

FIRST REGULAR SESSION

SENATE BILL NO. 365

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 28, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0134S.011

AN ACT

To repeal section 208.010, RSMo, and to enact in lieu thereof one new section relating to trusts to pay for funeral services, facilities, or merchandise.

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Section A. Section 208.010, RSMo, is repealed and one new section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 [division of family
3 services] **family support division** to consider and take into account all facts
4 and circumstances surrounding the claimant, including his or her living
5 conditions, earning capacity, income and resources, from whatever source
6 received, and if from all the facts and circumstances the claimant is not found to
7 be in need, assistance shall be denied. In determining the need of a claimant, the
8 costs of providing medical treatment which may be furnished pursuant to sections
9 208.151 to 208.158 [and 208.162] shall be disregarded. The amount of benefits,
10 when added to all other income, resources, support, and maintenance shall
11 provide such persons with reasonable subsistence compatible with decency and
12 health in accordance with the standards developed by the [division of family
13 services] **family support division**; provided, when a husband and wife are
14 living together, the combined income and resources of both shall be considered in
15 determining the eligibility of either or both. "Living together" for the purpose of
16 this chapter is defined as including a husband and wife separated for the purpose
17 of obtaining medical care or nursing home care, except that the income of a
18 husband or wife separated for such purpose shall be considered in determining
19 the eligibility of his or her spouse, only to the extent that such income exceeds

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

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

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

30 (1) Has or whose spouse with whom he or she is living has, prior to July
31 1, 1989, given away or sold a resource within the time and in the manner
32 specified in this subdivision. In determining the resources of an individual,
33 unless prohibited by federal statutes or regulations, there shall be included (but
34 subject to the exclusions pursuant to subdivisions (4) and (5) of this subsection,
35 and subsection [5] 6 of this section) any resource or interest therein owned by
36 such individual or spouse within the twenty-four months preceding the initial
37 investigation, or at any time during which benefits are being drawn, if such
38 individual or spouse gave away or sold such resource or interest within such
39 period of time at less than fair market value of such resource or interest for the
40 purpose of establishing eligibility for benefits, including but not limited to
41 benefits based on December, 1973, eligibility requirements, as follows:

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

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

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

55 b. When the uncompensated value exceeds twelve thousand dollars, the

56 resource shall not be used in determining eligibility for more than sixty months;

57 (2) The provisions of subdivision (1) of this subsection shall not apply to
58 a transfer, other than a transfer to claimant's spouse, made prior to March 26,
59 1981, when the claimant furnishes convincing evidence that the uncompensated
60 value of the disposed of resource or any part thereof is no longer possessed or
61 owned by the person to whom the resource was transferred;

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

71 (4) Owns or possesses resources in the sum of one thousand dollars or
72 more; provided, however, that if such person is married and living with spouse,
73 he or she, or they, individually or jointly, may own resources not to exceed two
74 thousand dollars; and provided further, that in the case of a temporary assistance
75 for needy families 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 [division of family services] **family support division**, less encumbrances
81 of record, exceeds twenty-nine thousand dollars, or if married and actually living
82 together with husband or wife, if the value of his or her property, or the value of
83 his or her interest in property, together with that of such husband and wife,
84 exceeds such amount;

85 (6) In the case of temporary assistance for needy families, if the parent,
86 stepparent, and child or children in the home owns or possesses property of any
87 kind or character, or has an interest in property for which he or she is a record
88 or beneficial owner, the value of such property, as determined by the [division of
89 family services] **family support division** and as allowed by federal law or
90 regulation, less encumbrances of record, exceeds one thousand dollars, excluding
91 the home occupied by the claimant, amounts placed in an irrevocable prearranged

92 funeral or burial contract under chapter 436, one automobile which shall not
93 exceed a value set forth by federal law or regulation and for a period not to
94 exceed six months, such other real property which the family is making a
95 good-faith effort to sell, if the family agrees in writing with the [division of family
96 services] **family support division** to sell such property and from the net
97 proceeds of the sale repay the amount of assistance received during such period.
98 If the property has not been sold within six months, or if eligibility terminates for
99 any other reason, the entire amount of assistance paid during such period shall
100 be a debt due the state;

101 (7) Is an inmate of a public institution, except as a patient in a public
102 medical institution.

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

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

128 irrevocable prearranged funeral contract.

129 **5. In determining eligibility and the amount of benefits to be**
130 **granted pursuant to federally aided programs, any amounts up to nine**
131 **thousand nine hundred ninety-nine dollars placed in an irrevocable**
132 **trust designated to pay for, at the time of need, the final disposition of**
133 **a dead human body, funeral or burial services or facilities, or funeral**
134 **merchandise that is not a preneed contract as defined in section**
135 **436.405, shall not be considered an asset of the beneficiary. Any**
136 **overages after final disposition shall be paid to the state of Missouri up**
137 **to the amount of public assistance benefits provided to the beneficiary**
138 **pursuant to this chapter with any remainder to be paid to those**
139 **designated in the trust.**

140 **6.** In determining the total property owned pursuant to subdivision (5) of
141 subsection 2 of this section, or resources, of any person claiming or for whom
142 public assistance is claimed, there shall be disregarded any life insurance policy,
143 or prearranged funeral or burial contract, or any two or more policies or
144 contracts, or any combination of policies and contracts, which provides for the
145 payment of one thousand five hundred dollars or less upon the death of any of the
146 following:

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

155 **[6.] 7.** Beginning September 30, 1989, when determining the eligibility
156 of institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical
157 assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections
158 1396a, et seq., the **[division of family services] family support division** shall
159 comply with the provisions of the federal statutes and regulations. As necessary,
160 the division shall by rule or regulation implement the federal law and regulations
161 which shall include but not be limited to the establishment of income and
162 resource standards and limitations. The division shall require:

- 163 (1) That at the beginning of a period of continuous institutionalization

164 that is expected to last for thirty days or more, the institutionalized spouse, or
165 the community spouse, may request an assessment by the [division of family
166 services] **family support division** of total countable resources owned by either
167 or both spouses;

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

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

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

179 (5) That beginning in January, 1990, the amount specified in subdivision
180 (3) of this subsection shall be increased by the percentage increase in the
181 Consumer Price Index for All Urban Consumers between September, 1988, and
182 the September before the calendar year involved; and

183 (6) That beginning the month after initial eligibility for the
184 institutionalized spouse is determined, the resources of the community spouse
185 shall not be considered available to the institutionalized spouse during that
186 continuous period of institutionalization.

187 [7.] 8. Beginning July 1, 1989, institutionalized individuals shall be
188 ineligible for the periods required and for the reasons specified in 42 U.S.C.
189 Section 1396p.

190 [8.] 9. The hearings required by 42 U.S.C. Section 1396r-5 shall be
191 conducted pursuant to the provisions of section 208.080.

192 [9.] 10. Beginning October 1, 1989, when determining eligibility for
193 assistance pursuant to this chapter there shall be disregarded unless otherwise
194 provided by federal or state statutes the home of the applicant or recipient when
195 the home is providing shelter to the applicant or recipient, or his or her spouse
196 or dependent child. The [division of family services] **family support division**
197 shall establish by rule or regulation in conformance with applicable federal
198 statutes and regulations a definition of the home and when the home shall be
199 considered a resource that shall be considered in determining eligibility.

200 [10.] 11. Reimbursement for services provided by an enrolled Medicaid
201 provider to a recipient who is duly entitled to Title XIX Medicaid and Title XVIII
202 Medicare Part B, Supplementary Medical Insurance (SMI) shall include payment
203 in full of deductible and coinsurance amounts as determined due pursuant to the
204 applicable provisions of federal regulations pertaining to Title XVIII Medicare
205 Part B, except for hospital outpatient services or the applicable Title XIX cost
206 sharing.

207 [11.] 12. A "community spouse" is defined as being the
208 noninstitutionalized spouse.

209 [12.] 13. An institutionalized spouse applying for Medicaid and having
210 a spouse living in the community shall be required, to the maximum extent
211 permitted by law, to divert income to such community spouse to raise the
212 community spouse's income to the level of the minimum monthly needs allowance,
213 as described in 42 U.S.C. Section 1396r-5. Such diversion of income shall occur
214 before the community spouse is allowed to retain assets in excess of the
215 community spouse protected amount described in 42 U.S.C. Section 1396r-5.

Bill ✓

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