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Judiciary Committee

Chair
Civil Law and Procedure
Subcommittee



The Maryland House of Delegates
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Re: HB 687

Estates and Trusts – Trusts – Decanting
(Maryland Trust Decanting Act)

Position -- Support

This bill promulgates the rules that govern the exercise of the decanting power to distribute the property of a first trust to one or more second trusts or modify the terms of a first trust. This Act applies retroactively.

While there is no express statutory authority that permits decanting in Maryland, current law allows a trust to be modified under limited circumstances. However, thirty-states have enacted trust decanting statutes that authorizes a trustee to modify a trust where assets from one trust are distributed to a second trust. This measure brings Maryland in line with the other states and eliminates the need for trustees to move a Maryland trust to a “decanting” jurisdiction.

Additionally, a new Maryland Trust Decanting Act provides clear authority when a trust may be decanted in Maryland and provides trustees with certainty and the flexibility necessary to further the settlor’s objectives. In the case of my constituent this proposed Act provides a trustee with the power to decant a portion of a trust to a special needs trust for the benefit of a beneficiary with a disability.

The Maryland State Bar Association’s Estate & Trust Law Section supports this bill. I urge this committee to favorably report HB 687.

Once again, I am pleased to welcome Sarah H. B. Kahl who is testifying on behalf of the MSBA. Sarah is Chair-elect, Maryland State Bar Association Estate and Trust Section Council, Chair, Legislative Committee, Maryland State Bar Association Estate and Trust Law Section, a CPA, and a partner at the law firm Venable LLP.