

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1810

By: Representative Penzo

## For An Act To Be Entitled

AN ACT TO PROVIDE FOR QUALIFIED SPOUSAL TRUSTS IN  
ARKANSAS; AND FOR OTHER PURPOSES.

### Subtitle

TO PROVIDE FOR QUALIFIED SPOUSAL TRUSTS  
IN ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 28, Chapter 72, is amended to add an additional subchapter to read as follows:

Subchapter 6 – Qualified Spousal Trust

28-72-601. Definitions.

As used in this subchapter:

(1) "Property" means an interest in any type of property that is:

(A) Held in a qualified spousal trust;

(B) Income earned from property held in a qualified spousal trust; and

(C) Property into which the interest, proceeds, or income earned from property held in a qualified spousal trust may be converted; and

(2) "Qualified spousal trust" means a trust that:

(A) At the time of its creation has two (2) settlors who are married to each other; and

(B) Includes terms requiring that during the joint lives of the settlors, all property transferred to or held by the trustee shall be held and administered:



(i) In one (1) trust for the benefit of both settlors and allows:

(a) The trust to be revoked by either settlor or both settlors while either or both of the settlors are alive; and

(b) Each settlor 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 life of the survivor;

(ii) In two (2) separate shares of one (1) trust for the benefit of each settlor and allows:

(a) A settlor to revoke his or her separate share of the trust without the participation or consent of the other settlor; and

(b) Each settlor to have the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the separate share of the settlor or for the life of the settlor; or

(iii) Under the terms and conditions provided under subdivisions (2)(B)(i) and (2)(B)(ii) of this section.

28-72-602. Settlement of trust.

(a) A qualified spousal trust may include a trust term that is not inconsistent with the provisions of this subchapter, including without limitation a discretionary power to distribute trust property to a person other than a settlor.

(b)(1) Unless otherwise provided in writing by each settlor who transfers property to a qualified spousal trust, property that is held at any time in a qualified spousal trust, without regard to how the property was titled before the property was held:

(A) Has the same immunity from the claim of a separate creditor of either settlor as if the property were held outside the qualified spousal trust by both settlors as tenants by the entirety; and

(B) Shall be treated as tenants by entirety property for the purpose of immunity from federal and state bankruptcy laws.

(2) Property that is held in a qualified spousal trust is not immune from the claim of a creditor if the marriage of the settlors

dissolves.

28-72-603. Death of settlors.

(a) After the death of both settlors, all property held by the trustee of the qualified spousal trust shall be distributed as directed by the then current terms of the governing instrument of the qualified spousal trust.

(b) After the death of the first settlor, if immediately before his or her death the predeceased settlor's interest in the qualified spousal trust was held in a separate share, the property held in the predeceased settlor's separate share may pass into an irrevocable trust for the benefit of the surviving settlor as provided by the terms of the governing instrument, including without limitation a spendthrift provision.

28-72-604. Dissolution of marriage.

(a) For purposes of the dissolution of the marriage of the settlors, the respective property rights of settlors who are married to each other shall not be affected or changed by the transfer of the property to, or the subsequent administration of the property as an asset of, a qualified spousal trust during the marriage of the settlors unless both of the settlors expressly agree otherwise in writing.

28-72-605. Applicability of other laws.

(a) The provisions of this subchapter are subject to the Uniform Voidable Transactions Act, § 4-59-201 et seq.

(b) This subchapter applies to a trust that meets the description and requirements of a qualified spousal trust under this subchapter regardless of whether the trust was created before or after the effective date of this act.

**APPROVED: 4/16/19**