

CERTIFICATION OF ENROLLMENT  
**SUBSTITUTE SENATE BILL 5012**

Chapter 29, Laws of 2017

65th Legislature  
2017 Regular Session

TRUSTS--DECANTING POWER

EFFECTIVE DATE: 7/23/2017

Passed by the Senate March 1, 2017  
Yeas 49 Nays 0

CYRUS HABIB

**President of the Senate**

Passed by the House April 5, 2017  
Yeas 97 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Approved April 17, 2017 11:19 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5012** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

**Secretary**

FILED

April 17, 2017

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5012**

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Passed Legislature - 2017 Regular Session

**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Pedersen, Padden, Frockt, Fain, Mullet, and Kuderer; by request of Washington State Bar Association and Uniform Law Commission)

READ FIRST TIME 02/02/17.

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 a charitable organization;

14       (b) Benefits charitable organizations;

15       (c) Is held for charitable purposes; or

16       (d) Holds assets subject to limitations permitting their use only  
17 for charitable, religious, eleemosynary, benevolent, educational, or  
18 similar purposes.

19       (3) "Charitable purpose" means a purpose that is for: The relief  
20 of poverty, the advancement of education or religion, the promotion

1 of health, governmental or municipal purposes, or other purposes the  
2 achievement of which are beneficial to a community.

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

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

10 (6) "First trust" means a trust over which a trustee may exercise  
11 the decanting power.

12 (7) "Limited discretion" means a discretionary power of  
13 distribution that is limited to an ascertainable standard or a  
14 reasonably definite standard.

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

18 (9) "Qualified beneficiary" means a beneficiary that on the date  
19 of qualification is described in RCW 11.98.002(2).

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

25 (11) "Second trust" means:

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

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

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

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

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

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

1 (ii) Include as a presumptive remainder beneficiary or successor  
2 beneficiary a person that is not a current beneficiary, presumptive  
3 remainder beneficiary, or successor beneficiary of the first trust,  
4 except as otherwise provided in (b) of this subsection; or

5 (iii) Reduce or eliminate a vested interest;

6 (b) Subject to (a)(iii) of this subsection and section 7 of this  
7 act, a second trust may in an exercise of the decanting power under  
8 this section:

9 (i) Retain a power of appointment granted in the first trust;

10 (ii) Omit a power of appointment granted in the first trust,  
11 other than a presently exercisable general power of appointment;

12 (iii) Create or modify a power of appointment if the powerholder  
13 is a current beneficiary of the first trust and the trustee has  
14 expanded discretion to distribute principal to the current  
15 beneficiary; and

16 (iv) Create or modify a power of appointment if the powerholder  
17 is a presumptive remainder beneficiary or successor beneficiary of  
18 the first trust, but the exercise of the power may take effect only  
19 after the powerholder becomes, or would have become if then living, a  
20 current beneficiary;

21 (c) A power of appointment described in (b) of this subsection  
22 may be general or nongeneral. The class of permissible appointees in  
23 favor of which the power may be exercised may be broader than or  
24 different from the beneficiaries of the first trust;

25 (d) In an exercise of the decanting power under this section, a  
26 second trust may be a trust created or administered under the law of  
27 any jurisdiction; and

28 (e) If a trustee has expanded discretion to distribute part but  
29 not all of the principal of a first trust, the trustee may exercise  
30 the decanting power under this section only over that part of the  
31 principal.

32 (2) The definitions in this subsection apply throughout this  
33 section unless the context clearly requires otherwise.

34 (a) "Presumptive remainder beneficiary" means a qualified  
35 beneficiary other than a current beneficiary.

36 (b) "Successor beneficiary" means a beneficiary that on the date  
37 of the beneficiary's qualification is determined not to be a  
38 qualified beneficiary. The term does not include a person that is a  
39 beneficiary only because the person holds a nongeneral power of  
40 appointment.

1 (c) "Vested interest" means:

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) If a trustee has limited discretion to distribute part but  
2 not all of the principal of a first trust, the trustee may exercise  
3 the decanting power under this section only over that part of the  
4 principal.

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

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

11 (b) In the event that the first trust contains a charitable  
12 interest, the trustee gives written notice to the attorney general of  
13 the trustee's intention to exercise the decanting power; and

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

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

24 (3) The trustee of the first trust, a qualified beneficiary, a  
25 holder of a presently exercisable power of appointment over any part  
26 of the first trust, and a person that currently has the right to  
27 remove or replace the trustee may petition the court under chapter  
28 11.96A RCW regarding exercise of the decanting power for the  
29 following relief, to:

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

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

34 (c) Determine that a proposed or attempted exercise of the  
35 decanting power is ineffective because the proposed or attempted  
36 exercise does not or did comply with this chapter or the proposed or  
37 attempted exercise would be or was an abuse of the trustee's  
38 discretion or a breach of fiduciary duty; or

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

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

4 (a) An increase of the trustee's compensation under section  
5 7(2)(a)(ii) of this act; or

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

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

15 (6) The trustee is not required to give notice under this section  
16 to a person who is not known to the trustee or is known to the  
17 trustee but cannot be located by the trustee after reasonable  
18 diligence.

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

21 (a) Specify the manner in which the trustee must exercise the  
22 decanting power;

23 (b) Specify the proposed effective date for exercise of the  
24 decanting power;

25 (c) Include a copy of all governing instruments of the first  
26 trust; and

27 (d) Include a copy of all governing instruments of the second  
28 trust. An exercise of the decanting power under this section must be  
29 made in a record signed by the trustee; for this purpose, a "record  
30 signed by the trustee" must include a court order under subsection  
31 (3) of this section.

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

1            NEW SECTION.    **Sec. 5.**    DECANTING STATUTE—EFFECTS AND CONSEQUENCES

2    OF AN EXERCISE OF THE DECANTING POWER. (1) A trustee or other person  
3    that reasonably relies on the validity of a distribution of part or  
4    all of the income and principal of a trust to another trust, or a  
5    modification of a trust, under this chapter or the law of another  
6    jurisdiction is not liable to any person for any action or failure to  
7    act as a result of the reliance.

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

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

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

34           (5) A reference under this title to a trust instrument or to  
35    terms of the trust includes the second trust, the second trust  
36    instrument, and the terms of the second trust.

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



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

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

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

11 (a) "Beneficiary with a disability" means a beneficiary of the  
12 first trust who the trustee believes may qualify for governmental  
13 benefits based on disability, whether or not the beneficiary  
14 currently receives those benefits or is an individual who is  
15 incapacitated within the meaning of RCW 11.88.010.

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

18 (c) "Special needs trust" means a trust the trustee believes  
19 would not be considered a resource for purposes of determining  
20 whether the beneficiary with a disability is eligible for  
21 governmental benefits.

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

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

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

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

32 (a) The provisions of the second trust for a beneficiary with a  
33 disability may:

34 (i) Meet the medicaid law requirements for an account in a pooled  
35 trust for a beneficiary with a disability under 42 U.S.C. Sec.  
36 1369p(d)(4)(C), as amended, including requiring a payback to the  
37 state of medicaid expenditures of funds not retained by the pooled  
38 trust; or

1 (ii) Meet the medicaid law requirements for a trust for the sole  
2 benefit of a beneficiary with a disability under age sixty-five under  
3 42 U.S.C. Sec. 1369(d)(4)(A), as amended, including requiring a  
4 payback to the state of medicaid expenditures.

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

7 (c) Except as affected by any change to the interests of the  
8 beneficiary with a disability, the second trusts, in the aggregate,  
9 must grant each other beneficiary of the first trust beneficial  
10 interests in the second trusts which are substantially similar to the  
11 beneficiary's beneficial interests in the first trust unless  
12 inconsistent with (a)(i) or (ii) of this subsection (3).

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

14 (1) A trustee may not exercise the decanting power to the extent the  
15 first trust instrument expressly prohibits exercise of the decanting  
16 power or a power granted by state law to the trustee to modify the  
17 trust including, but not limited to, modification pursuant to chapter  
18 11.96A RCW, and any exercise of the decanting power is subject to the  
19 prohibition and the prohibition must be included in the second trust  
20 instrument or modified first trust instrument. If the first trust  
21 instrument contains an express restriction on exercise of the  
22 decanting power or such a power to modify the trust, the exercise of  
23 the decanting power is subject to the restriction and the restriction  
24 must be included in the second trust instrument or modified first  
25 trust instrument.

26 (2)(a) Whether or not a first trust instrument specifies a  
27 trustee's compensation, the trustee may not exercise the decanting  
28 power to increase the trustee's compensation beyond any compensation  
29 specified or above the compensation permitted by RCW 11.98.070(26)  
30 unless:

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

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

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

38 (3) Except as otherwise provided in subsection (2)(a)(i) or (ii)  
39 or (b) of this section, a second trust instrument may not relieve a

1 trustee from liability for breach of trust to a greater extent than  
2 the first trust instrument.

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

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

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

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

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

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

23 (5) A second trust may have a duration that is the same as or  
24 different from the duration of the first trust. Notwithstanding the  
25 foregoing, to the extent that income and principal of a second trust  
26 is attributable to income and principal of the first trust, the  
27 second trust is subject to any maximum perpetuity, accumulation, or  
28 suspension of the power of alienation rules that were applicable to  
29 income and principal of the first trust.

30 (6) If a first trust contains a charitable interest, the attorney  
31 general has the rights of a qualified beneficiary and may represent  
32 and bind the charitable interest and the attorney general has the  
33 authority to participate in any proceedings in accordance with  
34 chapter 11.110 RCW. If a first trust contains a charitable interest,  
35 the second trusts, in the aggregate, may not:

36 (a) Diminish the charitable interest;

37 (b) Diminish the interest of any entity that holds the charitable  
38 interest; or

39 (c) Alter any charitable purpose stated in the first trust  
40 instrument.

1 (7) If the first trust contains assets that qualified, or would  
2 have qualified but for the provisions of this chapter other than this  
3 subsection, for a tax benefit as defined in this subsection, the  
4 second trust instrument must not include or omit a term which would  
5 have prevented the first trust from qualifying in the same manner  
6 for, or would have reduced the amount of, that tax benefit.

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

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

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

21 (iii) The exclusion from the gift tax described in 26 U.S.C. Sec.  
22 2503(b), including by application of Title 26 U.S.C. Sec. 2503(c) of  
23 the internal revenue code, as amended;

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

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

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

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

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

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

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

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

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

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

19 (B) The first trust instrument contains a provision granting the  
20 settlor or another person the power to cause the first trust to cease  
21 to be a grantor trust and the second trust instrument contains the  
22 same provision.

23 (8) A trustee may not exercise the decanting power if RCW  
24 11.98.200 applies to the first trust and exercise would cause RCW  
25 11.98.200 not to apply to the second trust or modified first trust  
26 instrument.

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

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

1           (2) This chapter does not limit the power of a trustee,  
2 powerholder, or other person to distribute or appoint income and  
3 principal in further trust or to modify a trust under the trust  
4 instrument, law of this state other than this title, a court order,  
5 or a nonjudicial agreement. This chapter does not increase or modify  
6 the requirements for a binding agreement under RCW 11.96A.220 or the  
7 requirements for a directed trust under chapter 11.98A RCW. This  
8 chapter does not affect the ability of a settlor to provide in a  
9 trust instrument for the distribution or appointment in further trust  
10 of the trust income and principal or for modification of the trust  
11 instrument.

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

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

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

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

21           (b) Provides by its trust instrument that it is governed by the  
22 law of this state or is governed by the law of this state for  
23 purposes of:

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

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

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

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

31           (7) If exercise of the decanting power would be effective under  
32 this chapter except that the second trust instrument in part does not  
33 comply with this chapter, the exercise of the decanting power is  
34 effective and the following rules apply to the principal of the first  
35 trust subject to the exercise of the power:

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

39           (b) A provision required by this chapter to be in the second  
40 trust instrument which is not contained in the instrument is deemed

1 to be included in the instrument to the extent necessary to comply  
2 with this chapter.

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

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

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

Passed by the Senate March 1, 2017.

Passed by the House April 5, 2017.

Approved by the Governor April 17, 2017.

Filed in Office of Secretary of State April 17, 2017.

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