

FIRST REGULAR SESSION

SENATE BILL NO. 481

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time February 23, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2165S.02I

AN ACT

To repeal section 456.950, RSMo, and to enact in lieu thereof two new sections 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Section A. Section 456.950, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 456.950 and 456.1-113, to read
3 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] **married to each other**
4 at the time of the creation 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 **settlor** or both settlors [acting together] while either or both
9 are alive, and each settlor having the right to receive distributions of income or
10 principal, whether mandatory or within the discretion of the trustee, from the
11 entire trust 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

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

19 paragraphs (a) and (b) of this subdivision.

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

24 3. [Any property or interests in property that are at any time transferred
25 to the trustee of a qualified spousal trust of which the husband and wife are the
26 settlors, shall thereafter be administered as provided by the trust terms in
27 accordance with paragraph (a), (b), or (c) of subdivision (2) of subsection 1 of this
28 section. All trust property and interests in property that is deemed for purposes
29 of this section to be held as tenants by the entirety, including the proceeds
30 thereof, the income thereon, and any property into which such property, proceeds,
31 or income may be converted, shall have the same immunity from the claims of the
32 separate creditors of the settlors as would have existed if the settlors had
33 continued to hold that property as husband and wife as tenants by the
34 entirety. Property or interests in property held by a husband and wife as tenants
35 by the entirety or as joint tenants or other form of joint ownership with right of
36 survivorship shall be conclusively deemed for purposes of this section to be held
37 as tenants by the entirety upon its transfer to the qualified spousal trust. All
38 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] **All property at any time held in a**
42 **qualified spousal trust, without regard to how such property was titled**
43 **prior to it being so held, shall have the same immunity from the claims**
44 **of a separate creditor of either settlor as if such property were held**
45 **outside the trust by the settlors as tenants by the entirety, unless**
46 **otherwise provided in writing by the settlor or settlors who transferred**
47 **such property to the trust, and such property shall be treated for that**
48 **purpose, including without limitation, federal and state bankruptcy**
49 **laws, as tenants by entirety property. Property held in a qualified**
50 **spousal trust shall cease to receive immunity from the claims of**
51 **creditors upon the dissolution of marriage of the settlors by a court.**

52 4. [Property or interests in property held by a husband and wife or held
53 in the sole name of a husband or wife that are not held as tenants by the entirety
54 or deemed held as tenants by the entirety for purposes of this section and are

55 transferred to a qualified spousal trust shall be held as directed in the qualified
56 spousal trust's governing instrument or in the instrument of transfer and the
57 rights of any claimant to any interest in that property shall not be affected by
58 this section] **As used in this section, "property" means any interest in any**
59 **type of property held in a qualified spousal trust, the income thereon,**
60 **and any property into which such interest, proceeds, or income may be**
61 **converted.**

62 5. Upon the death of each settlor, all property [and interests in property]
63 held by the trustee of the qualified spousal trust shall be distributed as directed
64 by the then current terms of the governing instrument of such trust. Upon the
65 death of the first settlor to die, if immediately prior to death the predeceased
66 settlor's interest in the qualified spousal trust was then held in such settlor's
67 separate share, the property [or interests in property] **held** in such settlor's
68 separate share may pass into an irrevocable trust for the benefit of the surviving
69 settlor upon such terms as the governing instrument shall direct, including
70 without limitation a spendthrift provision as provided in section 456.5-502.

71 6. No transfer by a [husband and wife as settlors] **spouse as a settlor**
72 to a qualified spousal trust shall affect or change either settlor's marital property
73 rights to the transferred property [or interest therein] immediately prior to such
74 transfer in the event of dissolution of marriage of the spouses, unless both
75 spouses otherwise expressly agree in writing.

76 7. **No transfer to a qualified spousal trust shall avoid or defeat**
77 **the Missouri Uniform Fraudulent Transfer Act in chapter 428.**

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

456.1-113. Any transfer of an asset to a trustee of a trust, to such
2 **trust itself, or to a share of such trust, in a manner that is reasonably**
3 **calculated to identify such trust or that share of such trust, subjects**
4 **that asset to the terms of such trust or that share.**

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