

FIRST REGULAR SESSION

SENATE BILL NO. 170

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS DIXON AND SIFTON.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0574S.01I

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Section A. Section 456.950, RSMo, is repealed and one new section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 married to each other at the time of the
4 creation of the trust; and

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

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

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

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

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

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

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

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

35 (2) **Shall be exempt from attachment and execution during the**
36 **settlors' joint lives to the extent of any settlor's interest, right, or power**
37 **therein, except from the claims of the settlors' joint creditors; and**

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

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

43 5. Upon the death of each settlor, all property held by the trustee of the
44 qualified spousal trust shall be distributed as directed by the then current terms
45 of the governing instrument of such trust. Upon the death of the first settlor to
46 die, if immediately prior to death the predeceased settlor's interest in the
47 qualified spousal trust was then held in such settlor's separate share, the
48 property held in such settlor's separate share may pass into an irrevocable trust
49 for the benefit of the surviving settlor **or other beneficiary** upon such terms as
50 the governing instrument shall direct, including without limitation a spendthrift
51 provision as provided in section 456.5-502. **Property may be held in or**
52 **transferred to a settlor's separate share of a trust by designation under**
53 **the current terms of the governing instrument of such trust or pursuant**
54 **to the specific titling of property that refers to such separate share of**
55 **the trust or its trustee as the owner.**

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

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

63 8. 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, on, or after August 28, 2011.

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Bill

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