

SECOND REGULAR SESSION

SENATE BILL NO. 636

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time January 10, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4054S.011

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Section A. Section 456.950, RSMo, is repealed and one new section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 husband and wife at the time of the creation
4 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 [either]:

8 (a) Held and administered in one trust for the benefit of both settlors,
9 revocable by either or both settlors acting together while either or both are alive,
10 and each settlor having the right to receive distributions of income or principal,
11 whether mandatory or within the discretion of the trustee, from the entire trust
12 for the joint lives of the settlors and for the survivor's life; or

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

19 (c) **Held and administered under the terms and conditions**

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

20 **contained in paragraphs (a) and (b) of this subdivision.**

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

23 3. Property or interests in property held as tenants by the entirety by a
24 husband and wife that is at any time transferred to the trustee of a qualified
25 spousal trust of which the husband and wife are the settlors shall be held and
26 administered as provided by the trust terms in accordance with [either]
27 paragraph (a) [or], (b), or (c) of subdivision (2) of subsection 1 of this section, and
28 all such property and interests in property, including the proceeds thereof, the
29 income thereon, and any property into which such property, proceeds, or income
30 may be converted, shall thereafter have the same immunity from the claims of the
31 separate creditors of the settlors as would have existed if the settlors had
32 continued to hold that property as husband and wife as tenants by the entirety,
33 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
36 trustee of the qualified spousal trust.

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

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

52 6. No transfer by a husband and wife as settlors to a qualified spousal
53 trust shall affect or change either settlor's marital property rights to the
54 transferred property or interest therein immediately prior to such transfer in the
55 event of dissolution of marriage of the spouses, unless both spouses otherwise

56 expressly agree in writing.

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

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Unofficial

Bill

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