

SECOND REGULAR SESSION

HOUSE BILL NO. 1782

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PERKINS.

4189H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 456.950, RSMo, and to enact in lieu thereof one new section relating to qualified spousal trusts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 456.950, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 456.950, to read as follows:

456.950. 1. As used in this section, "qualified spousal trust" means a trust:

(1) The settlors of which are married to each other at the time of the creation of the trust; and

(2) The terms of which provide that during the joint lives of the settlors **or the life of the sole surviving settlor** all property transferred to, or held by, the trustee are:

(a) Held and administered in one trust for the benefit of both settlors, **which may be** revocable by either settlor or both settlors while either or both are alive, **and by one settlor after the death or incapacity of the other**, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the entire trust for the joint lives of the settlors and for the survivor's life; or

(b) Held and administered in two **or more** separate shares of one trust for the benefit of each **or both** of the settlors, with the trust revocable by each settlor with respect to that settlor's separate share of that trust without the participation or consent of the other settlor, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from that settlor's separate share for that settlor's life; or

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (c) Held and administered under the terms and conditions contained in paragraphs (a)
18 and (b) of this subdivision.

19 2. A qualified spousal trust may contain any other trust terms that are not inconsistent
20 with the provisions of this section, including, without limitation, a discretionary power to
21 distribute trust property to a person in addition to a settlor.

22 3. All property at any time held in a qualified spousal trust, without regard to how
23 such property was titled prior to it being so held~~[-]~~:

24 (1) Shall have the same immunity from the claims of a separate creditor of either
25 settlor as if such property were held outside the trust by the settlors as tenants by the entirety,
26 unless otherwise provided in writing by the settlor or settlors who transferred such property to
27 the trust, and such property shall be treated for that purpose, including without limitation,
28 federal and state bankruptcy laws, as tenants by entirety property~~[-Property held in a~~
29 ~~qualified spousal trust]~~;

30 (2) **With the exception of any written financial obligations, written guarantees,**
31 **or secured or unsecured transactions executed by the settlors and held in a qualified**
32 **spousal trust, shall continue to be immune and exempt from attachment during the life**
33 **of the surviving settlor to the extent the property was held in a qualified spousal trust**
34 **prior to the death of the first settlor and remains in a qualified spousal trust. This**
35 **includes any property appreciation; and**

36 (3) Shall cease to receive immunity from the claims of creditors upon the dissolution
37 of marriage of the settlors by a court.

38 4. As used in this section, "property" means any interest in any type of property held
39 in a qualified spousal trust, the income thereon, and any property into which such interest,
40 proceeds, or income may be converted.

41 5. Upon the death of each settlor, all property held by the trustee of the qualified
42 spousal trust shall be distributed as directed by the then current terms of the governing
43 instrument of such trust. Upon the death of the first settlor to die, if immediately prior to
44 death the predeceased settlor's interest in the qualified spousal trust was then held **or deemed**
45 **to be held** in such settlor's separate share, the property held in such settlor's separate share
46 may pass into an irrevocable trust for the benefit of the surviving settlor **or other beneficiary**
47 upon such terms as the governing instrument shall direct, including without limitation a
48 spendthrift provision as provided in section 456.5-502. **Property may be held in or**
49 **transferred to a settlor's joint or separate share of a trust:**

50 (1) **By designation under the current terms of the governing instrument of such**
51 **trust;**

52 (2) **According to the specific titling of property or other designation that refers**
53 **to such joint or separate share of such trust; or**

54 **(3) By designation to the trustee as the owner as provided in section 456.1-113.**

55 6. The respective rights of settlors who are married to each other in any property for
56 purposes of a dissolution of the settlors' marriage shall not be affected or changed by reason
57 of the transfer of that property to, or its subsequent administration as an asset of, a qualified
58 spousal trust during the marriage of the settlors, unless both settlors expressly agree otherwise
59 in writing.

60 7. No transfer to a qualified spousal trust shall avoid or defeat the Missouri uniform
61 fraudulent transfer act in chapter 428.

62 8. This section shall apply to all trusts which fulfill the criteria set forth in this section
63 for a qualified spousal trust regardless of whether such trust was created before, on, or after
64 August 28, 2011.

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