

FIRST REGULAR SESSION

SENATE BILL NO. 322

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

Read 1st time January 27, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1707S.02I

AN ACT

To repeal section 208.010, RSMo, and to enact in lieu thereof one new section relating to public assistance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 208.010, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 208.010, to read as follows:

208.010. 1. In determining the eligibility of a claimant for public
2 assistance pursuant to this law, it shall be the duty of the family support division
3 to consider and take into account all facts and circumstances surrounding the
4 claimant, including his or her living conditions, earning capacity, income and
5 resources, from whatever source received, and if from all the facts and
6 circumstances the claimant is not found to be in need, assistance shall be denied.
7 In determining the need of a claimant, the costs of providing medical treatment
8 which may be furnished pursuant to sections 208.151 to 208.158 shall be
9 disregarded. The amount of benefits, when added to all other income, resources,
10 support, and maintenance shall provide such persons with reasonable subsistence
11 compatible with decency and health in accordance with the standards developed
12 by the family support division; provided, when a husband and wife are living
13 together, the combined income and resources of both shall be considered in
14 determining the eligibility of either or both. "Living together" for the purpose of
15 this chapter is defined as including a husband and wife separated for the purpose
16 of obtaining medical care or nursing home care, except that the income of a
17 husband or wife separated for such purpose shall be considered in determining
18 the eligibility of his or her spouse, only to the extent that such income exceeds
19 the amount necessary to meet the needs (as defined by rule or regulation of the
20 division) of such husband or wife living separately. In determining the need of

21 a claimant in federally aided programs there shall be disregarded such amounts
22 per month of earned income in making such determination as shall be required
23 for federal participation by the provisions of the federal Social Security Act (42
24 U.S.C.A. 301, et seq.), or any amendments thereto. When federal law or
25 regulations require the exemption of other income or resources, the family
26 support division may provide by rule or regulation the amount of income or
27 resources to be disregarded.

28 2. Benefits shall not be payable to any claimant who:

29 (1) Has or whose spouse with whom he or she is living has, prior to July
30 1, 1989, given away or sold a resource within the time and in the manner
31 specified in this subdivision. In determining the resources of an individual,
32 unless prohibited by federal statutes or regulations, there shall be included (but
33 subject to the exclusions pursuant to subdivisions (4) and (5) of this subsection,
34 and subsection 5 of this section) any resource or interest therein owned by such
35 individual or spouse within the twenty-four months preceding the initial
36 investigation, or at any time during which benefits are being drawn, if such
37 individual or spouse gave away or sold such resource or interest within such
38 period of time at less than fair market value of such resource or interest for the
39 purpose of establishing eligibility for benefits, including but not limited to
40 benefits based on December, 1973, eligibility requirements, as follows:

41 (a) Any transaction described in this subdivision shall be presumed to
42 have been for the purpose of establishing eligibility for benefits or assistance
43 pursuant to this chapter unless such individual furnishes convincing evidence to
44 establish that the transaction was exclusively for some other purpose;

45 (b) The resource shall be considered in determining eligibility from the
46 date of the transfer for the number of months the uncompensated value of the
47 disposed of resource is divisible by the average monthly grant paid or average
48 Medicaid payment in the state at the time of the investigation to an individual
49 or on his or her behalf under the program for which benefits are claimed,
50 provided that:

51 a. When the uncompensated value is twelve thousand dollars or less, the
52 resource shall not be used in determining eligibility for more than twenty-four
53 months; or

54 b. When the uncompensated value exceeds twelve thousand dollars, the
55 resource shall not be used in determining eligibility for more than sixty months;

56 (2) The provisions of subdivision (1) of this subsection shall not apply to

57 a transfer, other than a transfer to claimant's spouse, made prior to March 26,
58 1981, when the claimant furnishes convincing evidence that the uncompensated
59 value of the disposed of resource or any part thereof is no longer possessed or
60 owned by the person to whom the resource was transferred;

61 (3) Has received, or whose spouse with whom he or she is living has
62 received, benefits to which he or she was not entitled through misrepresentation
63 or nondisclosure of material facts or failure to report any change in status or
64 correct information with respect to property or income as required by section
65 208.210. A claimant ineligible pursuant to this subsection shall be ineligible for
66 such period of time from the date of discovery as the family support division may
67 deem proper; or in the case of overpayment of benefits, future benefits may be
68 decreased, suspended or entirely withdrawn for such period of time as the
69 division may deem proper;

70 (4) Owns or possesses resources in the sum of one thousand dollars or
71 more; provided, however, that if such person is married and living with spouse,
72 he or she, or they, individually or jointly, may own resources not to exceed two
73 thousand dollars; and provided further, that in the case of a temporary assistance
74 for needy families claimant **or a MO HealthNet permanent and total**
75 **disability claimant**, the provision of this subsection shall not apply;

76 (5) Prior to October 1, 1989, owns or possesses property of any kind or
77 character, excluding amounts placed in an irrevocable prearranged funeral or
78 burial contract under chapter 436, or has an interest in property, of which he or
79 she is the record or beneficial owner, the value of such property, as determined
80 by the family support division, less encumbrances of record, exceeds twenty-nine
81 thousand dollars, or if married and actually living together with husband or wife,
82 if the value of his or her property, or the value of his or her interest in property,
83 together with that of such husband and wife, exceeds such amount;

84 (6) In the case of temporary assistance for needy families, if the parent,
85 stepparent, and child or children in the home owns or possesses property of any
86 kind or character, or has an interest in property for which he or she is a record
87 or beneficial owner, the value of such property, as determined by the family
88 support division and as allowed by federal law or regulation, less encumbrances
89 of record, exceeds one thousand dollars, excluding the home occupied by the
90 claimant, amounts placed in an irrevocable prearranged funeral or burial contract
91 under chapter 436, one automobile which shall not exceed a value set forth by
92 federal law or regulation and for a period not to exceed six months, such other

93 real property which the family is making a good-faith effort to sell, if the family
94 agrees in writing with the family support division to sell such property and from
95 the net proceeds of the sale repay the amount of assistance received during such
96 period. If the property has not been sold within six months, or if eligibility
97 terminates for any other reason, the entire amount of assistance paid during such
98 period shall be a debt due the state;

99 **(7) In the case of MO HealthNet permanent and total disability**
100 **claimants, owns or possesses resources in the sum of five thousand**
101 **dollars or more; provided, however, that if such person is married and**
102 **living with spouse, he or she, or they, individually or jointly, may own**
103 **resources not to exceed ten thousand dollars except for medical savings**
104 **accounts and independent living accounts as defined and limited in**
105 **subsection 1 of section 208.146;**

106 **(8)** Is an inmate of a public institution, except as a patient in a public
107 medical institution.

108 3. In determining eligibility and the amount of benefits to be granted
109 pursuant to federally aided programs, the income and resources of a relative or
110 other person living in the home shall be taken into account to the extent the
111 income, resources, support and maintenance are allowed by federal law or
112 regulation to be considered.

113 4. In determining eligibility and the amount of benefits to be granted
114 pursuant to federally aided programs, the value of burial lots or any amounts
115 placed in an irrevocable prearranged funeral or burial contract under chapter 436
116 shall not be taken into account or considered an asset of the burial lot owner or
117 the beneficiary of an irrevocable prearranged funeral or funeral contract. For
118 purposes of this section, "burial lots" means any burial space as defined in section
119 214.270 and any memorial, monument, marker, tombstone or letter marking a
120 burial space. If the beneficiary, as defined in chapter 436, of an irrevocable
121 prearranged funeral or burial contract receives any public assistance benefits
122 pursuant to this chapter and if the purchaser of such contract or his or her
123 successors in interest transfer, amend, or take any other such actions regarding
124 the contract so that any person will be entitled to a refund, such refund shall be
125 paid to the state of Missouri with any amount in excess of the public assistance
126 benefits provided under this chapter to be refunded by the state of Missouri to the
127 purchaser or his or her successors. In determining eligibility and the amount of
128 benefits to be granted under federally aided programs, the value of any life

129 insurance policy where a seller or provider is made the beneficiary or where the
130 life insurance policy is assigned to a seller or provider, either being in
131 consideration for an irrevocable prearranged funeral contract under chapter 436,
132 shall not be taken into account or considered an asset of the beneficiary of the
133 irrevocable prearranged funeral contract. In addition, the value of any funds, up
134 to nine thousand nine hundred ninety-nine dollars, placed into an irrevocable
135 personal funeral trust account, where the trustee of the irrevocable personal
136 funeral trust account is a state or federally chartered financial institution
137 authorized to exercise trust powers in the state of Missouri, shall not be taken
138 into account or considered an asset of the person whose funds are so deposited if
139 such funds are restricted to be used only for the burial, funeral, preparation of
140 the body, or other final disposition of the person whose funds were deposited into
141 said personal funeral trust account. No person or entity shall charge more than
142 ten percent of the total amount deposited into a personal funeral trust in order
143 to create or set up said personal funeral trust, and any fees charged for the
144 maintenance of such a personal funeral trust shall not exceed three percent of the
145 trust assets annually. Trustees may commingle funds from two or more such
146 personal funeral trust accounts so long as accurate books and records are kept as
147 to the value, deposits, and disbursements of each individual depositor's funds and
148 trustees are to use the prudent investor standard as to the investment of any
149 funds placed into a personal funeral trust. If the person whose funds are
150 deposited into the personal funeral trust account receives any public assistance
151 benefits pursuant to this chapter and any funds in the personal funeral trust
152 account are, for any reason, not spent on the burial, funeral, preparation of the
153 body, or other final disposition of the person whose funds were deposited into the
154 trust account, such funds shall be paid to the state of Missouri with any amount
155 in excess of the public assistance benefits provided under this chapter to be
156 refunded by the state of Missouri to the person who received public assistance
157 benefits or his or her successors. No contract with any cemetery, funeral
158 establishment, or any provider or seller shall be required in regards to funds
159 placed into a personal funeral trust account as set out in this subsection.

160 5. In determining the total property owned pursuant to subdivision (5) of
161 subsection 2 of this section, or resources, of any person claiming or for whom
162 public assistance is claimed, there shall be disregarded any life insurance policy,
163 or prearranged funeral or burial contract, or any two or more policies or
164 contracts, or any combination of policies and contracts, which provides for the

165 payment of one thousand five hundred dollars or less upon the death of any of the
166 following:

- 167 (1) A claimant or person for whom benefits are claimed; or
168 (2) The spouse of a claimant or person for whom benefits are claimed with
169 whom he or she is living. If the value of such policies exceeds one thousand five
170 hundred dollars, then the total value of such policies may be considered in
171 determining resources; except that, in the case of temporary assistance for needy
172 families, there shall be disregarded any prearranged funeral or burial contract,
173 or any two or more contracts, which provides for the payment of one thousand five
174 hundred dollars or less per family member.

175 6. Beginning September 30, 1989, when determining the eligibility of
176 institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical
177 assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections
178 1396a, et seq., the family support division shall comply with the provisions of the
179 federal statutes and regulations. As necessary, the division shall by rule or
180 regulation implement the federal law and regulations which shall include but not
181 be limited to the establishment of income and resource standards and
182 limitations. The division shall require:

183 (1) That at the beginning of a period of continuous institutionalization
184 that is expected to last for thirty days or more, the institutionalized spouse, or
185 the community spouse, may request an assessment by the family support division
186 of total countable resources owned by either or both spouses;

187 (2) That the assessed resources of the institutionalized spouse and the
188 community spouse may be allocated so that each receives an equal share;

189 (3) That upon an initial eligibility determination, if the community
190 spouse's share does not equal at least twelve thousand dollars, the
191 institutionalized spouse may transfer to the community spouse a resource
192 allowance to increase the community spouse's share to twelve thousand dollars;

193 (4) That in the determination of initial eligibility of the institutionalized
194 spouse, no resources attributed to the community spouse shall be used in
195 determining the eligibility of the institutionalized spouse, except to the extent
196 that the resources attributed to the community spouse do exceed the community
197 spouse's resource allowance as defined in 42 U.S.C. Section 1396r-5;

198 (5) That beginning in January, 1990, the amount specified in subdivision
199 (3) of this subsection shall be increased by the percentage increase in the
200 Consumer Price Index for All Urban Consumers between September, 1988, and

201 the September before the calendar year involved; and

202 (6) That beginning the month after initial eligibility for the
203 institutionalized spouse is determined, the resources of the community spouse
204 shall not be considered available to the institutionalized spouse during that
205 continuous period of institutionalization.

206 7. Beginning July 1, 1989, institutionalized individuals shall be ineligible
207 for the periods required and for the reasons specified in 42 U.S.C. Section 1396p.

208 8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted
209 pursuant to the provisions of section 208.080.

210 9. Beginning October 1, 1989, when determining eligibility for assistance
211 pursuant to this chapter there shall be disregarded unless otherwise provided by
212 federal or state statutes the home of the applicant or recipient when the home is
213 providing shelter to the applicant or recipient, or his or her spouse or dependent
214 child. The family support division shall establish by rule or regulation in
215 conformance with applicable federal statutes and regulations a definition of the
216 home and when the home shall be considered a resource that shall be considered
217 in determining eligibility.

218 10. Reimbursement for services provided by an enrolled Medicaid provider
219 to a recipient who is duly entitled to Title XIX Medicaid and Title XVIII Medicare
220 Part B, Supplementary Medical Insurance (SMI) shall include payment in full of
221 deductible and coinsurance amounts as determined due pursuant to the
222 applicable provisions of federal regulations pertaining to Title XVIII Medicare
223 Part B, except for hospital outpatient services or the applicable Title XIX cost
224 sharing.

225 11. A "community spouse" is defined as being the noninstitutionalized
226 spouse.

227 12. An institutionalized spouse applying for Medicaid and having a spouse
228 living in the community shall be required, to the maximum extent permitted by
229 law, to divert income to such community spouse to raise the community spouse's
230 income to the level of the minimum monthly needs allowance, as described in 42
231 U.S.C. Section 1396r-5. Such diversion of income shall occur before the
232 community spouse is allowed to retain assets in excess of the community spouse
233 protected amount described in 42 U.S.C. Section 1396r-5.