

**OFFICE OF POLICY AND LEGAL ANALYSIS**  
**Bill Analysis**

**To:** Joint Standing Committee on Judiciary

**From:** Peggy Reinsch, Legislative Analyst

**LD 422 An Act To Enact the Maine Uniform Trust Decanting Act**

**Public Hearing Date:** February 25, 2021

**SUMMARY**

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes to adopt a law that is based on the Uniform Trust Decanting Act, the text of which may be found here: <https://legislature.maine.gov/doc/5382>.

**TESTIMONY**

**Proponents**

- Representative Harnett, presenter (written testimony)
- Molly Liddell, Probate and Trust Law Advisory Commission (PATLAC) (ULC information)
  - The Uniform Trust Decanting Act recognizes a nationwide change in statutes regulating trusts. These statutes align with innovations in trust law that seek to make trusts more flexible so that the settlor's purposes can best be carried out under current circumstances.
  - A decanting statute provides flexibility by expanding discretion already granted to the trustee to permit the trustee to modify the trust either directly or by distributing its assets to another trust.
  - While some trusts expressly grant the trustee or another person a power to modify or decant the trust, a statutory provision can better describe the power granted, impose limits on the power to protect the beneficiaries and the settlor's intent, protect against inadvertent tax consequences, provide procedural rules for exercising the power and provide for appropriate remedies.
  - With a charitable interest, the Attorney General or other officials who may enforce the charitable interest, may ask a court for instructions, appointment of a special fiduciary who may exercise the decanting power, approval of an exercise of decanting power, a determination that the authorized fiduciary breached its fiduciary duties, a determination that the savings provisions apply or a determination that the attempted decanting is invalid.
  - Although some changes could be made without this law with the documented approval of a beneficiary, there may be tax consequences for the active involvement of the beneficiary
  - "Decanting" means the trustee can change the trust; the trustee is always subject to its fiduciary duties
  - 29 states have some version of a decanting act
  - This does NOT apply to fully charitable trusts – that is the application of the *cy pres* doctrine.
  - Trust modification is happening now; this ensures there are ground rules

- This is another tool in estate planning. If want to change a trust now, the trustee files a petition with the court, and the judge has to sign off
- We believe this will be helpful to beneficiaries, especially in establishing special needs trusts to ensure accessibility to government benefits for a trust beneficiary with disabilities
- I am not sure if there will be a fiscal cost to the State

**Opponents**

- None

**Neither for nor against**

- None

**FISCAL IMPACT:**

Not yet determined

**BACKGROUND**

Joint Order, SP 9 directs the Revisor of Statutes to prepare all legislative requests for uniform acts as Concept Drafts.

The Probate and Trust Law Advisory Commission had already worked through the Uniform Trust Decanting Act and prepared a bill to work it into the Maine Trust Code (Title 18-B). The bill draft has been submitted instead as a proposed committee amendment. See separate document.