

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM  
2026 REGULAR SESSION  
**Unofficial Document**

Amend printed copy of **SB 50**

On page 6, line 26, after "Section", delete "58" and insert "56" in lieu thereof; and  
 On page 6, line 27, after "Section", delete "59" and insert "57" in lieu thereof; and  
 On page 35, line 1, after "Section", delete "125" and insert "123" in lieu thereof; and  
 On page 34, line 27, after "Section", delete "118" and insert "116" in lieu thereof; and  
 On page 39, line 5, after "Section", delete "118" and insert "116" in lieu thereof; and  
 On page 39, line 14, after "Section", delete "118" and insert "116" in lieu thereof; and  
 On page 39, line 16, after "Section", delete "118" and insert "116" in lieu thereof; and  
 On page 39, line 17, after "Section", delete "118" and insert "116" in lieu thereof; and  
 On page 39, line 18, after "Section", delete "118" and insert "116" in lieu thereof; and  
 On page 39, line 19, after "Section", delete "125" and insert "123" in lieu thereof; and  
 On page 44, beginning on line 10 and continuing through page 48, line 6, delete Sections  
 56 and 57 in their entirety; and

Renumber subsequent sections accordingly; and

On page 56, line 15, after "Section", delete "58" and insert "56" in lieu thereof; and

On page 56, beginning on line 22 and continuing through page 121, line 26, delete all text  
in its entirety and insert the following in lieu thereof:

"→SECTION 59. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ  
AS FOLLOWS:

Amendment No. SFA 1

Rep. Sen. Brandon J. Storm

Committee Amendment \_\_\_\_\_

Signed: \_\_\_\_\_

Floor Amendment \_\_\_\_\_

LRD Drafter: \_\_\_\_\_

Adopted: \_\_\_\_\_

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

Rejected: \_\_\_\_\_

Doc. ID: XXXX

**Not for Filing**

As used in Sections 59 to 69 of this Act, unless the context otherwise requires:

- (1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured;
- (2) "Creditor" means, with respect to a transferor, a person who has a claim;
- (3) "Debt" means liability on a claim;
- (4) "Disposition":
  - (a) Means a transfer, conveyance, or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one (1) or more new trustees; and
  - (b) Includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition;
- (5) "Investment advisor" means a person given authority by the terms of a qualified trust to direct, consent to, or disapprove a transferor's actual or proposed investment decisions, distribution decisions, or other decisions of the transferor;
- (6) "Investment decision" means the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments;
- (7) "Person" has the same meaning as in Section 116 of this Act;
- (8) "Property" means anything that may be the subject of ownership, including real property, personal property, and interests in real or personal property, but does not include any property that is encumbered by a valid lien;
- (9) "Qualified affidavit" means a sworn affidavit signed by the transferor before a disposition of assets to a qualified trust that meets the requirements of Section 60 of this

Act. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the transferor who made the original disposition to the trustee or a predecessor trustee in a form that meets the requirements of paragraphs (b) and (c) of subsection (11) of this section and shall state facts as of the time of the original disposition;

(10) "Qualified disposition" means a disposition by or from a transferor with or without consideration to a qualified trust after the transferor executes a qualified affidavit;

(11) "Qualified trust" means an instrument appointing a qualified trustee or qualified trustees for property that is the subject of a disposition, which instrument:

(a) Expressly incorporates the law of this Commonwealth to govern the validity, construction, and administration of the trust;

(b) Is irrevocable; and

(c) Provides that the interest of the transferor or other beneficiary in trust property or income from trust property may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute property or income from the trust to the beneficiary;

(12) "Qualified trustee" means a person who:

(a) In the case of a natural person, is a resident of this Commonwealth, or in all other cases, is authorized by the law of this Commonwealth to act as a trustee and whose activities are subject to supervision by the Kentucky Department of Financial Institutions, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or any successor to those entities;

(b) Maintains or arranges for custody in this Commonwealth of some or all of the property that is the subject of the qualified disposition, maintains records for the qualified trust on an exclusive or nonexclusive basis, prepares or arranges for the

preparation of required income tax returns for the qualified trust, or otherwise materially participates in the administration of the qualified trust; and

(c) Is not the transferor;

(13) "Spouse or former spouse" means only persons to whom the transferor was legally married at or before the time the qualified disposition is made;

(14) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in the person's capacity:

(a) As an owner of property;

(b) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate, or the creditors of the holder's estate; or

(c) As a trustee; and

(15) "Trustee" means an original, additional, and successor trustee, and a cotrustee, whether singular or plural, who is a fiduciary relative to any power or duty held by that person that could otherwise be held by a trustee.

➔SECTION 60. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ

AS FOLLOWS:

A qualified affidavit shall state that:

(1) The transferor has full right, title, and authority to transfer the assets to the trust;

(2) The transfer of the assets to the trust will not render the transferor insolvent;

(3) The transferor does not intend to defraud a creditor by transferring the assets to the trust;

(4) The transferor does not have any pending or threatened court actions against the transferor, except for those court actions identified by the transferor on an attachment to the affidavit;

- (5) The transferor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit;
- (6) The transferor does not contemplate filing for relief under the federal bankruptcy code;  
and
- (7) The assets being transferred to the trust were not derived from unlawful activities.

➔SECTION 61. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) Notwithstanding any law to the contrary, including KRS 386B.5-020(7)(a), no action of any kind, including but not limited to an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition to a qualified trust or for the avoidance of a qualified disposition to a qualified trust, unless:
- (a) The action is brought pursuant to the Kentucky Uniform Voidable Transactions Act, KRS 378A.005 to 378A.140; and
- (b) The qualified disposition was made with actual intent to defraud a creditor whose claim arose after a qualified disposition.
- (2) (a) Notwithstanding KRS 378A.090, a creditor's claim under subsection (1) of this section shall be extinguished:
1. If the person is a creditor when the qualified disposition to a qualified trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or
  2. If the person becomes a creditor after a qualified disposition to a qualified trust is made, unless the action is commenced within two (2) years after the

qualified disposition is made.

(b) Any valid lien attaching to property before a disposition of that property to a trustee of a qualified trust shall survive the disposition, and the trustee shall take title to the property subject to the valid lien and subject to any agreements that created or perfected the valid lien. This chapter shall not be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents. In the event of any conflict between this subparagraph and any other provision of this chapter, this subparagraph shall control.

(c) If paragraph (a) of this subsection applies:

1. A person shall be deemed to have discovered the existence of a qualified disposition to a qualified trust at the time any public record is made of any transfer of property relative to the qualified disposition, including but not limited to the conveyance of real property that is recorded in the office of the county clerk in which the property is located, the filing of a financing statement under Article 9 of KRS Chapter 355, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this Commonwealth; and

2. No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of the property was made with intent to defraud that specific creditor.

(3) For purposes of Sections 59 to 69 of this Act, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time the property that is the subject of the qualified disposition was

originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of subsection (11)(a) and (c) of Section 59 of this Act.

(4) Notwithstanding any law to the contrary:

(a) A creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition that are provided in this section and Section 63 of this Act;

(b) Neither a creditor nor any other person shall have any claim or cause of action against the trustee, an advisor of a qualified trust, or any person involved in the counseling, drafting, preparation, execution, or funding of a qualified trust; and

(c) For purposes of this subsection, counseling, drafting, preparation, execution, or funding of a qualified trust includes the counseling, drafting, preparation, execution, or funding of a limited partnership or limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the qualified trust.

(5) Notwithstanding any law to the contrary, no action of any kind, including but not limited to an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a qualified trust, or against any person involved in the counseling, drafting, preparation, execution, or funding of a qualified trust if, as of the date the action is brought, an action by a creditor with respect to the qualified trust would be barred under this section.

(6) In circumstances where more than one (1) qualified disposition is made by means of the same qualified trust:

(a) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition

is extinguished as provided in subsection (2) of this section; and

(b) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(7) (a) If, in any action brought against a qualified trust, a court takes any action whereby the court declines to apply the law of this Commonwealth in determining the effect of a spendthrift provision of the trust:

1. The trustee shall immediately, upon the court's action and without the further order of any court, cease in all respects to be trustee and a successor trustee shall succeed as trustee in accordance with the terms of the trust; or

2. If the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this Commonwealth, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and Sections 59 to 69 of this Act.

(b) Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this subsection.

(8) A qualified trust shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in Section 68 of this Act or serves as an investment advisor pursuant to Section 66 of this Act.

(9) (a) Notwithstanding subsection (1) or (2) of this section, the limitations on actions by creditors in law or equity shall not apply, and such creditors' claims shall not be extinguished, if the transferor is indebted on account of an agreement, judgment, or order of a court for the payment of any of the following:

1. Past due child support;

2. Past due temporary or permanent maintenance to a spouse or former spouse;
  3. A written agreement, judgment, or order of a court for division of marital property of a spouse or former spouse, but only to the extent of the debt, legally mandated interest on the debt, and the reasonable cost of collection of the debt; or
  4. A valid note, mortgage, security interest, or debt instrument in existence prior to the qualified disposition.
- (b) 1. A claim under this subsection shall be asserted against a trustee only:
- a. Upon a final, nonappealable determination of a Kentucky court or a fully domesticated, final, nonappealable order of a court of another state as defined by Section 116 of this Act that the debt is past due; and
  - b. After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that such attempts would be futile.
2. Nothing in this paragraph shall be construed to prohibit the court from making the findings required in subparagraph 1. of this paragraph in the same proceeding and order.
- (c) This subsection shall not apply to any claim for forced heirship, legitime, or elective share.

➔SECTION 62. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

A transferor shall only have the powers and rights conferred by the qualified trust. The powers and rights conferred by the qualified trust upon the transferor are personal powers and rights that may not be exercised by a creditor or any other person, except as expressly permitted by the trust. Except as permitted by Sections 66 and 68 of this Act, the transferor shall have no

rights or authority with respect to the corpus of the qualified trust or the income from the trust, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

➔ SECTION 63. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) A qualified disposition to a qualified trust shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition was avoided, together with costs, including attorneys' fees, that the court may allow.

(2) In the event any qualified disposition is avoided as described in subsection (1) of this section:

(a) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

1. The qualified trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the qualified trustee in defense of the action or proceedings to avoid the qualified disposition except any valid lien attaching to the property before a disposition of that property to a trustee of a qualified trust shall survive the disposition, and the trustee shall take title to the property subject to the valid lien and subject to any agreements that created or perfected the valid lien;

2. The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims, and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and

3. For purposes of this paragraph, it shall be presumed that the qualified trustee

did not act in bad faith merely by accepting the property; and

(b) 1. If the court is satisfied that a beneficiary of a qualified trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the beneficiary's right to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees of the qualified trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid a qualified disposition.

2. For purposes of this paragraph, it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(3) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of subsection (11)(a) of Section 59 of this Act.

(4) In the case of a disposition to more than one (1) trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the recipient trustees are qualified trustees.

➔SECTION 64. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

A spendthrift provision as described in subsection (11)(c) of Section 59 of this Act shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. sec. 541(c)(2) or any successor provision.

➔SECTION 65. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) For purposes of Sections 59 to 69 of this Act, none of the following shall be considered a qualified trustee:

(a) The transferor or any other natural person who is a nonresident of this Commonwealth; or

(b) An entity:

1. That is not authorized by the law of this Commonwealth to act as a trustee; or

2. Whose activities are not subject to supervision as provided in subsection (12)(a) of Section 59 of this Act.

(2) (a) Nothing in Sections 59 to 69 of this Act shall preclude a transferor from appointing one (1) or more advisors, including but not limited to:

1. Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors;

2. Advisors who have authority under the terms of the trust instrument to direct, consent to, or disapprove distributions from the trust; or

3. Investment advisors, whether or not the advisors would meet the requirements of subsection (12) of Section 59 of this Act.

(b) For purposes of this subsection, "advisor" includes a trust protector or any other person who, in addition to a qualified trustee, holds one (1) or more trust powers.

➔SECTION 66. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

A person may serve as an investment advisor notwithstanding that the person is the transferor of the qualified disposition.

➔SECTION 67. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

In the event that a qualified trustee of a qualified trust ceases to meet the requirements of

subsection (12)(a) of Section 59 of this Act, and there remains no trustee that meets the requirements, the qualified trustee shall be deemed to have resigned as of the time of that cessation, and thereupon, the successor qualified trustee provided for in the qualified trust shall become a qualified trustee of the qualified trust, or in the absence of any successor qualified trustee provided for in the qualified trust, then a court of this Commonwealth shall, upon application of any interested party, appoint a successor qualified trustee.

➔SECTION 68. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

A qualified trust shall not be deemed revocable on account of its inclusion of one (1) or more of the following:

- (1) A transferor's power to veto a distribution from the trust;
- (2) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate, either exercisable by written instrument of the transferor during the transferor's life or exercisable by will or other written instrument of the transferor effective upon the transferor's death;
- (3) The transferor's potential or actual receipt of income, including rights to the income retained in the trust;
- (4) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in 26 U.S.C. sec. 664 or any successor provision;
- (5) The transferor's receipt each year of an amount specified in the trust, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined from time to time pursuant to the trust;
- (6) The transferor's potential or actual receipt or use of principal if the potential or actual

receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting:

(a) In the qualified trustee's or trustees' discretion. For purposes of this subsection, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust;

(b) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or 2514(c)(1), as amended; or

(c) At the direction of an advisor described in Section 65 of this Act who is acting:

1. In the advisor's discretion; or

2. Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or 2514(c)(1), as amended;

(7) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; provided, however, that the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of 26 U.S.C. sec. 672(c) or any successor provision;

(8) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in 26 U.S.C. sec. 2702(c) or

any successor provision;

(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly permits a distribution to the transferor as reimbursement for such taxes and if the distribution would be the result of a qualified trustee's or qualified trustees' acting:

(a) In the qualified trustee's or trustees' discretion or pursuant to a mandatory direction in the trust instrument; or

(b) At the direction of an advisor described in Section 65 of this Act who is acting in that advisor's discretion;

(10) The ability, whether pursuant to direction in the qualified trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; or

(11) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subsections (3), (6), (9), or (10) of this section by direct payment to taxing authorities.

➔SECTION 69. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

Sections 59 to 69 of this Act shall apply to qualified dispositions to qualified trusts and dispositions by transferors who are trustees made on or after the effective date of this Act.

➔SECTION 70. SUBCHAPTER 12 OF KRS CHAPTER 386B IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this subchapter:

- (1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, the provisions of Sections 70 to 86 of this Act, or other law of this Commonwealth pertaining to trusts;
- (2) "Directed trust" means a trust for which the terms of the trust grant a power of direction;
- (3) "Directed trustee" means a trustee that is subject to a trust director's power of direction;
- (4) "Person" has the same meaning as in Section 116 of this Act;
- (5) "Power of direction" has the same meaning as in Section 116 of this Act;
- (6) "Settlor" has the same meaning as in Section 116 of this Act;
- (7) "State" has the same meaning as in Section 116 of this Act;
- (8) "Terms of a trust" has the same meaning as in Section 116 of this Act;
- (9) "Trust director" has the same meaning as in Section 116 of this Act; and
- (10) "Trustee" has the same meaning as in Section 116 of this Act.

➔SECTION 71. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

Sections 70 to 86 of this Act apply to a trust, whenever created, that has its principal place of administration in this Commonwealth, subject to the following rules:

- (1) If the trust was created before the effective date of this Act, Sections 70 to 86 of this Act apply only to a decision or action occurring on or after the effective date of this Act; and
- (2) If the principal place of administration of the trust is changed to this Commonwealth on or after the effective date of this Act, Sections 70 to 86 of this Act apply only to a decision or action occurring on or after the date of the change.

➔SECTION 72. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

The common law and principles of equity supplement the provisions of Sections 70 to 86 of

this Act, except to the extent modified by Sections 70 to 86 of this Act or another statute of this Commonwealth.

➔SECTION 73. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(2) The provisions of Sections 70 to 86 of this Act shall not apply to a:

(a) Power of appointment;

(b) Power to appoint or remove a trustee or trust director;

(c) Power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(d) Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

1. The beneficiary; or

2. Another beneficiary represented by the beneficiary under KRS 386B.3-010 to 386B.3-050 with respect to the exercise or nonexercise of the power; or

(e) Power over a trust if:

1. The terms of the trust provide that the power is held in a nonfiduciary capacity; and

2. The power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986, as amended, and regulations issued thereunder, as amended.

(3) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which

is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

➔SECTION 74. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) Subject to Section 75 of this Act, the terms of a trust may grant a power of direction to a trust director.

(2) Unless the terms of a trust provide otherwise:

(a) A trust director may exercise any further power appropriate to the exercise or nonexercise of power of direction granted to the director under subsection (1) of this section; and

(b) Trust directors with joint powers shall act by majority decision.

➔SECTION 75. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under subsection (2)(a) of Section 74 of this Act regarding:

(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C. sec. 1396p(d)(4)(A), as amended, and regulations issued thereunder, as amended; and

(2) A charitable interest in the trust, including notice regarding the interest to the Attorney General.

➔SECTION 76. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) Subject to subsection (2) of this section, with respect to a power of direction or further power under subsection (2)(a) of Section 74 of this Act:

- (a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:
1. If the power is held individually, as a sole trustee in a like position and under similar circumstances; or
  2. If the power is held jointly with a trustee or another trust director, as a cotrustee in like position and under similar circumstances; and
- (b) The terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.
- (2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than the provisions of Sections 70 to 86 of this Act to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director shall have no duty or liability under Sections 70 to 86 of this Act.
- (3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

➔SECTION 77. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

- (1) Subject to subsection (2) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under subsection (2)(a) of Section 74 of this Act, and the trustee is not liable for the action.
- (2) A directed trustee shall not comply with a trust director's exercise or nonexercise of a power of direction or further power under Section 74 of this Act to the extent that by complying, the trustee would engage in willful misconduct.

- (3) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:
- (a) The breach involved the trustee's or other director's willful misconduct;
  - (b) The release was induced by improper conduct of the trustee or other director in procuring the release; or
  - (c) At the time of the release, the director did not know the material facts relating to the breach.
- (4) A directed trustee that has reasonable doubt about its duty under this section may petition a court with jurisdiction under Subchapter 2 of KRS Chapter 386B for instructions.
- (5) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

➔SECTION 78. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

- (1) Subject to Section 79 of this Act, a trustee shall provide information to a trust director to the extent the information is reasonably related to both:
- (a) The powers or duties of the trustee; and
  - (b) The powers or duties of the director.
- (2) Subject to Section 79 of this Act, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to both:
- (a) The powers or duties of the director; and
  - (b) The powers or duties of the trustee or other director.
- (3) A trustee that acts in reliance on information provided by a trust director is not liable for breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

**(4) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.**

➔SECTION 79. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

**(1) Unless the terms of a trust provide otherwise:**

**(a) The trustee shall not have a duty to:**

**1. Monitor a trust director; or**

**2. Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and**

**(b) By taking an action described in paragraph (a) of this subsection, a trustee does not assume the duty excluded by paragraph (a) of this subsection.**

**(2) Unless the terms of a trust provide otherwise:**

**(a) The trust director shall not have a duty to:**

**1. Monitor a trustee or another trust director; or**

**2. Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another director; and**

**(b) By taking an action described in paragraph (a) of this subsection, a trust director does not assume the duty excluded by paragraph (a) of this subsection.**

➔SECTION 80. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

**The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in**

*a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power under Sections 77, 78, and 79 of this Act.*

➔SECTION 81. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

*(1) An action against a trust director for breach of trust shall be commenced within the same limitation period as under KRS 386B.10-050 for an action for breach of trust against a trustee in a like position and under similar circumstances.*

*(2) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under KRS 386B.10-050 in an action for breach of trust against a trustee in a like position and under similar circumstances.*

➔SECTION 82. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

*In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.*

➔SECTION 83. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

*(1) By accepting appointment as a trust director of a trust subject to the provisions of Sections 70 to 86 of this Act, the director submits to personal jurisdiction of the courts of this Commonwealth regarding any matter related to a power or duty of the director.*

*(2) This section shall not preclude other methods of obtaining jurisdiction over a trust director.*

➔SECTION 84. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

- (1) Acceptance under KRS 386B.7-010;
- (2) Giving of bond to secure performance under KRS 386B.7-020;
- (3) Reasonable compensation under KRS 386B.7-080;
- (4) Resignation under KRS 386B.7-050;
- (5) Removal under KRS 386B.7-060; and
- (6) Vacancy and appointment of successor under KRS 386B.7-040.

→SECTION 85. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

In applying and construing Sections 75 to 86 of this Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

→SECTION 86. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 70 to 86 of this Act modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but do not modify, limit, or supersede 15 U.S.C. sec. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. sec. 7003(b).

→SECTION 87. SUBCHAPTER 13 OF KRS CHAPTER 386B IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this subchapter:

- (1) "Appointive property" means the property or property interest subject to a power of appointment;
- (2) "Ascertainable standard" means the same as in Section 116 of this Act;

**(3) "Authorized fiduciary" means:**

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

**(b) A special fiduciary appointed under Section 94 of this Act; or**

**(c) A special needs fiduciary under Section 98 of this Act;**

**(4) "Beneficiary" means a person that:**

**(a) Has a present or future, vested or contingent, beneficial interest in a trust;**

**(b) Holds a power of appointment over trust property; or**

**(c) Is an identified charitable organization that will or may receive distributions under the terms of the trust;**

**(5) "Charitable interest" means an interest in a trust which:**

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

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

**(c) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary;**

**(6) "Charitable organization" means:**

**(a) A person, other than an individual, organized and operated exclusively for charitable purposes; or**

**(b) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose;**

**(7) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or**

another purpose the achievement of which is beneficial to the community;

(8) "Court" means a court in this Commonwealth having jurisdiction in matters relating to trusts under Subchapter 2 of this chapter;

(9) "Current beneficiary":

(a) Means a beneficiary that on the date of the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal;  
and

(b) Includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment;

(10) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under Sections 70 to 86 of this Act to distribute property of a first trust to one (1) or more second trusts or to modify the terms of the first trust;

(11) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard;

(12) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power;

(13) "First-trust instrument" means the trust instrument for a first trust;

(14) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate;

(15) "Jurisdiction" has the same meaning as in Section 116 of this Act;

(16) "Person" has the same meaning as in Section 116 of this Act;

(17) "Power of appointment":

(a) Means a power that enables a powerholder acting in a nonfiduciary capacity to

designate a recipient of an ownership interest in or another power of appointment over the appointive property; and

(b) Does not include a power of attorney;

(18) "Powerholder" means a person in which a donor creates a power of appointment;

(19) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time and:

(a) Includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

1. The occurrence of the specified event;

2. The satisfaction of the ascertainable standard; or

3. The passage of the specified time; and

(b) Does not include a power exercisable only at the powerholder's death;

(20) "Qualified beneficiary" has the same meaning as in Section 116 of this Act;

(21) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. sec. 674(b)(5)(A), as amended, and any applicable regulations;

(22) "Record" has the same meaning as in Section 32 of this Act;

(23) "Second-trust instrument" means the trust instrument for a second trust;

(24) "Settlor," except as otherwise provided in Section 110 of this Act, has the same meaning as in Section 116 of this Act;

(25) "Sign" has the same meaning as in Section 32 of this Act;

(26) "State" has the same meaning as in Section 116 of this Act;

(27) "Terms of the trust" has the same meaning as in Section 116 of this Act; and

(28) "Trust instrument" has the same meaning as in Section 116 of this Act.

➔SECTION 88. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

- (1) Except as otherwise provided in subsections (2) and (3) of this section, the provisions of Sections 87 to 114 of this Act shall apply to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.
- (2) Sections 87 to 114 of this Act shall not apply to a trust held solely for charitable purposes.
- (3) Subject to Section 100 of this Act, a trust instrument may restrict or prohibit exercise of the decanting power.
- (4) Sections 87 to 114 of this Act do not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, statutes of this Commonwealth other than the provisions of Sections 87 to 114 of this Act, common law, a court order, or a nonjudicial settlement agreement.
- (5) Sections 87 to 114 of this Act do not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

➔SECTION 89. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

- (1) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.
- (2) Sections 87 to 114 of this Act do not create or imply a duty to exercise the decanting power or to inform the beneficiaries about the applicability of Sections 87 to 114 of this Act.

**(3) Except as otherwise provided in a first-trust instrument, for purposes of Sections 70 to 86 of this Act and KRS 386B.8-010 and 386B.8-020, the terms of the first trust are deemed to include the decanting power.**

➔SECTION 90. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

**Sections 87 to 114 of this Act shall apply to a trust created before, on, or after the effective date of this Act which:**

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

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

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

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

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

➔SECTION 91. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

**A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under Sections 87 to 114 of this Act, statutes of this Commonwealth other than Sections 87 to 114 of this Act, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.**

➔SECTION 92. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

**(1) A notice period in this section begins on the day notice is given under subsection (3) of**

this section and ends fifty-nine (59) days after the day notice is given.

- (2) Except as otherwise provided in Sections 87 to 114 of this Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.
- (3) Except as otherwise provided in subsection (6) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not less than sixty (60) days before the exercise to:
- (a) Each settlor of the first trust, if living or then in existence;
  - (b) Each qualified beneficiary of the first trust;
  - (c) Each holder of a presently exercisable power of appointment over any part or all of the first trust;
  - (d) Each person that currently has the right to remove or replace the authorized fiduciary;
  - (e) Each other fiduciary of the first trust;
  - (f) Each fiduciary of the second trust; and
  - (g) The Attorney General, if subsection (2) of Section 99 of this Act applies.
- (4) An authorized fiduciary is not required to give notice under subsection (3) of this section to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.
- (5) A notice under subsection (3) of this section shall:
- (a) Specify the manner in which the authorized fiduciary intends to exercise the decanting power;
  - (b) Specify the proposed effective date for exercise of the power; and
  - (c) Include a copy of:
    - 1. The first-trust instrument; or

2. All second-trust instruments.

- (6) The decanting power may be exercised before the expiration of the notice period under subsection (1) of this section if all persons entitled to receive notice waive the period in a signed record.
- (7) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under Section 94 of this Act asserting that:
- (a) An attempted exercise of the decanting power is ineffective because it did not comply with the provisions of Sections 87 to 114 of this Act or was an abuse of discretion or breach of fiduciary duty; or
- (b) Section 107 of this Act applies to the exercise of the decanting power.
- (8) An exercise of the decanting power is not ineffective because of the failure to give notice to one (1) or more persons under subsection (3) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (3) of this section.

➔SECTION 93. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

- (1) Notice to a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter has the same effect as notice given directly to the person represented.
- (2) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.
- (3) A person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter may file an application under Section 94 of

this Act on behalf of the person represented.

(4) A settlor may not bind or represent a beneficiary under Sections 87 to 114 of this Act.

➔SECTION 94. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) On application of an authorized fiduciary, a person entitled to notice under subsection

(3) of Section 92 of this Act, a beneficiary, or with respect to a charitable interest, the Attorney General or other person that has standing to enforce the charitable interest, the court may:

(a) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under Sections 87 to 114 of this Act and consistent with the fiduciary duties of the authorized fiduciary;

(b) Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under Sections 87 to 114 of this Act and to exercise the decanting power;

(c) Approve an exercise of the decanting power;

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

1. After applying Section 107 of this Act, the proposed or attempted exercise does not or did not comply with the provisions of Sections 87 to 114 of this Act; or

2. The proposed or attempted exercise would be or was an abuse of fiduciary's discretion or a breach of fiduciary duty;

(e) Determine the extent to which Section 107 of this Act applies to a prior exercise of the decanting power;

(f) Provide instructions to the trustee regarding the application of Section 107 of this

Act to a prior exercise of the decanting power; or

(g) Order other relief to carry out the purposes of Sections 87 to 114 of this Act.

(2) On application of an authorized fiduciary, the court may approve:

(a) An increase in the fiduciary's compensation under Section 101 of this Act; or

(b) A modification under Section 103 of this Act of a provision granting a person the right to remove or replace the fiduciary.

→SECTION 95. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

An exercise of the decanting power shall be made in a record signed by an authorized fiduciary. The signed record shall, directly or by reference to the notice required by Section 92 of this Act, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

→SECTION 96. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate;

(b) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary;

(c) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a

person that is a beneficiary only because the person holds a nongeneral power of appointment; and

(d) "Vested interest" means:

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

(2) Subject to subsection (3) of this section and Section 99 of this Act, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one (1) or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(3) Subject to Section 98 of this Act, in an exercise of the decanting power under this section, a second trust shall not:

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

- beneficiary of the first trust, except as otherwise provided in subsection (4) of this section; or
- (c) Reduce or eliminate a vested interest.
- (4) Subject to subsection (3)(c) of this section and Section 99 of this Act, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:
- (a) Retain a power of appointment granted in the first trust;
- (b) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;
- (c) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and
- (d) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.
- (5) A power of appointment described in paragraphs (a) to (d) of subsection (4) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.
- (6) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

➔SECTION 97. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B

IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.
- (2) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for the benefit of one (1) or more current beneficiaries may exercise the decanting power over the principal of the first trust.
- (3) Under this section and subject to Section 99 of this Act, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, shall grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary of the first trust.
- (4) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

  - (a) The distribution is applied for the benefit of the beneficiary;
  - (b) The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or
  - (c) The distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.
- (5) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

➔SECTION 98. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B

IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

- (a) "Beneficiary with a disability" means a beneficiary of a first trust who the special needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incompetent;
- (b) "Governmental benefits" means financial aid or services from a state, federal, or other public agency;
- (c) "Special needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:
1. A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one (1) or more current beneficiaries;
  2. If no trustee or fiduciary has discretion under subparagraph 1. of this paragraph, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one (1) or more current beneficiaries; or
  3. If no trustee or beneficiary has discretion under subparagraphs 1. and 2. of this paragraph, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one (1) or more current beneficiaries; and
- (d) "Special needs trust" means a trust that the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.
- (2) A special needs fiduciary may exercise the decanting power in Section 96 of this Act over the principal of the first trust as if the fiduciary had authority to distribute principal to a

beneficiary with a disability subject to expanded distributive discretion if:

(a) A second trust is a special needs trust that benefits the beneficiary with a disability;

and

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

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

(a) Notwithstanding subsection (3)(b) of Section 96 of this Act, the interest in the second trust of a beneficiary with a disability may:

1. Be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. sec. 1396p(d)(4)(A), as amended; or

2. Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. sec. 1396p(d)(4)(A), as amended;

(b) Subsection (3)(c) of Section 96 of this Act shall not apply to the interests of the beneficiary with a disability; and

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

➔SECTION 99. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be

held solely for charitable purposes; and

- (b) "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.
- (2) If a first trust contains a determinable charitable interest, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.
- (3) If a first trust contains a charitable interest, the second trust or trusts shall not:
- (a) Diminish the charitable interest;
  - (b) Diminish the interest of an identified charitable organization that holds the charitable interest;
  - (c) Alter any charitable purpose stated in the first-trust instrument; or
  - (d) Alter any condition or restriction related to the charitable interest.
- (4) If there are two (2) or more second trusts, the second trusts shall be treated as one (1) trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (3) of this section.
- (5) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (3) of this section shall be administered under the law of this Commonwealth unless:
- (a) The Attorney General, after having received notice under Section 92 of this Act, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

- (b) The Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or
- (c) The court approves the exercise of the decanting power.
- (6) Sections 87 to 114 of this Act do not limit the powers and duties of the Attorney General under the law of this Commonwealth other than the provisions of Sections 87 to 114 of this Act.

➔SECTION 100. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

- (1) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits the exercise of:
- (a) The decanting power; or
- (b) A power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.
- (2) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to the exercise of:
- (a) The decanting power; or
- (b) A power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.
- (3) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.
- (4) Subject to subsections (1) and (2) of this section, an authorized fiduciary may exercise the decanting power under Sections 87 to 114 of this Act even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(5) If a first-trust instrument contains an express prohibition described in subsection (1) of this section or an express restriction described in subsection (2) of this section, the provision shall be included in the second-trust instrument.

➔SECTION 101 A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

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

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

(b) The increase is approved by the court.

(2) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by this chapter unless:

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

(b) The increase is approved by the court.

(3) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (1) and (2) of this section.

➔SECTION 102. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

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

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

(3) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(4) Subject to subsection (3) of this section, a second-trust instrument may divide and reallocate fiduciary powers among the fiduciaries, including one (1) or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this Commonwealth other than Sections 87 to 114 of this Act.

→SECTION 103. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

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

(1) The person holding the power consents to the modification in a signed record and the modification applies only to that person;

(2) The person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

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

→SECTION 104. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Grantor trust" means a trust as to which a settlor of a first trust is considered the

owner under 26 U.S.C. secs. 671 to 677, as amended, or 26 U.S.C. sec. 679, as amended;

(b) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

(c) "Nongrantor trust" means a trust that is not a grantor trust; and

(d) "Qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. sec. 401(a)(9), as amended, and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. sec. 401(a)(9) or the regulations.

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

(a) If a first trust contains property that qualified, or would have qualified but for provisions of Sections 87 to 114 of this Act other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified;

(b) If the first trust contains property that qualified, or would have qualified but for provisions of Sections 87 to 114 of this Act other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument shall not include or omit any term that, if included from or omitted from the trust instrument for the trust to which the property was transferred, would have

- prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified;
- (c) If the first trust contains property that qualified, or would have qualified but for provisions of Sections 87 to 114 of this Act other than this section, for the exclusion from the gift tax described in:
1. 26 U.S.C. sec. 2503(b), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. sec. 2503(b), as amended; or
  2. 26 U.S.C. sec. 2503(c), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. sec. 2503(c), as amended;
- (d) If the property of the first trust includes shares of stock in an S corporation as defined in 26 U.S.C. sec. 1361, as amended, and the first trust is, or but for provisions of Sections 87 to 114 of this Act other than this section would be, a permitted shareholder under any provision of 26 U.S.C. sec. 1361, as amended, an authorized fiduciary may exercise the power with respect to part of all the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. sec. 1361(c)(2), as amended. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of Sections 87 to 114 of this Act other than this section would be, a qualified subchapter S trust within the meaning of 26 U.S.C. sec. 1361(d), as amended, the second-trust instrument shall not include or omit a term that prevents

the second trust from qualifying as a qualified subchapter S trust;

- (e) If the first trust contains property that qualified, or would have qualified but for provisions of Sections 87 to 114 of this Act other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. sec. 2642(c), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. sec. 2642(c), as amended;
- (f) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument shall not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. sec. 401(a)(9), as amended, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. sec. 401(a)(9), as amended, or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and Section 107 of this Act applies to the separate share;
- (g) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. sec. 672(f)(2)(A), as amended, the second trust shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. sec. 672(f)(2)(A), as amended;
- (h) As used in this paragraph, "tax benefit" means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to paragraph (i) of this

subsection, a second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

1. The first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and
2. The transfer of property held by the first trust or the first trust qualified, or but for the provisions of Sections 87 to 114 of this Act other than this section, would have qualified for the tax benefit;

(i) Subject to paragraph (d) of this subsection:

1. Except as otherwise provided in paragraph (g) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and
2. Except as otherwise provided in paragraph (j) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust; and

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

1. The first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or
2. The first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:
  - a. The settlor has the power at all times to cause the second trust to cease to be a grantor trust; or
  - b. The first-trust instrument contains a provision granting the settlor or

another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

→SECTION 105. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) Subject to subsection (2) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

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

→SECTION 106. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

→SECTION 107. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) If exercise of the decanting power would be effective under Sections 87 to 114 of this Act except that the second-trust instrument in part does not comply with the provisions of Sections 87 to 114 of this Act, the exercise of the power is effective and the following rules shall apply with respect to the principal of the second trust attributable to the exercise of the power:

(a) A provision in the second-trust instrument which is not permitted under Sections 87 to 114 of this Act is void to the extent necessary to comply with Sections 87 to

114 of this Act; and

(b) A provision required by Sections 87 to 114 of this Act to be in the second-trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with Sections 87 to 114 of this Act.

(2) If a trustee or other fiduciary of a second trust determines that subsection (1) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

➔SECTION 108. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Animal trust" means a trust or an interest in a trust created to provide for the care of one (1) or more animals; and

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

(2) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under Sections 87 to 114 of this Act if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(3) A protector for an animal has the rights under Sections 87 to 114 of this Act of a qualified beneficiary.

(4) Notwithstanding any other provision of Sections 87 to 114 of this Act, if a first trust is an animal trust, in an exercise of the decanting power, the second trust shall provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

➔SECTION 109. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

*A reference in KRS Chapter 386B to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.*

➔SECTION 110. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

*(1) For purposes of law of this Commonwealth other than Sections 87 to 114 of this Act and subject to subsection (2) of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.*

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

➔SECTION 111. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

*(1) Except as otherwise provided in subsection (3) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one (1) or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.*

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

*(3) An authorized fiduciary may provide in an exercise of the decanting power or by the*

terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

→ SECTION 112. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

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

→ SECTION 113. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

In applying and construing Sections 87 to 114 of this Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

→ SECTION 114. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 87 to 114 of this Act modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but do not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. sec. 7003(b).

→ Section 115. KRS 386.010 is amended to read as follows:

As used in KRS 386.010 to 386.170~~[386.175]~~, unless the context requires otherwise:

- (1) "Fiduciary" means any trustee, guardian, executor, administrator, conservator or other individual or corporation holding funds or otherwise acting in a fiduciary capacity.
- (2) "Principal" means any person to whom a fiduciary, as such, owes an obligation.

→ Section 116. KRS 386B.1-010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Action" with respect to an act of a trustee, includes a failure to act;
- (2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or 26 U.S.C. sec. 2514(c)(1), as amended;
- (3) "Beneficiary" means a person that:
  - (a) Has a present or future beneficial interest in a trust, vested or contingent; or
  - (b) In a capacity other than that of trustee, holds a power of appointment over trust property;
- (4) "Charitable trust" means a trust, or part of a trust, established for a charitable purpose as described in KRS 386B.4-050(1);
- (5) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual;
- (6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment;
- (7) "Guardian" means a person appointed by the court, a parent, or a spouse to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term shall not include a guardian ad litem;
- (8) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust;
- (9) "Jurisdiction," with respect to a geographic area, includes a state or country;
- (10) "Person" means any individual or entity as defined in KRS 446.010;
- (11) "Power of direction":**
  - (a) Means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee;**

**(b) Includes a power over the investment, management, or distribution of trust property or other matters of trust administration; and**

**(c) Excludes the powers described in subsection (2) of Section 73 of this Act;**

**(12)**~~(11)~~ "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

- (a) Exercisable by a trustee and limited by an ascertainable standard; or
- (b) Exercisable by another person only on the consent of the trustee or a person holding an adverse interest;

**(13)**~~(12)~~ "Property" means anything that may be the subject of ownership, whether legal or equitable, or any interest therein;

**(14)**~~(13)~~ "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

- (a) Is a distributee or permissible distributee of trust income or principal;
- (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (a) of this subsection ended on that date without causing the trust to end; or
- (c) Would be a distributee or permissible distributee of trust income or principal if the trust ended on that date;

**(15)**~~(14)~~ "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest;

**(16)**~~(15)~~ "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one (1) person creates or contributes property to a trust, each person is a settlor of the part of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that part;

**(17)**~~(16)~~ "Spendthrift provision" means a term of a trust which restrains both voluntary and

involuntary transfer of a beneficiary's interest;

~~(18)~~~~(17)~~ "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state;

~~(19)~~~~(18)~~ "Terms of a trust" means:

**(a) Except as otherwise provided in paragraph (b) of this subsection,** the manifestation of the settlor's intent regarding a trust's provisions as:

- 1.** Expressed in the trust instrument; ~~or as may be~~
  - 2.** Established by other evidence that would be admissible in a judicial proceeding;
- or**

**(b) The trust's provisions as established, determined, or amended by:**

- 1. A trustee or trust director in accordance with applicable law;**
- 2. A court order; or**
- 3. A nonjudicial settlement agreement under KRS 386B.1-090;**

~~(20)~~~~(19)~~ (a) "Trust" means an express trust established by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both. This definition includes oral trusts.

(b) "Trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust established by the judgment of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument in which a person is nominee or escrowee for another, a trust

established in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration;

**(21) "Trust director" means a person that is granted power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust;**

~~(22)(20)~~ "Trust instrument" means an instrument signed by the settlor that contains terms of the trust, including any amendments thereto; and

~~(23)(21)~~ "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

➔Section 117. KRS 386B.1-030 is amended to read as follows:

- (1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.
- (2) The terms of a trust prevail over any provision of this chapter, except:
  - (a) The requirements for creating a trust;
  - (b) **Subject to Sections 77, 79, and 80 of this Act,** the duty of a trustee to act in good faith and in the interests of the beneficiaries;
  - (c) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
  - (d) The power of the court to change or terminate a trust under Subchapter 4 of this chapter;
  - (e) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Subchapter 5 of this chapter;
  - (f) The power of the court under KRS 386B.7-020 to require, dispense with, or modify or terminate a bond;

- (g) The power of the court under KRS 386B.7-080(2) to adjust a trustee's compensation as specified in the terms of the trust which is unreasonably low or high;
- (h) The duty to notify and report under KRS 386B.8-130(2);
- (i) The effect of an exculpatory term under KRS 386B.10-080;
- (j) The rights under KRS 386B.10-100, 386B.10-110, and 386B.10-120 of a person other than a trustee or beneficiary;
- (k) Periods of limitation for commencing a judicial proceeding;
- (l) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and
- (m) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in KRS 386B.2-030 and 386B.2-040.

➔Section 118. KRS 386B.1-060 is amended to read as follows:

- (1) Without precluding other means for establishing a connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:
  - (a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;~~{or}~~
  - (b) A trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or**
  - ~~(c){(b)}~~ All or part of the administration occurs in the designated jurisdiction.
- (2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.
- (3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of

the United States.

- (4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty (60) days before initiating the transfer. The notice of proposed transfer shall include:
  - (a) The name of the jurisdiction to which the principal place of administration is to be transferred;
  - (b) The address and telephone number at the new location at which the trustee can be contacted;
  - (c) An explanation of the reasons for the proposed transfer;
  - (d) The date on which the proposed transfer is anticipated to occur; and
  - (e) The date, not less than sixty (60) days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.
- (5) The authority of a trustee under this section to transfer a trust's principal place of administration ends if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.
- (6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under KRS 386B.7-040.
- (7) The District Court shall have exclusive jurisdiction over matters under this section.  
➔Section 119. KRS 386B.3-010 is amended to read as follows:
  - (1) Notice to a person who may represent and bind another person under this subchapter has the same effect as if notice were given directly to the other person.
  - (2) The consent of a person who may represent and bind another person under this subchapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

- (3) Except as otherwise provided under KRS 386B.4-110 and 386B.6-020, a person who under this subchapter may represent a settlor who lacks capacity, may receive notice and give a binding consent on the settlor's behalf.
- (4) A settlor may not represent and bind a beneficiary under this subchapter with respect to the termination or modification of a trust under KRS 386B.4-110(1).
- (5) Provisions of this subchapter shall also be applicable to Sections 87 to 114 of this Act~~KRS 386.175~~ regarding a trustee's power to appoint principal and income in favor of a trustee of a second trust and KRS 386.454 regarding a trustee's power to adjust between principal and income and conversion to unitrust.

➔Section 120. KRS 386B.6-030 is amended to read as follows:

- (1) While a trust is revocable:
  - (a) And, in the reasonable belief of the trustee, the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor; and
  - (b) The trustee may follow a direction of the settlor that is contrary to the terms of the trust.
- (2) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

➔Section 121. KRS 386B.7-030 is amended to read as follows:

- (1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.
- (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
- (3) Subject to Section 80 of this Act, a cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the

cotrustee has properly delegated the performance of the function to another trustee.

- (4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
- (5) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.
- (6) Except as otherwise provided in subsection (7) of this section, a trustee who does not join in an action of another trustee is not liable for the action.
- (7) **Subject to Section 80 of this Act,** each trustee shall exercise reasonable care to:
  - (a) Prevent a cotrustee from committing a breach of trust; and
  - (b) Compel a cotrustee to redress a breach of trust.
- (8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a breach of trust.

➔Section 122. KRS 386B.8-180 is amended to read as follows:

- (1) (a) When a trust terminates pursuant to the terms of the trust, the trustee may follow the requirements for distribution upon termination as provided in KRS 386B.8-170 or, if proceeding under this section, within a reasonable amount of time after such termination, the trustee shall provide to the qualified beneficiaries a statement showing the fair market value of the net assets to be distributed, a trust accounting for the prior five (5) years and an estimate for any items reasonably anticipated but not yet received or disbursed, the amount of any fees, including trustee fees, remaining to be paid, and notice that the trust is terminating. The trustee may also provide such

statement and notice to any other person whom the trustee reasonably believes may have an interest in the trust.

(b) If, after receiving the notice and trust information described in paragraph (a) of this subsection, a qualified beneficiary objects to an action or omission disclosed, he or she shall provide written notice of the objection to the trustee within forty-five (45) days of the notice having been sent by the trustee. If no written objection is provided within the forty-five (45) day time period, the information provided pursuant to paragraph (a) of this subsection shall be considered approved by the recipient and the trustee shall, within a reasonable period of time following the expiration of such period, distribute the assets as provided in the trust. If the trustee receives a written objection within the applicable forty-five (45) day time period, the trustee may:

1. Submit the written objection to the District Court for resolution and charge the expense of commencing such a proceeding to the trust; or
2. Resolve the objection with the qualified beneficiary, whether by nonjudicial settlement agreement or otherwise. Any agreement entered into pursuant to this paragraph may include a release, an indemnity clause, or both on the part of the beneficiary against the trustee relating to the trust. If the parties agree to a nonjudicial settlement agreement, any related expenses shall be charged to the trust.

Upon a resolution of an objection pursuant to subparagraph 1. or 2. of this paragraph, within a reasonable period of time thereafter the trustee shall distribute the remaining trust assets as provided in the trust.

- (c) The trustee may rely upon the written statement of a person receiving notice that such person does not object.
- (2) (a) When a trustee is removed or resigns pursuant to the terms of the trust, the trustee

may follow the requirements for distribution upon termination as provided in KRS 386B.8-170 or, if proceeding under this section, the trustee, within a reasonable time after such removal or resignation, shall provide to the successor trustee a statement showing the net assets to be distributed, a trust accounting for the prior five (5) years, an estimate for any items reasonably anticipated but not yet received or disbursed, the amount of any fees, including trustee fees, remaining to be paid, and notice that the trustee has resigned or been removed. The trustee may also provide such statement and notice to any other person whom trustee reasonably believes may have an interest in the trust.

- (b) Any person provided notice and trust information as described in paragraph (a) of this subsection who objects to an action or omission disclosed shall provide written notice of the objection to the trustee within forty-five (45) days of the notice having been sent by the trustee. If no written objection is provided within the forty-five (45) day time period, the information provided pursuant to paragraph (a) of this subsection will be considered approved, and the trustee shall, within a reasonable period following the expiration of such forty-five (45) day period, distribute the assets to the successor trustee. If the trustee receives a written objection within the applicable forty-five (45) day time period, the trustee may:
1. Submit the written objection to the District Court for resolution and charge the expense of commencing such a proceeding to the trust; or
  2. Resolve the objection with the opposing party, whether by nonjudicial settlement agreement or otherwise. Any agreement entered into pursuant to this paragraph may include a release, an indemnity clause, or both on the part of the opposing party against the trustee relating to the trust. If the parties agree to a nonjudicial settlement agreement, any related expenses shall be charged to the

trust.

Upon a resolution of any objection raised by an opposing party pursuant to subparagraph 1. or 2. of this paragraph, within a reasonable period of time thereafter the trustee shall distribute the remaining trust assets as provided in the trust.

- (c) The trustee may rely upon the written statement of a person receiving notice that such person does not object.
- (3) When a trustee distributes assets of the trust pursuant to subsection (1) or (2) of this section, the limitations in KRS 386B.6-040 and 386B.10-050 are waived by each person who received notice and either consented or failed to object pursuant to this section, and any such person is barred from bringing a claim against the trustee for breach of trust or challenging the validity of the trust, to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account.
- (4) Notice provided under subsection (1) or (2) of this section shall clearly warn of the impending bar of claims against a trustee under KRS 386B.6-040 and 386B.10-050 that will result if an objection is not timely made.
- (5) No trustee trust shall request that any beneficiary indemnify the trustee against loss in exchange for the trustee forgoing a request to the court to approve its accounts at the time the trust terminates or at the time the trustee is removed or resigns, except as agreed upon by the parties pursuant to paragraph (b)1. or 2. of subsections (1) and (2) of this section.
- (6) **For purposes of this section, a termination of a trust under KRS 389B.4-140 shall be considered a termination pursuant to the trust terms.**
- (7)** The District Court shall have exclusive jurisdiction over matters under this section.

➔Section 123. KRS 394.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise, "will":

- (1)** Means a last will or testament, codicil, appointment by will, writing in the nature of a will

in exercise of a power, and any other testamentary disposition; and

(2) Includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

➔SECTION 124. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Beneficiary" means a person designated to receive title to a vehicle upon the death of the preceding owner or joint owners;

(b) "Beneficiary designation form" means a form that contains the intention of a present owner or joint owners of a vehicle to transfer ownership of the vehicle to one (1) named beneficiary upon the death of the owner or last surviving joint owner of the vehicle;

(c) "Joint owner" means:

1. An individual who owns a vehicle with one (1) or more other individuals as joint tenants with rights of survivorship; and

2. "Joint owner" does not include an individual who owns a vehicle with one (1) or more other individuals as tenants in common;

(d) "Owner" means an individual who owns a vehicle; and

(e) "Vehicle" includes any motor vehicle, motorcycle, motor home, trailer, or other item for which a certificate of title is issued by the cabinet.

(2) The cabinet shall provide a beneficiary designation form that allows the owner or joint owners of a vehicle to provide for the transfer of the vehicle's title to one (1) named beneficiary upon the death of the owner or upon the death of all joint owners of the

- vehicle. The form shall include but not be limited to fields for the following information:
- (a) The manufacturer, model, year, and vehicle identification number of the vehicle;
  - (b) The name of the owner or every joint owner of the vehicle;
  - (c) The words "transfer on death to," or the abbreviation "TOD," followed by the name of the beneficiary; and
  - (d) The signature of the owner of the vehicle or of each joint owner of the vehicle.
- (3) The cabinet shall make beneficiary forms available:
- (a) In each county clerk's office; and
  - (b) On the cabinet's public website.
- (4) Upon the death of the owner, or the last surviving joint owner, of a vehicle for which a beneficiary designation form has been properly executed under subsection (2) of this section, the beneficiary shall present the form to the county clerk and request a new title of ownership of the vehicle in the beneficiary's name. The form shall be accompanied by:
- (a) A death certificate of the owner or last surviving joint owner of the vehicle;
  - (b) Proof of payment of ad valorem taxes on the vehicle for the current year. If the taxes have not been paid, the beneficiary may elect to pay the taxes to facilitate the transfer; and
  - (c) The fee for the certificate of title transfer.
- (5) Upon presentation of a properly executed beneficiary designation form and accompanying documents as required under subsection (4) of this section, the county clerk, subject to any security interest in the vehicle, shall issue a new certificate of title to the beneficiary.
- (6) During the lifetime of the owner of the vehicle for which a beneficiary designation form has been properly executed or before the death of the last surviving joint owner of the

**vehicle:**

- (a) The signature or consent of the beneficiary shall not be required for any transaction relating to the vehicle; and**
- (b) The owner or surviving joint owners of the vehicle may revoke the beneficiary designation form or change the beneficiary on the beneficiary designation form at any time by:**
- 1. Selling the vehicle with proper transfer and delivery of the certificate of title to another person; or**
  - 2. Properly executing a subsequent beneficiary designation form that designates a new beneficiary.**
- (7) Upon the death of the owner or the last surviving joint owner of a vehicle for which a beneficiary designation form has been properly executed, the interest of the beneficiary in the vehicle shall be subject to any contract of sale, assignment, or ownership or security interest to which the owner or joint owners of the vehicle were subject during their lifetime.**
- (8) Except as provided in subsection (6)(b) of this section, the designation of a beneficiary in a beneficiary designation form shall not be changed or revoked by will or by other instrument.**
- (9) The transfer on death of a vehicle under this section shall be a nontestamentary transfer and shall not be subject to any tax under KRS 138.460.**

➔Section 125. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

- (1) (a) Motor vehicles titled or registered to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions; and
- (b) The gross rental or lease charges for the rental or lease of a motor vehicle paid by the

- United States, or the Commonwealth of Kentucky or any of its political subdivisions;
- (2) Motor vehicles titled or registered to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;
  - (3) Motor vehicles which have been previously titled in Kentucky on or after July 1, 2005, or previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. The motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;
  - (4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to members of the Armed Forces on duty in this Commonwealth under orders from the United States government;
  - (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;
  - (6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;
  - (7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;
  - (8) Motor vehicles transferred to a corporation from a proprietorship or limited liability company, to a limited liability company from a corporation or proprietorship, or from a corporation or limited liability company to a proprietorship, within six (6) months from the time that the business is incorporated, organized, or dissolved, if the transferor and the

- transferee are the same business entity except for a change in legal form;
- (9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky;
- (10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (11) Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (12) The interest of a partner in a motor vehicle when other interests are transferred to him **or her**;
- (13) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(6). The reposessor shall hold the vehicle for resale only and not for personal use, unless he **or she** has previously paid the motor vehicle usage tax on the vehicle;
- (14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only;
- (15) Motor carriers operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281;
- (16) (a) 1. Motor vehicles registered under KRS 186.050 that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater; and
2. Farm trucks registered under KRS 186.050(4) that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or

greater.

- (b) To be eligible for the exemption established in paragraph (a) of this subsection, motor vehicles shall be registered at the appropriate range for the declared gross weight of the vehicle established in KRS 186.050(3)(b) and shall be prohibited from registering at a higher weight range. If a motor vehicle is initially registered in one (1) declared gross weight range and subsequently is registered at a declared gross weight range lower than forty-four thousand and one (44,001) pounds, the person registering the vehicle shall be required to pay the county clerk the usage tax due on the vehicle unless the person can provide written proof to the clerk that the tax has been previously paid;
- (17) Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a beneficiary of the trust, if a direct transfer from the grantor of the trust to all individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section;
- (18) Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679;
- (19) Motor vehicles transferred from a trustee of a trust to another person if:
  - (a) The grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679; and
  - (b) A direct transfer from the grantor of the trust to the person would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section;~~and~~
- (20) Motor vehicles under a manufacturer's statement of origin in possession of a licensed new motor vehicle dealer that are titled and transferred to a licensed used motor vehicle dealer

and held for sale; and

**(21) Motor vehicles transferred under Section 124 of this Act.**

➔Section 126. KRS 395.160 is amended to read as follows:

- (1) If a personal representative moves out of the state and fails to designate a process agent as required by KRS 395.015~~[(1)]~~, becomes insane or otherwise incapable to discharge the trust, goes bankrupt or insolvent or is in failing circumstances, the District Court shall remove him or her, and the other personal representative, if there is another, shall discharge the trust. If he or she resides in the county of his or her appointment or in an adjoining county, and is not insane, he or she shall have ten (10) days' notice before the order of removal is made. If he or she is insane, the notice shall be given to his or her committee, if he or her has one, and if there is no committee, the court may appoint one.
- (2) The district court may remove a personal representative for failing to give additional security when required under KRS 62.060 and appoint another.
- (3) The court shall require a personal representative who is removed to settle his accounts, and deliver over the decedent's estate to the person appointed in his stead.

➔Section 127. Sections 32 to 40 of this Act may be cited as the Uniform Electronic Wills Act.

➔Section 128. Sections 41 to 55 of this Act may be cited as the Uniform Electronic Estate Planning Documents Act.

➔Section 129. Sections 59 to 69 of this Act may be cited as the Kentucky Qualified Dispositions in Trust Act.

➔Section 130. Sections 70 to 86 of this Act may be cited as the Uniform Directed Trust Act.

➔Section 131. Sections 87 to 114 of this Act may be cited as the Uniform Trust Decanting Act.

# Unofficial Document

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➔Section 132. The following KRS sections are repealed:

395.635 Certification of list of fiduciaries delinquent in accounting -- Notice -- Fees.

386B.8-080 Powers to direct.

386.175 Trustee's power to appoint principal or income in favor of trustee of second trust --  
Terms of second trust -- Special fiduciary -- Notice -- Judicial proceedings.".