

SECOND REGULAR SESSION

HOUSE BILL NO. 1428

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

5413L.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 456.950, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 456.950, to read as follows: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

(1) The settlors of which are husband and wife 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 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.

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

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

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

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

35 4. Property or interests in property held by a husband and wife or held in the sole name
36 of a husband or wife that is not held as tenants by the entirety **or deemed held as tenants by the**
37 **entirety for purposes of this section** and is transferred to a qualified spousal trust shall be held
38 as directed in the qualified spousal trust's governing instrument or in the instrument of transfer
39 and the rights of any claimant to any interest in that property shall not be affected by this section.

40 5. Upon the death of each settlor, all property and interests in property held by the trustee
41 of the qualified spousal trust shall be distributed as directed by the then current terms of the
42 governing instrument of such trust. Upon the death of the first settlor to die, if immediately prior
43 to death the predeceased settlor's interest in the qualified spousal trust was then held in such
44 settlor's separate share, the property or interests in property in such settlor's separate share may
45 pass into an irrevocable trust for the benefit of the surviving settlor upon such terms as the
46 governing instrument shall direct, including without limitation a spendthrift provision as
47 provided in section 456.5-502.

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

52 7. This section shall apply to all trusts which fulfill the criteria set forth in this section
53 for a qualified spousal trust regardless of whether such trust was created before or after August
54 28, 2011.

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