

FIRST REGULAR SESSION

HOUSE BILL NO. 807

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

1938L.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 456.950, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 456.950 and 456.1-113, to read as follows: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] **married to each other** 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 **settlor** 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.

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

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

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

35 (2) The property, proceeds, or income continue to be held in trust by the trustee of the
36 qualified spousal trust] **All property at any time held in a qualified spousal trust, without**
37 **regard to how such property was titled prior to it being so held, shall have the same**
38 **immunity from the claims of a separate creditor of either settlor as if such property were**
39 **held outside the trust by the settlors as tenants by the entirety, unless otherwise provided**
40 **in writing by the settlor or settlors who transferred such property to the trust, and such**
41 **property shall be treated for that purpose (including without limitation, federal and state**
42 **bankruptcy laws) as tenants by entirety property. Property held in a qualified spousal**
43 **trust shall be treated as tenants by the entirety as provided in this section, without regard**
44 **to whether the document governing such qualified spousal trust has been amended or**
45 **restated, so long as:**

46 **(1) That trust qualifies as a qualified spousal trust under subsection 1 and 2 of this**
47 **section; and**

48 **(2) Both settlors remain married to each other.**

49 4. [Property or interests in property held by a husband and wife or held in the sole name
50 of a husband or wife that are not held as tenants by the entirety or deemed held as tenants by the
51 entirety for purposes of this section and are transferred to a qualified spousal trust shall be held
52 as directed in the qualified spousal trust's governing instrument or in the instrument of transfer
53 and the rights of any claimant to any interest in that property shall not be affected by this section]

54 **As used in this section, "property" means any interest in any type of property held in a**
55 **qualified spousal trust, the income thereon, and any property into which such interest,**
56 **proceeds, or income may be converted.**

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

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

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

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

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

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