



SENATE BILL 450: Uniform Trust Decanting Act.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 25, 2017
Introduced by:	Sens. Newton, Daniel	Prepared by:	Bill Patterson
Analysis of:	Second Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 450 would adopt the North Carolina Uniform Trust Decanting Act, which would replace existing law governing the circumstances under which a trustee is permitted to distribute assets from one trust into a second trust without the approval of a court.*

CURRENT LAW: Chapter 36C of the General Statutes is the North Carolina Uniform Trust Code, which contains default provisions that set forth, among other things, the duty of trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.

Decanting is a term referring to a trustee's distribution of assets from one trust into a second trust. The circumstances under which a trustee may do this without the approval of a court are set forth in G.S. 36C-8-816.1 in Article 8 of Chapter 36C, "Duties and Powers of Trustee."

BILL ANALYSIS: Senate Bill 450 would repeal G.S. 36C-8-816.1 and replace it with a new Article 8B, the "North Carolina Uniform Trust Decanting Act."

The new act would apply to any trust having a principal place of administration in North Carolina and to any trust that provides that North Carolina law will govern its administration or construction (G.S. 36C-8b-5) and would, among other things:

- Relieve persons who reasonably rely on the validity of a decanting power under Article 8B from liability to any person for any action or failure to act as a result of the reliance. (G.S. 36C-8B-6)
- Require notice of a proposed decanting to be given to all qualified beneficiaries of the first trust and to specified others. (G.S. 36C-8B-7)
- Permit an authorized fiduciary, a beneficiary, or persons entitled to notice of a proposed decanting to commence a proceeding to seek approval or disapproval of the proposed exercise of the fiduciary's decanting power. (G.S. 36C-8B-9)
- Require exercise of the decanting power to be made in a written instrument signed by an authorized fiduciary. (G.S. 36C-8B-10)
- Set forth requirements for and restrictions on the exercise of the decanting power. (G.S. 36C-8B-11)
- Provide exceptions to otherwise applicable restrictions on the decanting power to permit a fiduciary to decant to a special needs trust for the benefit of a disabled beneficiary who may be eligible to qualify for governmental benefits or who has been adjudicated incompetent. (G.S. 36C-8B-13)

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Legislative Analysis
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Senate Bill 450

Page 2

- Require all qualified beneficiaries or the clerk of superior court to approve any increase in an authorized fiduciary's compensation. (G.S. 36C-8B-16)
- Prohibit a second trust from relieving the liability of an authorized fiduciary for breach of trust to a greater extent than the first trust or from reducing the aggregate liability of the fiduciary. (G.S. 36C-8B-17)
- Limit an authorized fiduciary's ability to change provisions in a first trust permitting the fiduciary's removal by another person. (G.S. 36C-8B-18)
- Provide more detailed tax-related limitations on the exercise of the decanting power. (G.S. 36C-8B-19)
- Provide rules for determining which trust holds property discovered subsequent to a decanting. (G.S. 36C-8B-26)

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: Senate Bill 450 is a result of the work done by the Uniform Decanting Subcommittee of the North Carolina Bar Association Estate Planning and Fiduciary Law Section, which analyzed the Uniform Decanting Act, adopted by the Uniform Laws Commission in 2015, to evaluate its practical effect and the consistency between its provisions and current North Carolina law.