

SECOND REGULAR SESSION

# HOUSE BILL NO. 2320

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE RUZICKA.

5374L.011

D. ADAM CRUMBLISS, Chief Clerk

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### 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.

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*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Section A. Section 208.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 208.010, to read as follows: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 assistance pursuant to this law, it shall be the duty of the division of family services to consider and take into account all facts and circumstances surrounding the claimant, including his or her living conditions, earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the claimant is not found to be in need, assistance shall be denied. In determining the need of a claimant, the costs of providing medical treatment which may be furnished pursuant to sections 208.151 to 208.158 and 208.162 shall be disregarded. The amount of benefits, when added to all other income, resources, support, and maintenance shall provide such persons with reasonable subsistence compatible with decency and health in accordance with the standards developed by the division of family services; provided, when a husband and wife are living together, the combined income and resources of both shall be considered in determining the eligibility of either or both. "Living together" for the purpose of this chapter is defined as including a husband and wife separated for the purpose of obtaining medical care or nursing home care, except that the income of a husband or wife separated for such purpose shall be considered in determining the eligibility of his or her spouse, only to the extent that such income exceeds the amount necessary to meet the needs (as defined by rule or regulation of the division) of such husband or wife living separately. In determining the need of a claimant in

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.

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] 6 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; provided,  
60 however, that if such person is married and living with spouse, he or she, or they, individually  
61 or jointly, may own resources not to exceed two thousand dollars; and provided further, that in  
62 the case of a temporary assistance for needy families claimant, the provision of this subsection  
63 shall not apply;

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

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

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

87 3. In determining eligibility and the amount of benefits to be granted pursuant to  
88 federally aided programs, the income and resources of a relative or other person living in the

89 home shall be taken into account to the extent the income, resources, support and maintenance  
90 are allowed by federal law or regulation to be considered.

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

104 **5. In determining eligibility and the amount of benefits to be granted pursuant to**  
105 **federally aided programs, any amounts up to nine thousand nine hundred ninety-nine**  
106 **dollars placed in an irrevocable trust designated to pay for, at the time of need, the final**  
107 **disposition of a dead human body, funeral or burial services or facilities, or funeral**  
108 **merchandise that is not a preneed funeral contract as defined in section 436.405, shall not**  
109 **be considered an asset of the beneficiary. Any overages after final disposition shall be paid**  
110 **to the state of Missouri up to the amount of public assistance benefits provided to the**  
111 **beneficiary pursuant to this chapter with any remainder to be paid to those designated in**  
112 **the trust.**

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

- 119 (1) A claimant or person for whom benefits are claimed; or  
120 (2) The spouse of a claimant or person for whom benefits are claimed with whom he or  
121 she is living. If the value of such policies exceeds one thousand five hundred dollars, then the  
122 total value of such policies may be considered in determining resources; except that, in the case  
123 of temporary assistance for needy families, there shall be disregarded any prearranged funeral

124 or burial contract, or any two or more contracts, which provides for the payment of one thousand  
125 five hundred dollars or less per family member.

126 [6.] 7. Beginning September 30, 1989, when determining the eligibility of  
127 institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical assistance  
128 benefits as provided for in section 208.151 and 42 U.S.C. Sections 1396a et seq., the division  
129 of family services shall comply with the provisions of the federal statutes and regulations. As  
130 necessary, the division shall by rule or regulation implement the federal law and regulations  
131 which shall include but not be limited to the establishment of income and resource standards and  
132 limitations. The division shall require:

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

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

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

143 (4) That in the determination of initial eligibility of the institutionalized spouse, no  
144 resources attributed to the community spouse shall be used in determining the eligibility of the  
145 institutionalized spouse, except to the extent that the resources attributed to the community  
146 spouse do exceed the community spouse's resource allowance as defined in 42 U.S.C. Section  
147 1396r-5;

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

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

155 [7.] 8. Beginning July 1, 1989, institutionalized individuals shall be ineligible for the  
156 periods required and for the reasons specified in 42 U.S.C. Section 1396p.

157 [8.] 9. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted pursuant  
158 to the provisions of section 208.080.

159           [9.] **10.** Beginning October 1, 1989, when determining eligibility for assistance pursuant  
160 to this chapter there shall be disregarded unless otherwise provided by federal or state statutes,  
161 the home of the applicant or recipient when the home is providing shelter to the applicant or  
162 recipient, or his or her spouse or dependent child. The division of family services shall establish  
163 by rule or regulation in conformance with applicable federal statutes and regulations a definition  
164 of the home and when the home shall be considered a resource that shall be considered in  
165 determining eligibility.

166           [10.] **11.** Reimbursement for services provided by an enrolled Medicaid provider to a  
167 recipient who is duly entitled to Title XIX Medicaid and Title XVIII Medicare Part B,  
168 Supplementary Medical Insurance (SMI) shall include payment in full of deductible and  
169 coinsurance amounts as determined due pursuant to the applicable provisions of federal  
170 regulations pertaining to Title XVIII Medicare Part B, except the applicable Title XIX cost  
171 sharing.

172           [11.] **12.** A "community spouse" is defined as being the noninstitutionalized spouse.

173           [12.] **13.** An institutionalized spouse applying for Medicaid and having a spouse living  
174 in the community shall be required, to the maximum extent permitted by law, to divert income  
175 to such community spouse to raise the community spouse's income to the level of the minimum  
176 monthly needs allowance, as described in 42 U.S.C. Section 1396r-5. Such diversion of income  
177 shall occur before the community spouse is allowed to retain assets in excess of the community  
178 spouse protected amount described in 42 U.S.C. Section 1396r-5.

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