

# SENATE BILL NO. 988

## 102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

4048S.01I

KRISTINA MARTIN, Secretary

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Section A. Section 456.950, RSMo, is repealed and one new  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

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

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

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

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

17 (b) Held and administered in two **or more** separate  
18 shares of one trust for the benefit of each **or both** of the

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

19 settlors, with the trust revocable by each settlor with  
20 respect to that settlor's separate share of that trust  
21 without the participation or consent of the other settlor,  
22 and each settlor having the right to receive distributions  
23 of income or principal, whether mandatory or within the  
24 discretion of the trustee, from that settlor's separate  
25 share for that settlor's life; or

26 (c) Held and administered under the terms and  
27 conditions contained in paragraphs (a) and (b) of this  
28 subdivision.

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

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

37 (1) Shall have the same immunity from the claims of a  
38 separate creditor of either settlor as if such property were  
39 held outside the trust by the settlors as tenants by the  
40 entirety, unless otherwise provided in writing by the  
41 settlor or settlors who transferred such property to the  
42 trust, and such property shall be treated for that purpose,  
43 including without limitation, federal and state bankruptcy  
44 laws, as tenants by entirety property[. Property held in a  
45 qualified spousal trust];

46 (2) **With the exception of any written financial**  
47 **obligations, written guarantees, or secured or unsecured**  
48 **transactions, executed by the settlors and held in a**  
49 **qualified spousal trust, all property, including the**  
50 **appreciation therein, shall continue to be immune and exempt**

51 from attachment during the life of the surviving settlor to  
52 the extent the property was held in a qualified spousal  
53 trust prior to the death of the first settlor and remains in  
54 a qualified spousal trust; and

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

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

62 5. Upon the death of each settlor, all property held  
63 by the trustee of the qualified spousal trust shall be  
64 distributed as directed by the then current terms of the  
65 governing instrument of such trust. Upon the death of the  
66 first settlor to die, if immediately prior to death the  
67 predeceased settlor's interest in the qualified spousal  
68 trust was then held **or deemed to be held** in such settlor's  
69 separate share, the property held in such settlor's separate  
70 share may pass into an irrevocable trust for the benefit of  
71 the surviving settlor **or other beneficiary** upon such terms  
72 as the governing instrument shall direct, including without  
73 limitation a spendthrift provision as provided in section  
74 456.5-502. **Property may be held in or transferred to a**  
75 **settlor's joint or separate share of a trust by:**

76 (a) Designation under the current terms of the  
77 governing instrument of such trust; or

78 (b) Pursuant to the specified titling of property or  
79 other designation that refers to such joint or separate  
80 share of such trust; or

81 (c) Designation to the trustee as the owner as  
82 provided in section 456.1-113.

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

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

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

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