest were  
16 held by an expressly identified charitable organization, would make  
17 the organization a qualified beneficiary; or

18            (c) Is held solely for charitable purposes and, if the interest  
19 were held by an expressly identified charitable organization, would  
20 make the organization a qualified beneficiary.

1 (3) "Decanting power" or "the decanting power" means the power of  
2 a trustee under this chapter to distribute income and principal of a  
3 first trust to one or more second trusts or to modify the terms of  
4 the first trust.

5 (4) "Expanded discretion" means a discretionary power of  
6 distribution that is not limited to an ascertainable standard or a  
7 reasonably definite standard.

8 (5) "First trust" means a trust over which a trustee may exercise  
9 the decanting power.

10 (6) "Limited discretion" means a discretionary power of  
11 distribution that is limited to an ascertainable standard or a  
12 reasonably definite standard.

13 (7) "Person" means an individual, estate, business or nonprofit  
14 entity, public corporation, government or governmental subdivision,  
15 agency, or instrumentality, or other legal entity.

16 (8) "Qualified beneficiary" means a beneficiary that on the date  
17 of qualification is described in RCW 11.98.002(2).

18 (9) "Reasonably definite standard" means a clearly measurable  
19 standard under which a holder of a power of distribution is legally  
20 accountable within the meaning of Title 26 U.S.C. Sec. 674(b)(5)(A)  
21 of the federal internal revenue code and any applicable regulations,  
22 as amended, as of the effective date of this section.

23 (10) "Second trust" means:

24 (a) A first trust after modification under this chapter; or

25 (b) A trust to which a distribution of income and principal from  
26 a first trust is or may be made under this chapter.

27 NEW SECTION. **Sec. 2.** DECANTING POWER UNDER EXPANDED DISCRETION.

28 (1) Subject to (a) of this subsection and section 7 of this act, a  
29 trustee that has expanded discretion to distribute the principal of a  
30 first trust to one or more current beneficiaries may exercise the  
31 decanting power over the principal of the first trust, subject to the  
32 following:

33 (a) Except as provided in section 6 of this act, a second trust  
34 may not in an exercise of the decanting power under this section:

35 (i) Include as a current beneficiary a person that is not a  
36 current beneficiary of the first trust, except as otherwise provided  
37 in (b) of this subsection;

38 (ii) Include as a presumptive remainder beneficiary or successor  
39 beneficiary a person that is not a current beneficiary, presumptive

1 remainder beneficiary, or successor beneficiary of the first trust,  
2 except as otherwise provided in (b) of this subsection; or  
3 (iii) Reduce or eliminate a vested interest;  
4 (b) Subject to (a)(iii) of this subsection and section 7 of this  
5 act, a second trust may in an exercise of the decanting power under  
6 this section:  
7 (i) Retain a power of appointment granted in the first trust;  
8 (ii) Omit a power of appointment granted in the first trust,  
9 other than a presently exercisable general power of appointment;  
10 (iii) Create or modify a power of appointment if the powerholder  
11 is a current beneficiary of the first trust and the trustee has  
12 expanded discretion to distribute principal to the current  
13 beneficiary; and  
14 (iv) Create or modify a power of appointment if the powerholder  
15 is a presumptive remainder beneficiary or successor beneficiary of  
16 the first trust, but the exercise of the power may take effect only  
17 after the powerholder becomes, or would have become if then living, a  
18 current beneficiary;  
19 (c) A power of appointment described in (b) of this subsection  
20 may be general or nongeneral. The class of permissible appointees in  
21 favor of which the power may be exercised may be broader than or  
22 different from the beneficiaries of the first trust;  
23 (d) In an exercise of the decanting power under this section, a  
24 second trust may be a trust created or administered under the law of  
25 any jurisdiction; and  
26 (e) If a trustee has expanded discretion to distribute part but  
27 not all of the principal of a first trust, the trustee may exercise  
28 the decanting power under this section only over that part of the  
29 principal.  
30 (2) The definitions in this subsection apply throughout this  
31 section unless the context clearly requires otherwise.  
32 (a) "Presumptive remainder beneficiary" means a qualified  
33 beneficiary other than a current beneficiary.  
34 (b) "Successor beneficiary" means a beneficiary that on the date  
35 of the beneficiary's qualification is determined not to be a  
36 qualified beneficiary. The term does not include a person that is a  
37 beneficiary only because the person holds a nongeneral power of  
38 appointment.  
39 (c) "Vested interest" means:

1 (i) A right to a mandatory distribution that is noncontingent as  
2 of the date of the exercise of the decanting power;

3 (ii) A current and noncontingent right, annually or more  
4 frequently, to either a mandatory distribution of income or to  
5 withdraw income, a specified dollar amount, or a percentage of value  
6 of some or all of the trust income or principal;

7 (iii) A presently exercisable general power of appointment; or

8 (iv) A right to receive an ascertainable part of the trust  
9 principal on trust termination that is not subject to the exercise of  
10 discretion or the occurrence of a specified event that is not certain  
11 to occur.

12 NEW SECTION. **Sec. 3.** DECANTING POWER UNDER LIMITED DISCRETION.

13 Subject to section 7 of this act, a trustee that has limited  
14 discretion to distribute the principal of a first trust to one or  
15 more current beneficiaries may exercise the decanting power over the  
16 principal of the first trust, subject to the following:

17 (1) Second trusts under this section, in the aggregate, must  
18 grant each beneficiary of the first trust beneficial interests in the  
19 second trusts which are substantially similar to the beneficial  
20 interests of the beneficiary in the first trust;

21 (2) A power to make a distribution under the second trust for the  
22 benefit of a beneficiary who is an individual is substantially  
23 similar to a power under the first trust to make a distribution  
24 directly to the beneficiary. A distribution is for the benefit of a  
25 beneficiary if:

26 (a) The distribution is made for the benefit of the beneficiary;

27 (b) The beneficiary is incapacitated or otherwise under a legal  
28 disability or the trustee reasonably believes the beneficiary is  
29 incapacitated or under a legal disability, and the distribution is  
30 made as permitted by the first trust instrument or otherwise as  
31 permitted by law; or

32 (c) The distribution is made as permitted under the terms of the  
33 first trust instrument and the second trust instrument for the  
34 benefit of the beneficiary;

35 (3) In an exercise of the decanting power under this section, a  
36 second trust may be a trust created or administered under the law of  
37 any jurisdiction; and

38 (4) If a trustee has limited discretion to distribute part but  
39 not all of the principal of a first trust, the trustee may exercise

1 the decanting power under this section only over that part of the  
2 principal.

3 NEW SECTION. **Sec. 4.** DECANTING STATUTE—PROCEDURE TO EXERCISE  
4 DECANTING POWER. (1) The trustee of the first trust may exercise the  
5 decanting power under sections 2 and 3 of this act if:

6 (a) The trustee determines that the exercise of the decanting  
7 power is consistent with the trustee's fiduciary duties described in  
8 section 8(1) of this act; and

9 (b) The trustee gives written notice of the trustee's intention  
10 to exercise the decanting power to each qualified beneficiary, each  
11 holder of a presently exercisable power of appointment over any part  
12 of the first trust, and each person that currently has the right to  
13 remove or replace the trustee not less than sixty days prior to the  
14 effective date of the exercise.

15 (2) The trustee of the first trust, qualified beneficiaries, and  
16 any other party as defined by RCW 11.96A.030(5) may agree to exercise  
17 by the trustee of the decanting power by means of a binding agreement  
18 under RCW 11.96A.220.

19 (3) The trustee of the first trust, a qualified beneficiary, a  
20 holder of a presently exercisable power of appointment over any part  
21 of the first trust, and a person that currently has the right to  
22 remove or replace the trustee may petition the court under chapter  
23 11.96A RCW regarding exercise of the decanting power for the  
24 following relief, to:

25 (a) Provide instructions to the trustee regarding whether a  
26 proposed exercise of the decanting power is permitted under this  
27 chapter and consistent with the fiduciary duties of the trustee;

28 (b) Approve an exercise of the decanting power;

29 (c) Determine that a proposed or attempted exercise of the  
30 decanting power is ineffective because the proposed or attempted  
31 exercise does not or did comply with this chapter or the proposed or  
32 attempted exercise would be or was an abuse of the trustee's  
33 discretion or a breach of fiduciary duty; or

34 (d) Order other relief to carry out the purposes of this chapter.

35 (4) The trustee of the first trust may petition the court under  
36 chapter 11.96A RCW regarding exercise of the decanting power for the  
37 following relief:

38 (a) An increase of the trustee's compensation under section  
39 7(2)(a)(ii) of this act; or

1 (b) Modification under section 7(4)(b) of this act of a provision  
2 granting a person the right to remove or replace the trustee.

3 (5) If there is at least one qualified beneficiary who is not a  
4 minor or who has a representative, the trustee is not required to  
5 give notice under subsection (1)(b) of this section to a qualified  
6 beneficiary who is a minor and has no representative. If all  
7 qualified beneficiaries are minors and none has a representative, the  
8 trustee must petition for appointment of a guardian ad litem under  
9 RCW 11.98A.160.

10 (6) The trustee is not required to give notice under this section  
11 to a person who is not known to the trustee or is known to the  
12 trustee but cannot be located by the trustee after reasonable  
13 diligence.

14 (7) A notice under subsection (1) of this section or petition  
15 under subsection (3) or (4) of this section must:

16 (a) Specify the manner in which the trustee must exercise the  
17 decanting power;

18 (b) Specify the proposed effective date for exercise of the  
19 decanting power;

20 (c) Include a copy of all governing instruments of the first  
21 trust; and

22 (d) Include a copy of all governing instruments of the second  
23 trust. An exercise of the decanting power under this section must be  
24 made in a record signed by the trustee; for this purpose, a "record  
25 signed by the trustee" must include a court order under subsection  
26 (3) of this section.

27 (8) The decanting power may be exercised before expiration of the  
28 notice period under subsection (1) of this section if all persons  
29 entitled to receive notice waive the period in writing. An exercise  
30 of the decanting power is not ineffective because of the failure to  
31 give notice to one or more persons under subsection (1) of this  
32 section if the trustee acted with reasonable care to comply with this  
33 section.

34 NEW SECTION. **Sec. 5.** DECANTING STATUTE—EFFECTS AND CONSEQUENCES  
35 OF AN EXERCISE OF THE DECANTING POWER. (1) A trustee or other person  
36 that reasonably relies on the validity of a distribution of part or  
37 all of the income and principal of a trust to another trust, or a  
38 modification of a trust, under this chapter or the law of another

1 jurisdiction is not liable to any person for any action or failure to  
2 act as a result of the reliance.

3 (2) A debt, liability, or other obligation enforceable against  
4 income and principal of a first trust is enforceable to the same  
5 extent against that income and principal when held by the second  
6 trust after exercise of the decanting power.

7 (3) For purposes of the law of this state other than this chapter  
8 and subject to this subsection, a settlor of a first trust is deemed  
9 to be the settlor of the second trust with respect to the portion of  
10 the principal of the first trust subject to the exercise of the  
11 decanting power. In determining settlor intent with respect to a  
12 second trust, the intent of a settlor of the first trust and the  
13 intent of a settlor of the second trust, if different, may be  
14 considered. The intent of the trustee may also be considered.

15 (4) If the trustee intends to distribute all of the principal of  
16 a first trust to a second trust and the trustee makes a good faith  
17 effort to do so, the distribution of all of the principal of a first  
18 trust to a second trust includes subsequently discovered assets  
19 otherwise belonging to the first trust and principal paid to or  
20 acquired by the first trust after the distribution of the first  
21 trust's principal. If the trustee does not intend to distribute all  
22 of the principal of a first trust to a second trust, the distribution  
23 of part of the principal of a first trust to a second trust does not  
24 include subsequently discovered assets belonging to the first trust  
25 or principal paid to or acquired by the first trust after the  
26 distribution of principal from the first trust to the second trust,  
27 and those assets or that principal remain the assets or principal of  
28 the first trust.

29 (5) A reference under this title to a trust instrument or to  
30 terms of the trust includes the second trust, the second trust  
31 instrument, and the terms of the second trust.

32 (6) The title to all real estate and other property, both  
33 tangible and intangible, owned by the first trust remains vested in  
34 the second trust without reversion or impairment.

35 (7) An action or proceeding pending by or against the first trust  
36 may be continued by or against the second trust as if the decanting  
37 had not occurred.

38 (8) Except as otherwise provided by this chapter, all of the  
39 rights, privileges, immunities, powers, and purposes of the first  
40 trust remain vested in the second trust.

1        NEW SECTION.    **Sec. 6.**    DECANTING STATUTE—TRUST FOR BENEFICIARY  
2 WITH A DISABILITY. (1) The definitions in this subsection apply  
3 throughout this section unless the context clearly requires  
4 otherwise.

5        (a) "Beneficiary with a disability" means a beneficiary of the  
6 first trust who the trustee believes may qualify for governmental  
7 benefits based on disability, whether or not the beneficiary  
8 currently receives those benefits or is an individual who is  
9 incapacitated within the meaning of RCW 11.88.010.

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

12        (c) "Special needs trust" means a trust the trustee believes  
13 would not be considered a resource for purposes of determining  
14 whether the beneficiary with a disability is eligible for  
15 governmental benefits.

16        (2) A trustee may exercise the decanting power under sections 2  
17 and 3 of this act over the property of the first trust as if the  
18 trustee had authority to distribute principal to a beneficiary with a  
19 disability subject to expanded discretion if:

20        (a) The second trust is a special needs trust that benefits the  
21 beneficiary with a disability; and

22        (b) The trustee determines that exercise of the decanting power  
23 will further the purposes of the first trust.

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

26        (a) The provisions of the second trust for a beneficiary with a  
27 disability may:

28        (i) Meet the medicaid law requirements for an account in a pooled  
29 trust for a beneficiary with a disability under 42 U.S.C. Sec.  
30 1369p(d)(4)(C), as amended, including requiring a payback to the  
31 state of medicaid expenditures of funds not retained by the pooled  
32 trust; or

33        (ii) Meet the medicaid law requirements for a trust for the sole  
34 benefit of a beneficiary with a disability under age sixty-five under  
35 42 U.S.C. Sec. 1369(d)(4)(A), as amended, including requiring a  
36 payback to the state of medicaid expenditures.

37        (b) Section 2(1)(a)(iii) of this act does not apply to the  
38 interests of the beneficiary with a disability.

39        (c) Except as affected by any change to the interests of the  
40 beneficiary with a disability, the second trusts, in the aggregate,

1 must grant each other beneficiary of the first trust beneficial  
2 interests in the second trusts which are substantially similar to the  
3 beneficiary's beneficial interests in the first trust unless  
4 inconsistent with (a)(i) or (ii) of this subsection (3).

5 NEW SECTION. **Sec. 7.** DECANTING STATUTE—SPECIFIC PROHIBITIONS.

6 (1) A trustee may not exercise the decanting power to the extent the  
7 first trust instrument expressly prohibits exercise of the decanting  
8 power or a power granted by state law to the trustee to modify the  
9 trust including, but not limited to, modification pursuant to chapter  
10 11.96A RCW, and any exercise of the decanting power is subject to the  
11 prohibition and the prohibition must be included in the second trust  
12 instrument or modified first trust instrument. If the first trust  
13 instrument contains an express restriction on exercise of the  
14 decanting power or such a power to modify the trust, the exercise of  
15 the decanting power is subject to the restriction and the restriction  
16 must be included in the second trust instrument or modified first  
17 trust instrument.

18 (2)(a) Whether or not a first trust instrument specifies a  
19 trustee's compensation, the trustee may not exercise the decanting  
20 power to increase the trustee's compensation beyond any compensation  
21 specified or above the compensation permitted by RCW 11.98.070(26)  
22 unless:

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

25 (ii) The increase is approved by the court.

26 (b) A change in a trustee's compensation which is incidental to  
27 other changes made by the exercise of the decanting power is not an  
28 increase in the trustee's compensation for purposes of this  
29 subsection (2).

30 (3) Except as otherwise provided in subsection (2)(a)(i) or (ii)  
31 or (b) of this section, a second trust instrument may not relieve a  
32 trustee from liability for breach of trust to a greater extent than  
33 the first trust instrument.

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

1 (b) A second trust instrument may not reduce fiduciary liability  
2 in the aggregate.

3 (c) Subject to (b) of this subsection, a second trust instrument  
4 may divide and reallocate fiduciary powers among fiduciaries,  
5 including one or more trustees or statutory trust advisors, and  
6 relieve a fiduciary from liability for an act or failure to act of  
7 another fiduciary as permitted by law of this state other than this  
8 chapter. This includes but is not limited to directed trusts.

9 (4) A trustee may not exercise the decanting power to modify a  
10 provision in the first trust instrument granting another person power  
11 to remove or replace the trustee unless:

12 (a) All qualified beneficiaries of the second trust consent to  
13 the modification in a signed record; or

14 (b) The court approves the modification and the modification  
15 grants a substantially similar power to another person.

16 (5) A second trust may have a duration that is the same as or  
17 different from the duration of the first trust. Notwithstanding the  
18 foregoing, to the extent that income and principal of a second trust  
19 is attributable to income and principal of the first trust, the  
20 second trust is subject to any maximum perpetuity, accumulation, or  
21 suspension of the power of alienation rules that were applicable to  
22 income and principal of the first trust.

23 (6) If a first trust contains a charitable interest, the attorney  
24 general has the rights of a qualified beneficiary and may represent  
25 and bind the charitable interest and the attorney general has the  
26 authority to participate in any proceedings in accordance with  
27 chapter 11.110 RCW. If a first trust contains a charitable interest,  
28 the second trusts, in the aggregate, may not:

29 (a) Diminish the charitable interest;

30 (b) Diminish the interest of an expressly identified charitable  
31 organization that holds the charitable interest; or

32 (c) Alter any charitable purpose stated in the first trust  
33 instrument.

34 (7) If the first trust contains assets that qualified, or would  
35 have qualified but for the provisions of this chapter other than this  
36 subsection, for a tax benefit as defined in this subsection, the  
37 second trust instrument must not include or omit a term which would  
38 have prevented the first trust from qualifying in the same manner  
39 for, or would have reduced the amount of, that tax benefit.

1 (a) For the purposes of this subsection, "tax benefit" includes  
2 any federal or state tax deduction, exemption, exclusion, or other  
3 tax benefit under federal or state statute, regulation, or other law,  
4 except for the benefit of being a grantor trust other than under  
5 Title 26 U.S.C. Sec. 672(f)(2)(A) of the federal internal revenue  
6 code, as amended, as of the effective date of this section, including  
7 but not limited to the following:

8 (i) The marital deduction for gift, estate, or inheritance tax  
9 purposes, including but not limited to the deductions under Title 26  
10 U.S.C. Sec. 2056 of the federal internal revenue code, as amended, as  
11 of the effective date of this section, and RCW 83.100.047;

12 (ii) The charitable deduction for purposes of the income, gift,  
13 or estate tax under the internal revenue code or a state income,  
14 gift, estate, or inheritance tax;

15 (iii) The exclusion from the gift tax described in 26 U.S.C. Sec.  
16 2503(b), including by application of Title 26 U.S.C. Sec. 2503(c) of  
17 the internal revenue code, as amended;

18 (iv) Status as a permitted shareholder in an S corporation, as  
19 defined in Title 26 U.S.C. Sec. 1361 of the federal internal revenue  
20 code, as amended, as of the effective date of this section, including  
21 as a qualified subchapter S trust within the meaning of Title 26  
22 U.S.C. Sec. 1361(c)(2) of the federal internal revenue code;

23 (v) Qualification for a zero inclusion ratio for purposes of the  
24 generation-skipping transfer tax under Title 26 U.S.C. Sec. 2642(c)  
25 of the federal internal revenue code, as amended, as of the effective  
26 date of this section;

27 (vi) Meeting required minimum distribution and any similar  
28 requirements under Title 26 U.S.C. Sec. 401(a)(9) of the federal  
29 internal revenue code, as amended, as of the effective date of this  
30 section, and any applicable regulations; or

31 (vii) Qualification as a grantor trust because of the application  
32 of Title 26 U.S.C. Sec. 672(f)(2)(A) of the federal internal revenue  
33 code, as amended, as of the effective date of this section.

34 (b) Subject to (a)(vii) of this subsection, the second trust may  
35 be a nongrantor trust, even if the first trust is a grantor trust,  
36 and except as otherwise provided in this subsection (7)(b) the second  
37 trust may be a grantor trust, even if the first trust is a nongrantor  
38 trust. The trustee may not exercise the decanting power if the  
39 settlor objects in a written instrument delivered to the trustee  
40 within the notice period under section 4(1)(b) of this act; and

1 (i)(A) The first trust and second trust are both grantor trusts,  
2 in whole or in part;

3 (B) The first trust grants the settlor or another person the  
4 power to cause the first trust to cease to be a grantor trust; and

5 (C) The second trust does not grant an equivalent power to the  
6 settlor or other person; or

7 (ii) The first trust is a nongrantor trust and the second trust  
8 is a grantor trust, in whole or in part, with respect to the settlor  
9 unless:

10 (A) The settlor has the power at all times to cause the second  
11 trust to cease to be a grantor trust; or

12 (B) The first trust instrument contains a provision granting the  
13 settlor or another person the power to cause the first trust to cease  
14 to be a grantor trust and the second trust instrument contains the  
15 same provision.

16 (8) A trustee may not exercise the decanting power if RCW  
17 11.98.200 applies to the first trust and exercise would cause RCW  
18 11.98.200 not to apply to the second trust or modified first trust  
19 instrument.

20 (9) A general prohibition of the amendment or revocation of a  
21 first trust, a spendthrift clause, or a clause restraining the  
22 voluntary or involuntary transfer of a beneficiary's interest does  
23 not preclude exercise of the decanting power.

24 NEW SECTION. **Sec. 8.** MISCELLANEOUS. (1) This chapter applies to  
25 any express trust, within the meaning of RCW 11.98.009, other than a  
26 trust during such time as the grantor has retained the right to  
27 revoke or amend. In exercising the decanting power, the trustee must  
28 act in accordance with the trustee's fiduciary duties, including the  
29 duty to act in accordance with the purposes of the first trust.  
30 Except as otherwise provided in the first trust instrument, for  
31 purposes of this chapter the terms of the first trust are deemed to  
32 include the decanting power.

33 (2) This chapter does not limit the power of a trustee,  
34 powerholder, or other person to distribute or appoint income and  
35 principal in further trust or to modify a trust under the trust  
36 instrument, law of this state other than this title, a court order,  
37 or a nonjudicial agreement. This chapter does not increase or modify  
38 the requirements for a binding agreement under RCW 11.96A.220 or the  
39 requirements for a directed trust under chapter 11.98A RCW. This

1 chapter does not affect the ability of a settlor to provide in a  
2 trust instrument for the distribution or appointment in further trust  
3 of the trust income and principal or for modification of the trust  
4 instrument.

5 (3) This chapter does not apply to a trust held solely for  
6 charitable purposes.

7 (4) This chapter does not create or imply a duty to exercise the  
8 decanting power or to inform beneficiaries about the applicability of  
9 this chapter.

10 (5) This chapter applies to a trust created before, on, or after  
11 the effective date of this section that:

12 (a) Has its situs in this state, including a trust whose situs  
13 has been changed to this state; or

14 (b) Provides by its trust instrument that it is governed by the  
15 law of this state or is governed by the law of this state for  
16 purposes of:

17 (i) Administration, including a trust whose governing law for  
18 purposes of administration has been changed to the law of this state;

19 (ii) Construction of terms of the trust; or

20 (iii) Determining the meaning or effect of terms of the trust.

21 (6) A trustee may exercise the decanting power whether or not the  
22 trustee would have made or could have been compelled to make a  
23 discretionary distribution of principal at the time of the exercise.

24 (7) If exercise of the decanting power would be effective under  
25 this chapter except that the second trust instrument in part does not  
26 comply with this chapter, the exercise of the decanting power is  
27 effective and the following rules apply to the principal of the first  
28 trust subject to the exercise of the power:

29 (a) A provision in the second trust instrument which is not  
30 permitted under this chapter is void to the extent necessary to  
31 comply with this chapter.

32 (b) A provision required by this chapter to be in the second  
33 trust instrument which is not contained in the instrument is deemed  
34 to be included in the instrument to the extent necessary to comply  
35 with this chapter.

36 (8) If a trustee of a second trust discovers that subsection (7)  
37 of this section applies to a prior exercise of the decanting power,  
38 the trustee must take such appropriate corrective action as is  
39 consistent with the trustee's duties.

1        NEW SECTION.    **Sec. 9.**    SEVERABILITY. If any provision of this act  
2 or its application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 10.**    Sections 1 through 8 of this act  
6 constitute a new chapter in Title 11 RCW.

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