

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill No. 1725, Page 13, Section 362.245, Line 29,  
2 by inserting after all of said section and line the following:

3  
4 "456.950. 1. As used in this section, "qualified spousal trust" means a trust:

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

6 and

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

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

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

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

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

24 3. All property at any time held in a qualified spousal trust, without regard to how such  
25 property was titled prior to it being so held<sup>[5]</sup>:

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

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1           (2) With the exception of any written financial obligations, written guarantees, or secured or  
2 unsecured transactions executed by the settlors and held in a qualified spousal trust, shall continue  
3 to be immune and exempt from attachment during the life of the surviving settlor to the extent the  
4 property was held in a qualified spousal trust prior to the death of the first settlor and remains in a  
5 qualified spousal trust. This includes any property appreciation; and

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

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

11           5. Upon the death of each settlor, all property held by the trustee of the qualified spousal  
12 trust shall be distributed as directed by the then current terms of the governing instrument of such  
13 trust. Upon the death of the first settlor to die, if immediately prior to death the predeceased settlor's  
14 interest in the qualified spousal trust was then held or deemed to be held in such settlor's separate  
15 share, the property held in such settlor's separate share may pass into an irrevocable trust for the  
16 benefit of the surviving settlor or other beneficiary upon such terms as the governing instrument  
17 shall direct, including without limitation a spendthrift provision as provided in section 456.5-502.

18 Property may be held in or transferred to a settlor's joint or separate share of a trust:

19           (1) By designation under the current terms of the governing instrument of such trust;

20           (2) According to the specific titling of property or other designation that refers to such joint  
21 or separate share of such trust; or

22           (3) By designation to the trustee as the owner as provided in section 456.1-113.

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

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

29           8. This section shall apply to all trusts which fulfill the criteria set forth in this section for a  
30 qualified spousal trust regardless of whether such trust was created before, on, or after August 28,  
31 2011."; and

32  
33 Further amend said bill by amending the title, enacting clause, and intersectional references  
34 accordingly.