

FIRST REGULAR SESSION

# HOUSE BILL NO. 1005

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CHAPPELLE-NADAL.

Read 1st time February 28, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2135L.01I

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### AN ACT

To repeal sections 208.010 and 208.174, RSMo, and to enact in lieu thereof two new sections relating to eligibility for medical assistance.

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

Section A. Sections 208.010 and 208.174, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 208.010 and 208.174, to read as follows:

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 be considered in determining the eligibility of his or her spouse, only to the extent that such  
16 income exceeds the amount necessary to meet the needs (as defined by rule or regulation of the  
17 division) of such husband or wife living separately. In determining the need of a claimant in  
18 federally aided programs there shall be disregarded such amounts per month of earned income  
19 in making such determination as shall be required for federal participation by the provisions of  
20 the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments thereto. When  
21 federal law or regulations require the exemption of other income or resources, the division of  
22 family services may provide by rule or regulation the amount of income or resources to be  
23 disregarded.

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

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

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

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

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

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

48 (2) The provisions of subdivision (1) of this subsection shall not apply to a transfer, other  
49 than a transfer to claimant's spouse, made prior to March 26, 1981, when the claimant furnishes

50 convincing evidence that the uncompensated value of the disposed of resource or any part thereof  
51 is no longer possessed or owned by the person to whom the resource was transferred;

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

59 (4) Owns or possesses resources in the sum of one thousand dollars or more, **except that**  
60 **for eligibility for medical assistance, the resource limit shall be two thousand five hundred**  
61 **dollars or more;** provided, however, that if such person is married and living with spouse, he  
62 or she, or they, individually or jointly, may own resources not to exceed two thousand dollars,  
63 **except that for eligibility for medical assistance, the resource limit shall be five thousand**  
64 **dollars or more;** and provided further, that in the case of a temporary assistance for needy  
65 families claimant, the provision of this subsection shall not apply;

66 (5) Prior to October 1, 1989, owns or possesses property of any kind or character,  
67 excluding amounts placed in an irrevocable prearranged funeral or burial contract pursuant to  
68 subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053,  
69 RSMo, or has an interest in property, of which he or she is the record or beneficial owner, the  
70 value of such property, as determined by the division of family services, less encumbrances of  
71 record, exceeds twenty-nine thousand dollars, or if married and actually living together with  
72 husband or wife, if the value of his or her property, or the value of his or her interest in property,  
73 together with that of such husband and wife, exceeds such amount;

74 (6) In the case of temporary assistance for needy families, if the parent, stepparent, and  
75 child or children in the home owns or possesses property of any kind or character, or has an  
76 interest in property for which he or she is a record or beneficial owner, the value of such  
77 property, as determined by the division of family services and as allowed by federal law or  
78 regulation, less encumbrances of record, exceeds one thousand dollars, excluding the home  
79 occupied by the claimant, amounts placed in an irrevocable prearranged funeral or burial contract  
80 pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of  
81 section 436.053, RSMo, one automobile which shall not exceed a value set forth by federal law  
82 or regulation and for a period not to exceed six months, such other real property which the family  
83 is making a good-faith effort to sell, if the family agrees in writing with the division of family  
84 services to sell such property and from the net proceeds of the sale repay the amount of  
85 assistance received during such period. If the property has not been sold within six months, or

86 if eligibility terminates for any other reason, the entire amount of assistance paid during such  
87 period shall be a debt due the state;

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

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

93 4. In determining eligibility and the amount of benefits to be granted pursuant to  
94 federally aided programs, the value of burial lots or any amounts placed in an irrevocable  
95 prearranged funeral or burial contract pursuant to subsection 2 of section 436.035, RSMo, and  
96 subdivision (5) of subsection 1 of section 436.053, RSMo, shall not be taken into account or  
97 considered an asset of the burial lot owner or the beneficiary of an irrevocable prearranged  
98 funeral or funeral contract. For purposes of this section, "burial lots" means any burial space as  
99 defined in section 214.270, RSMo, and any memorial, monument, marker, tombstone or letter  
100 marking a burial space. If the beneficiary, as defined in chapter 436, RSMo, of an irrevocable  
101 prearranged funeral or burial contract receives any public assistance benefits pursuant to this  
102 chapter and if the purchaser of such contract or his or her successors in interest cancel or amend  
103 the contract so that any person will be entitled to a refund, such refund shall be paid to the state  
104 of Missouri up to the amount of public assistance benefits provided pursuant to this chapter with  
105 any remainder to be paid to those persons designated in chapter 436, RSMo.

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

112 (1) A claimant or person for whom benefits are claimed; or

113 (2) The spouse of a claimant or person for whom benefits are claimed with whom he or  
114 she is living.

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116 If the value of such policies exceeds one thousand five hundred dollars, then the total value of  
117 such policies may be considered in determining resources; except that, in the case of temporary  
118 assistance for needy families, there shall be disregarded any prearranged funeral or burial  
119 contract, or any two or more contracts, which provides for the payment of one thousand five  
120 hundred dollars or less per family member.

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

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

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

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

138           (4) That in the determination of initial eligibility of the institutionalized spouse, no  
139 resources attributed to the community spouse shall be used in determining the eligibility of the  
140 institutionalized spouse, except to the extent that the resources attributed to the community  
141 spouse do exceed the community spouse's resource allowance as defined in 42 U.S.C. Section  
142 1396r-5;

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

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

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

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

154           9. Beginning October 1, 1989, when determining eligibility for assistance pursuant to  
155 this chapter there shall be disregarded unless otherwise provided by federal or state statutes, the  
156 home of the applicant or recipient when the home is providing shelter to the applicant or

157 recipient, or his or her spouse or dependent child. The division of family services shall establish  
158 by rule or regulation in conformance with applicable federal statutes and regulations a definition  
159 of the home and when the home shall be considered a resource that shall be considered in  
160 determining eligibility.

161 10. Reimbursement for services provided by an enrolled Medicaid provider to a recipient  
162 who is duly entitled to Title XIX Medicaid and Title XVIII Medicare Part B, Supplementary  
163 Medical Insurance (SMI) shall include payment in full of deductible and coinsurance amounts  
164 as determined due pursuant to the applicable provisions of federal regulations pertaining to Title  
165 XVIII Medicare Part B, except the applicable Title XIX cost sharing.

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

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

208.174. 1. Within thirty days of August 28, 1992, the director of the department of  
2 social services shall apply to the United States Secretary of Health and Human Services for an  
3 amendment of the waiver of comparability of services for persons under section 42 U.S.C. 1396a  
4 (a)(10)(A)(ii)(VI) to include medical assistance benefits for persons who are defined in 42 U.S.C.  
5 1396 r-5.

6 2. Upon receipt of an amended waiver received pursuant to subsection 1 of this section,  
7 the director of the department of social services shall, subject to appropriations made for such  
8 purpose, promulgate rules and regulations to extend eligibility for medical assistance benefits  
9 by applying institutional status to individuals who are at risk of placement in an intermediate care  
10 facility or skilled nursing facility licensed pursuant to chapter 198, RSMo, but who, with the  
11 provision of home and community based services, may be cared for at home.

12 3. No rule or portion of a rule promulgated under the authority of this chapter shall  
13 become effective unless it has been promulgated pursuant to the provisions of section 536.024,  
14 RSMo.

15 **4. Within thirty days of August 28, 2007, the director of the department of social**  
16 **services shall apply to the United States Secretary of Health and Human Services for an**  
17 **amendment to the home and community-based waiver to extend medical assistance benefits**  
18 **under such waiver to persons with incomes up to three hundred percent of the federal**  
19 **poverty level. Upon receipt of an amended waiver received under this subsection, the**  
20 **director shall, subject to appropriations made for such purpose, promulgate rules to extend**

- 21 **eligibility for medical assistance benefits under the home and community-based waiver to**  
22 **persons with incomes up to three hundred percent of the federal poverty level.**

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