

SECOND REGULAR SESSION

# SENATE BILL NO. 1061

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5284S.011

## AN ACT

To repeal sections 208.080 and 454.475, RSMo, and to enact in lieu thereof two new sections relating to the appeals process for programs administered by the department of social services.

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

Section A. Sections 208.080 and 454.475, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 208.080 and 454.475, to read as follows:

208.080. 1. Any applicant for or recipient of benefits or services provided by law by the **family support** division [of family services] may appeal to the director of the **family support** division [of family services] from a decision of a county office of the **family support** division [of family services] in any of the following cases:

(1) If his right to make application for any such benefits or services is denied; or

(2) If his application is disallowed in whole or in part, or is not acted upon within a reasonable time after it is filed; or

(3) If it is proposed to cancel or modify benefits or services; or

(4) If he is adversely affected by any determination of a county office of the **family support** division [of family services] in its administration of the programs administered by it; or

(5) If a determination is made pursuant to subsection 2 of section 208.180 that payment of benefits on behalf of a dependent child shall not be made to the relative with whom he lives.

2. If the division proposes to terminate or modify the payment of benefits

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

18 or the providing of services to the recipient or the division has terminated or  
19 modified the payment of benefits or providing of services to the recipient and the  
20 recipient appeals, the decision of the director as to the eligibility of the recipient  
21 at the time such action was proposed or taken shall be based on the facts shown  
22 by the evidence presented at the hearing of the appeal to have existed at the time  
23 such action to terminate or modify was proposed or was taken.

24           3. In the case of a proposed action by the county office of the **family**  
25 **support** division [of family services] to reduce, modify, or discontinue benefits  
26 or services to a recipient, the recipient of such benefits or services shall have ten  
27 days from the date of the mailing of notice of the proposed action to reduce,  
28 modify, or discontinue benefits or services within which to request an appeal to  
29 the director of the **family support** division [of family services]. In the notice to  
30 the recipient of such proposed action, the county office of the **family support**  
31 division [of family services] shall notify the recipient of all his rights of appeal  
32 under this section. Proper blank forms for appeal to the director of the **family**  
33 **support** division [of family services] shall be furnished by the county office to  
34 any aggrieved recipient. Every such appeal to the director of the **family**  
35 **support** division [of family services] shall be transmitted by the county office to  
36 the director of the **family support** division [of family services] immediately upon  
37 the same being filed with the county office. If an appeal is requested, benefits or  
38 services shall continue undiminished or unchanged until such appeal is heard  
39 and a decision has been rendered thereon, except that in an aid to families with  
40 dependent children case the recipient may request that benefits or services not  
41 be continued undiminished or unchanged during the appeal.

42           4. When a case has been closed or modified and no appeal was requested  
43 prior to closing or modification, the recipient shall have ninety days from the date  
44 of closing or modification to request an appeal to the director of the **family**  
45 **support** division [of family services]. Each recipient who has not requested an  
46 appeal prior to the closing or modification of his case shall be notified at the time  
47 of such closing or modification of his right to request an appeal during this  
48 ninety-day period. Proper blank forms for requesting an appeal to the director  
49 of the **family support** division [of family services] shall be furnished by the  
50 county office to any aggrieved applicant. Every such request made in any manner  
51 for an appeal to the director of the **family support** division [of family services]  
52 shall be transmitted by the county office to the director of the **family support**  
53 division [of family services] immediately upon the same being filed with the

54 county office. If an appeal is requested in the ninety-day period subsequent to  
55 the closing or modification, benefits or services shall not be continued at their  
56 prior level during the pendency of the appeal.

57 5. In the case of a rejection of an application for benefits or services, the  
58 aggrieved applicant shall have ninety days from the date of the notice of the  
59 action in which to request an appeal to the director of the **family support**  
60 division [of family services]. In the rejection notice the applicant for benefits or  
61 services shall be notified of all of his rights of appeal under this section. Proper  
62 blank forms for requesting an appeal to the director of the **family support**  
63 division [of family services] shall be furnished by the county office to any  
64 aggrieved applicant. Any such request made in any manner for an appeal shall  
65 be transmitted by the county office to the director of the **family support** division  
66 [of family services], immediately upon the same being filed with the county office.

67 6. If the division has rejected an application for benefits or services and  
68 the applicant appeals, the decision of the director as to the eligibility of the  
69 applicant at the time such rejection was made shall be based upon the facts  
70 shown by the evidence presented at the hearing of the appeal to have existed at  
71 the time the rejection was made.

72 7. The director of the **family support** division [of family services] shall  
73 give the applicant for benefits or services or the recipient of benefits or services  
74 reasonable notice of, and an opportunity for, a [fair] hearing [in the county of his  
75 residence at the time the adverse action was taken]. The hearing shall be  
76 conducted by the director of the **family support** division [of family services] or  
77 [his] the director's designee. **The hearing may be held in person or by**  
78 **telephone, teleconference, video conference, or other electronic means**  
79 **at the discretion of the director or the director's designee. When**  
80 **making the decision on whether to hold an in-person hearing, the**  
81 **director or the director's designee shall consider all factors necessary**  
82 **to provide a full and fair hearing, including, but not limited to, the**  
83 **applicant's or recipient's ability to communicate by telephone,**  
84 **teleconference, video conference, or other electronic means, the**  
85 **complexity of issues involved in the administrative hearing, the**  
86 **potential number of witnesses to testify at the administrative hearing,**  
87 **and if veracity is at issue in the underlying action of the administrative**  
88 **hearing.** Every applicant or recipient, on appeal to the director of the **family**  
89 **support** division [of family services], shall be entitled to be present at the

90 hearing, [in person] **whether by telephone, teleconference, video**  
91 **conference, or other electronic means**, and by attorney or representative,  
92 and shall be entitled to introduce into the record of such hearing any and all  
93 evidence, by witnesses or otherwise, pertinent to such applicant's or recipient's  
94 eligibility between the time he **or she** applied for benefits or services and the  
95 time the application was denied or the benefits or services were terminated or  
96 modified, and all such evidence shall be taken down, preserved, and shall become  
97 a part of the applicant's or recipient's appeal record. Upon the record so made,  
98 the director of the **family support** division [of family services] shall determine  
99 all questions presented by the appeal, and shall make such decision as to the  
100 granting of benefits or services as in [his] **the director's** opinion is justified and  
101 is in conformity with the provisions of the law. The director shall clearly state  
102 the reasons for [his] **the** decision and shall include a statement of findings of fact  
103 and conclusions of law pertinent to the questions in issue.

104           8. All appeal requests may initially be made orally or in any written form,  
105 but all such requests shall be transcribed on forms furnished by the **family**  
106 **support** division [of family services] and signed by the aggrieved applicant or  
107 recipient or his representative prior to the commencement of the hearing.

454.475. 1. Hearings provided for in this section shall be conducted  
2 pursuant to chapter 536, RSMo, by administrative hearing officers designated by  
3 the Missouri department of social services, **except as otherwise provided in**  
4 **this section**. The hearing officer shall provide the parents, the person having  
5 custody of the child, or other appropriate agencies or their attorneys with notice  
6 of any proceeding in which support obligations may be established or  
7 modified. The department shall not be stayed from enforcing and collecting upon  
8 the administrative order during the hearing process and during any appeal to the  
9 courts of this state, unless specifically enjoined by court order.

10           2. If no factual issue has been raised by the application for hearing, or the  
11 issues raised have been previously litigated or do not constitute a defense to the  
12 action, the director may enter an order without an evidentiary hearing, which  
13 order shall be a final decision entitled to judicial review as provided in sections  
14 536.100 to 536.140, RSMo.

15           3. After full and fair hearing, the hearing officer shall make specific  
16 findings regarding the liability and responsibility, if any, of the alleged  
17 responsible parent for the support of the dependent child, and for repayment of  
18 accrued state debt or arrearages, and the costs of collection, and shall enter an

19 order consistent therewith. In making the determination of the amount the  
20 parent shall contribute toward the future support of a dependent child, the  
21 hearing officer shall use the scale and formula for minimum support obligations  
22 established by the department pursuant to section 454.480.

23 4. If the person who requests the hearing fails to appear at the time and  
24 place set for the hearing, upon a showing of proper notice to that parent, the  
25 hearing officer shall enter findings and order in accordance with the provisions  
26 of the notice and finding of support responsibility unless the hearing officer  
27 determines that no good cause [therefor] **therefore** exists.

28 5. In contested cases, the findings and order of the hearing officer shall  
29 be the decision of the director. Any parent or person having custody of the child  
30 adversely affected by such decision may obtain judicial review pursuant to  
31 sections 536.100 to 536.140, RSMo, by filing a petition for review in the circuit  
32 court of proper venue within thirty days of mailing of the decision. Copies of the  
33 decision or order of the hearing officer shall be mailed to any parent, person  
34 having custody of the child and the division within fourteen days of issuance.

35 6. If a hearing has been requested, and upon request of a parent, a person  
36 having custody of the child, the division or a IV-D agency, the director shall enter  
37 a temporary order requiring the provision of child support pending the final  
38 decision or order pursuant to this section if there is clear and convincing evidence  
39 establishing a presumption of paternity pursuant to section 210.822, RSMo. In  
40 determining the amount of child support, the director shall consider the factors  
41 set forth in section 452.340, RSMo. The temporary order, effective upon filing  
42 pursuant to section 454.490, is not subject to a hearing pursuant to this  
43 section. The temporary order may be stayed by a court of competent jurisdiction  
44 only after a hearing and a finding by the court that the order fails to comply with  
45 rule 88.01.

46 **7. (1) At any time after the issuance of a decision and order of**  
47 **the director and prior to either referral of the decision and order to the**  
48 **attorney general's office or filing of the director's decision and order**  
49 **with the appropriate clerk of the circuit court, errors in the decision**  
50 **and order arising from oversight or omission, mistake, surprise, fraud,**  
51 **misrepresentation, excusable neglect, or inadvertence may be**  
52 **corrected, after notice to the parties, by the agency hearing officer or**  
53 **the hearing officer's supervisor on behalf of the director on their own**  
54 **initiative or on the motion of any party or the division.**

55           **(2) After issuance of the decision and order of the director in an**  
56 **administrative hearing proceeding to modify a court order for child**  
57 **support and prior to the filing of the administrative order with the**  
58 **court for approval or the filing of a petition for judicial review, the**  
59 **director, by the agency hearing officer or the hearing officer's**  
60 **supervisor on their own initiative, or on the motion of any party or the**  
61 **division, after notice to the parties, may vacate the administrative**  
62 **order if it is found that the administrative order was issued without**  
63 **subject matter jurisdiction or personal jurisdiction or if the order was**  
64 **issued without affording the parties due process.**

✓

Bill

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