

SECOND REGULAR SESSION

SENATE BILL NO. 499

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Pre-filed December 1, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

4122S.02I

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Section A. Section 456.950, RSMo, is repealed and one new section
2 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
2 trust:

3 (1) The settlors of which are husband and wife at the time of the creation
4 of the trust; and

5 (2) The terms of which provide that during the joint lives of the settlors
6 all property or interests in property transferred to, or held by, the trustee are:

7 (a) Held and administered in one trust for the benefit of both settlors,
8 revocable by either or both settlors acting together while either or both are alive,
9 and each settlor having the right to receive distributions of income or principal,
10 whether mandatory or within the discretion of the trustee, from the entire trust
11 for the joint lives of the settlors and for the survivor's life; or

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 2. A qualified spousal trust may contain any other trust terms that are
21 not inconsistent with the provisions of this section.

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

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

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

42 4. Property or interests in property held by a husband and wife or held
43 in the sole name of a husband or wife that is not held as tenants by the entirety
44 **or deemed held as tenants by the entirety for purposes of this section**
45 and is transferred to a qualified spousal trust shall be held as directed in the
46 qualified spousal trust's governing instrument or in the instrument of transfer
47 and the rights of any claimant to any interest in that property shall not be
48 affected by this section.

49 5. Upon the death of each settlor, all property and interests in property
50 held by the trustee of the qualified spousal trust shall be distributed as directed
51 by the then current terms of the governing instrument of such trust. Upon the
52 death of the first settlor to die, if immediately prior to death the predeceased
53 settlor's interest in the qualified spousal trust was then held in such settlor's
54 separate share, the property or interests in property in such settlor's separate
55 share may pass into an irrevocable trust for the benefit of the surviving settlor

56 upon such terms as the governing instrument shall direct, including without
57 limitation a spendthrift provision as provided in section 456.5-502.

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

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

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Bill

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