

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 499
97TH GENERAL ASSEMBLY

4122L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 456.950, RSMo, and to enact in lieu thereof four new sections relating to trusts.

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

- Section A. Section 456.950, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 456.950, 456.2-205, 456.4-420, and 474.395, to read as follows:
- 456.950. 1. As used in this section, "qualified spousal trust" means a trust:
- (1) The settlors of which are husband and wife at the time of the creation of the trust; and
 - (2) The terms of which provide that during the joint lives of the settlors all property or interests in property transferred to, or held by, the trustee are:
 - (a) Held and administered in one trust for the benefit of both settlors, revocable by either or both settlors acting together while either or both are alive, 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 separate shares of one trust for the benefit of each 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
 - (c) Held and administered under the terms and conditions contained in paragraphs (a) and (b) of this subdivision.
2. A qualified spousal trust may contain any other trust terms that are not inconsistent with the provisions of this section.

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.

18 3. **Any** property or interests in property [held as tenants by the entirety by a husband and
19 wife] that is at any time transferred to the trustee of a qualified spousal trust of which the
20 husband and wife are the settlors, shall **thereafter** be [held and] administered as provided by the
21 trust terms in accordance with paragraph (a), (b), or (c) of subdivision (2) of subsection 1 of this
22 section[, and all such] . **All trust** property and interests in property **that is deemed for purposes**
23 **of this section to be held as tenants by the entirety**, including the proceeds thereof, the income
24 thereon, and any property into which such property, proceeds, or income may be converted, shall
25 [thereafter] have the same immunity from the claims of the separate creditors of the settlors as
26 would have existed if the settlors had continued to hold that property as husband and wife as
27 tenants by the entirety. **Property or interest in property held by a husband and wife as**
28 **tenants by the entirety or as joint tenants or other form of joint ownership with right of**
29 **survivorship shall be conclusively deemed for purposes of this section to be held as tenants**
30 **by the entirety upon its transfer to the qualified spousal trust. All such transfers shall**
31 **retain said immunity**, so long as:

32 (1) Both settlors are alive and remain married; and

33 (2) The property, proceeds, or income continue to be held in trust by the trustee of the
34 qualified spousal trust.

35 4. Property or interests in property held by a husband and wife or held in the sole name
36 of a husband or wife that is not held as tenants by the entirety **or deemed held as tenants by the**
37 **entirety for purposes of this section** and is transferred to a qualified spousal trust shall be held
38 as directed in the qualified spousal trust's governing instrument or in the instrument of transfer
39 and the rights of any claimant to any interest in that property shall not be affected by this section.

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

48 6. No transfer by a husband and wife as settlors to a qualified spousal trust shall affect
49 or change either settlor's marital property rights to the transferred property or interest therein
50 immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless
51 both spouses otherwise expressly agree in writing.

52 7. This section shall apply to all trusts which fulfill the criteria set forth in this section
53 for a qualified spousal trust regardless of whether such trust was created before or after August
54 28, 2011.

**456.2-205. 1. Subject to the exception in subsection 2 of this section, a provision in
2 a trust instrument requiring the mediation or arbitration of disputes between or among the
3 beneficiaries, a fiduciary, a person granted nonfiduciary powers under the trust
4 instrument, or any combination of such persons is enforceable.**

**5 2. A provision in a trust instrument requiring the mediation or arbitration of
6 disputes relating to the validity of a trust is not enforceable unless all interested persons
7 with regard to the dispute consent to the mediation or arbitration of the dispute.**

**456.4-420. 1. If a trust instrument containing a no-contest clause is or has become
2 irrevocable, an interested person may file a petition to the court for an interlocutory
3 determination whether a particular motion, petition, or other claim for relief by the
4 interested person would trigger application of the no-contest clause or would otherwise
5 trigger a forfeiture that is enforceable under applicable law and public policy.**

**6 2. The petition described in subsection 1 of this section shall be verified under oath.
7 The petition may be filed by an interested person either as a separate judicial proceeding,
8 or brought with other claims for relief in a single judicial proceeding, all in the manner
9 prescribed generally for such proceedings under this chapter. If a petition is joined with
10 other claims for relief, the court shall enter its order or judgment on the petition before
11 proceeding any further with any other claim for relief joined therein. In ruling on such a
12 petition, the court shall consider the text of the clause, the context to the terms of the trust
13 instrument as a whole, and in the context of the verified factual allegations in the petition.
14 No evidence beyond the pleadings and the trust instrument shall be taken except as
15 required to resolve an ambiguity in the no-contest clause.**

**16 3. An order or judgment determining a petition described in subsection 1 of this
17 section shall have the effect set forth in subsections 4 and 5 of this section, and shall be
18 subject to appeal as with other final judgments. If the order disposes of fewer than all
19 claims for relief in a judicial proceeding, that order is subject to interlocutory appeal in
20 accordance with the applicable rules for taking such an appeal. If an interlocutory appeal
21 is taken, the court may stay the pending judicial proceeding until final disposition of said
22 appeal on such terms and conditions as the court deems reasonable and proper under the
23 circumstances. A final ruling on the applicability of a no-contest clause shall not preclude
24 any later filing and adjudication of other claims related to the trust.**

**25 4. An order or judgment, in whole or in part, on a petition described in subsection
26 1 of this section shall result in the no-contest clause being enforceable to the extent of the**

27 court's ruling, and shall govern application of the no-contest clause to the extent that the
28 interested person then proceeds forward with the claims described therein. In the event
29 such an interlocutory order or judgment is vacated, reversed, or otherwise modified on
30 appeal, no interested person shall be prejudiced by any reliance, through action, inaction
31 or otherwise, on the order or judgment prior to final disposition of the appeal.

32 5. An order or judgment shall have effect only as to the specific trust terms and
33 factual basis recited in the petition. If claims are later filed that are materially different
34 than those upon which the order or judgment is based, then to the extent such new claims
35 are raised, the party in whose favor the order or judgment was entered shall have no
36 protection from enforcement of the no-contest clause otherwise afforded by the order and
37 judgment entered under this section.

38 6. For purposes of this section, a "no-contest clause" shall mean a provision in a
39 trust instrument purporting to rescind a donative transfer to, or a fiduciary appointment
40 of, any person, or that otherwise effects a forfeiture of some or all of an interested person's
41 beneficial interest in a trust estate as a result of some action taken by the beneficiary. This
42 definition shall not be construed in any way as determining whether a no-contest clause is
43 enforceable under applicable law and public policy in a particular factual situation. As
44 used in this section, the term "no-contest clause" shall also mean an "in terrorem clause".

45 7. A no-contest clause is not enforceable against an interested person in, but not
46 limited to, the following circumstances:

47 (1) Filing a motion, petition, or other claim for relief objecting to the jurisdiction
48 or venue of the court over a proceeding concerning a trust, or over any person joined, or
49 attempted to be joined, in such a proceeding;

50 (2) Filing a motion, petition, or other claim for relief concerning an accounting,
51 report, or notice that has or should have been made by a trustee, provided the interested
52 person otherwise has standing to do so under applicable law, including, but not limited to,
53 section 456.6-603;

54 (3) Filing a motion, petition, or other claim for relief under chapter 475 concerning
55 the appointment of a guardian or conservator for the settlor;

56 (4) Filing a motion, petition, or other claim for relief under chapter 404 concerning
57 the settlor;

58 (5) Disclosure to any person of information concerning a trust instrument or that
59 is relevant to a proceeding before the court concerning the trust instrument or property
60 of the trust estate, unless such disclosure is otherwise prohibited by law;

61 **(6) Filing a motion, pleading, or other claim for relief seeking approval of a**
62 **nonjudicial settlement agreement concerning a trust instrument, as set forth in section**
63 **456.1-111;**

64 **(7) To the extent a petition under subsection 1 of this section is limited to the**
65 **procedure and purpose described therein.**

66 **8. In any proceeding brought under this section, the court may award costs,**
67 **expenses, and attorneys' fees to any party, as provided in section 456.10-1004.**

474.395. 1. If a will contains a no-contest clause, an interested person may file a
2 **petition with the court for a determination whether a particular motion, petition, action,**
3 **or other claim for relief by the interested person would trigger application of the no-contest**
4 **clause or would otherwise trigger a forfeiture that is enforceable under applicable law and**
5 **public policy, which application would be adjudicated in the manner prescribed in section**
6 **456.4-420, and subject to the provisions set forth therein.**

7 **2. For purposes of this section, a "no-contest clause" shall mean a provision in a**
8 **will purporting to rescind a donative transfer to, or a fiduciary appointment of, any person**
9 **who institutes a proceeding challenging the validity of all or part of the will, or that**
10 **otherwise effects a forfeiture of some or all of an interested person's beneficial interest in**
11 **the estate as a result of some action taken by the beneficiary. This definition shall not be**
12 **construed in any way as determining whether a no-contest clause is enforceable under**
13 **applicable law and public policy in a particular factual situation. As used in this section,**
14 **the term no-contest clause shall also mean an "in terrorem clause".**

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