

FIRST REGULAR SESSION

SENATE BILL NO. 405

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time February 27, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1886S.011

AN ACT

To repeal section 208.010, RSMo, and to enact in lieu thereof one new section relating to personal funeral trust accounts.

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Section A. Section 208.010, RSMo, is repealed and one new section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 to consider and take into account all facts and circumstances
4 surrounding the claimant, including his or her living conditions, earning capacity,
5 income and 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 and 208.162
9 shall be disregarded. The amount of benefits, when added to all other income,
10 resources, support, and maintenance shall provide such persons with reasonable
11 subsistence compatible with decency and health in accordance with the standards
12 developed by the division of family services; provided, when a husband and wife
13 are living together, the combined income and resources of both shall be
14 considered in determining the eligibility of either or both. "Living together" for
15 the purpose of this chapter is defined as including a husband and wife separated
16 for the purpose of obtaining medical care or nursing home care, except that the
17 income of a husband or wife separated for such purpose shall be considered in
18 determining the eligibility of his or her spouse, only to the extent that such
19 income exceeds the amount necessary to meet the needs (as defined by rule or
20 regulation of the division) of such husband or wife living separately. In

21 determining the need of a claimant in federally aided programs there shall be
22 disregarded such amounts per month of earned income in making such
23 determination as shall be required for federal participation by the provisions of
24 the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments
25 thereto. When federal law or regulations require the exemption of other income
26 or resources, the division of family services may provide by rule or regulation the
27 amount of income or 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 division of family services
67 may deem proper; or in the case of overpayment of benefits, future benefits may
68 be 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, the provision of this subsection shall not apply;

75 (5) Prior to October 1, 1989, owns or possesses property of any kind or
76 character, excluding amounts placed in an irrevocable prearranged funeral or
77 burial contract under chapter 436, or has an interest in property, of which he or
78 she is the record or beneficial owner, the value of such property, as determined
79 by the division of family services, less encumbrances of record, exceeds
80 twenty-nine thousand dollars, or if married and actually living together with
81 husband or wife, if the value of his or her property, or the value of his or her
82 interest in property, together with that of such husband and wife, exceeds such
83 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 division of
88 family services 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 division of family services to sell such property and
95 from the net proceeds of the sale repay the amount of assistance received during
96 such 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) Is an inmate of a public institution, except as a patient in a public
100 medical institution.

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

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

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

157 5. In determining the total property owned pursuant to subdivision (5) of
158 subsection 2 of this section, or resources, of any person claiming or for whom
159 public assistance is claimed, there shall be disregarded any life insurance policy,
160 or prearranged funeral or burial contract, or any two or more policies or
161 contracts, or any combination of policies and contracts, which provides for the
162 payment of one thousand five hundred dollars or less upon the death of any of the
163 following:

- 164 (1) A claimant or person for whom benefits are claimed; or
165 (2) The spouse of a claimant or person for whom benefits are claimed with

166 whom he or she is living. If the value of such policies exceeds one thousand five
167 hundred dollars, then the total value of such policies may be considered in
168 determining resources; except that, in the case of temporary assistance for needy
169 families, there shall be disregarded any prearranged funeral or burial contract,
170 or any two or more contracts, which provides for the payment of one thousand five
171 hundred dollars or less per family member.

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

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

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

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

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

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

199 (6) That beginning the month after initial eligibility for the
200 institutionalized spouse is determined, the resources of the community spouse
201 shall not be considered available to the institutionalized spouse during that

202 continuous period of institutionalization.

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

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

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

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

222 11. A "community spouse" is defined as being the noninstitutionalized
223 spouse.

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

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