

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1810

5 By: Representative Penzo  
6

## For An Act To Be Entitled

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

### Subtitle

12 TO PROVIDE FOR QUALIFIED SPOUSAL TRUSTS  
13 IN ARKANSAS.  
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16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code Title 28, Chapter 72, is amended to add an  
20 additional subchapter to read as follows:

21 Subchapter 6 – Qualified Spousal Trust

22 28-72-601. Definitions.

23 As used in this subchapter:

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

26 (A) Held in a qualified spousal trust;

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

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

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

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

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



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

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

5                   (b) Each settlor the right to receive  
6 distributions of income or principal, whether mandatory or within the  
7 discretion of the trustee, from the entire trust for the joint lives of the  
8 settlers and for life of the survivor;

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

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

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

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

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21           28-72-602. Settlement of trust.

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

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

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

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

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

1 dissolves.

2  
3 28-72-603. Death of settlors.

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

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

13  
14 28-72-604. Dissolution of marriage.

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

21  
22 28-72-605. Applicability of other laws.

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

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