

1 HB196
2 208749-1
3 By Representative Simpson
4 RFD: Financial Services
5 First Read: 02-FEB-21
6 PFD: 01/28/2021

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8 SYNOPSIS: Under the Alabama Uniform Trust Decanting
9 Act, after giving statutorily required notice to
10 certain persons, an authorized fiduciary of a trust
11 may exercise decanting power without the consent of
12 any person and without court approval under certain
13 conditions. A person entitled to notice or a
14 beneficiary of the trust may challenge the exercise
15 of the decanting power by the authorized fiduciary
16 if the challenge is commenced within six months
17 from the date notice is given and it is alleged
18 that the proposed or attempted exercise of the
19 decanting power did not comply with the law or was
20 an abuse of the authorized fiduciary's discretion
21 or a breach of fiduciary duty.

22 Also under existing law, failure to receive
23 notice as required does not extend the notice
24 period if the authorized fiduciary acted with
25 reasonable diligence to comply with the legal
26 requirements of the Uniform Trust Decanting Act.

1 This bill would clarify that failure to
2 receive notice of the exercise of the decanting
3 power by the authorized fiduciary does not extend
4 the requirement to commence a challenge within six
5 months if the authorized fiduciary acted with
6 reasonable diligence to comply with the
7 requirements of the act.

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9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 Relating to the Alabama Uniform Trust Decanting Act;
14 to amend Sections 19-3D-7 and 19-3D-9, Code of Alabama 1975,
15 to provide further for the failure to receive notice.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 19-3D-7 and 19-3D-9, Code of
18 Alabama 1975, are amended to read as follows:

19 "§19-3D-7.

20 "(a) In this section, a notice period begins on the
21 day notice is given under subsection (c) and ends 59 days
22 after the day notice is given.

23 "(b) Except as otherwise provided in this chapter,
24 an authorized fiduciary may exercise the decanting power
25 without the consent of any person and without court approval.

26 "(c) Except as otherwise provided in subsection (f),
27 an authorized fiduciary shall not exercise the decanting power

1 prior to 60 days after giving ~~record~~ notice in a record of the
2 intended exercise of the decanting power to:

3 "(1) each settlor of the first trust, if living or
4 then in existence;

5 "(2) each qualified beneficiary of the first trust;

6 "(3) each holder of a presently exercisable power of
7 appointment over any part or all of the first trust;

8 "(4) each person that currently has the right to
9 remove or replace the authorized fiduciary;

10 "(5) each other fiduciary of the first trust;

11 "(6) each fiduciary of the second trust; and

12 "(7) the Attorney General, if Section 19-3D-14(b)
13 applies.

14 "(d) An authorized fiduciary may give notice under
15 subsection (c) to a qualified beneficiary who is a minor or
16 incapacitated individual by giving notice to such individual's
17 representative. An authorized fiduciary is not required to
18 give notice under subsection (c) to a person that is not known
19 to the fiduciary or is known to the fiduciary but cannot be
20 located by the fiduciary after reasonable diligence.

21 "(e) A notice under subsection (c) must:

22 "(1) specify the manner in which the authorized
23 fiduciary intends to exercise the decanting power;

24 "(2) specify the proposed effective date for
25 exercise of the power;

26 "(3) include a copy of the first-trust instrument;

27 "(4) include a copy of all second-trust instruments;

1 "(5) include a statement indicating the capacity in
2 which the intended recipient is being given notice; and

3 "(6) include a statement that any application under
4 Section 19-3D-9 must be filed within six months from the day
5 notice is given.

6 "(f) The decanting power may be exercised before
7 expiration of the notice period under subsection (a) if all
8 persons entitled to receive notice waive the period in a
9 signed record.

10 "(g) The receipt of notice, waiver of the notice
11 period, or expiration of the notice period does not affect the
12 right of a person to file an application under Section
13 19-3D-9.

14 "(h) An exercise of the decanting power is not
15 ineffective because of the failure to give notice to one or
16 more persons under subsection (c) if the authorized fiduciary
17 acted with reasonable care to comply with subsection (c).

18 "§19-3D-9.

19 "(a) On application of an authorized fiduciary, a
20 person entitled to notice under Section 19-3D-7(c), a
21 beneficiary, or with respect to a charitable interest that is
22 not entirely held by or for the benefit of one or more
23 identified and existing charitable organizations, the Attorney
24 General or other person that has standing to enforce the
25 charitable interest, the court may:

26 "(1) provide instructions to the authorized
27 fiduciary regarding whether a proposed exercise of the

1 decanting power is permitted under this chapter and consistent
2 with the fiduciary duties of the authorized fiduciary;

3 "(2) appoint a special fiduciary and authorize the
4 special fiduciary to determine whether the decanting power
5 should be exercised under this chapter and to exercise the
6 decanting power;

7 "(3) approve an exercise of the decanting power;

8 "(4) subject to the limitations set forth in
9 subsection (c), determine that a proposed or attempted
10 exercise of the decanting power is ineffective because:

11 "(A) after applying Section 19-3D-22, the proposed
12 or attempted exercise does not or did not comply with this
13 chapter; or

14 "(B) the proposed or attempted exercise would be or
15 was an abuse of the fiduciary's discretion or a breach of
16 fiduciary duty;

17 "(5) determine the extent to which Section 19-3D-22
18 applies to a prior exercise of the decanting power;

19 "(6) provide instructions to the trustee regarding
20 the application of Section 19-3D-22 to a prior exercise of the
21 decanting power; or

22 "(7) order other relief to carry out the purposes of
23 this chapter.

24 "(b) On application of an authorized fiduciary, the
25 court may approve:

26 "(1) an increase in the fiduciary's compensation
27 under Section 19-3D-16; or

1 "(2) a modification under Section 19-3D-18 of a
2 provision granting a person the right to remove or replace the
3 fiduciary.

4 "(c) A proceeding under subsection (a) (4) may not be
5 commenced by a person entitled to notice under Section
6 19-3D-7(c), or by a beneficiary, unless such proceeding is
7 commenced within six months from the day notice is given under
8 Section 19-3D-7(a). Failure to receive notice shall not extend
9 the ~~notice period~~ time by which such proceeding must be
10 commenced if the authorized fiduciary acted with reasonable
11 diligence to comply with the requirements of Section
12 19-3D-7(c)."

13 Section 2. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.