

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1
95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Offered February 10, 2009.

Senate Substitute adopted, February 12, 2009.

Taken up for Perfection February 12, 2009. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0404S.05P

AN ACT

To repeal sections 208.010, 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, and to enact in lieu thereof thirty-five new sections relating to preneed funeral contracts, with penalty provisions.

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

Section A. Sections 208.010, 436.005, 436.007, 436.011, 436.015, 436.021, 2 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 3 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are 4 repealed and thirty-five new sections enacted in lieu thereof, to be known as 5 sections 208.010, 333.300, 333.310, 333.315, 333.320, 333.325, 333.330, 333.335, 6 333.340, 436.400, 436.405, 436.410, 436.412, 436.415, 436.420, 436.425, 436.430, 7 436.435, 436.440, 436.445, 436.450, 436.455, 436.456, 436.457, 436.458, 436.460, 8 436.465, 436.470, 436.480, 436.485, 436.490, 436.500, 436.505, 436.510, and 9 436.520, 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

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

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] 6 of this section) any resource or interest therein owned by
35 such 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 pursuant to subsection 2 of section 436.035, RSMo, and
78 subdivision (5) of subsection 1 of section 436.053, RSMo, or has an interest in
79 property, of which he or she is the record or beneficial owner, the value of such
80 property, as determined by the division of family services, less encumbrances of
81 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 and as allowed by federal law or regulation, less encumbrances
90 of record, exceeds one thousand dollars, excluding the home occupied by the
91 claimant, amounts placed in an irrevocable prearranged funeral or burial contract
92 pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of
93 subsection 1 of section 436.053, RSMo, one automobile which shall not exceed a
94 value set forth by federal law or regulation and for a period not to exceed six
95 months, such other real property which the family is making a good-faith effort
96 to sell, if the family agrees in writing with the division of family services to sell
97 such property and from the net proceeds of the sale repay the amount of
98 assistance received during such period. If the property has not been sold within
99 six months, or if eligibility terminates for any other reason, the entire amount of
100 assistance paid during such period shall 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 pursuant to
111 [subsection 2 of section 436.035] chapter 436, RSMo, [and subdivision (5) of

112 subsection 1 of section 436.053, RSMo,] shall not be taken into account or
113 considered an asset of the burial lot owner or the beneficiary of an irrevocable
114 prearranged funeral or funeral contract. For purposes of this section, "burial lots"
115 means any burial space as defined in section 214.270, RSMo, and any memorial,
116 monument, marker, tombstone or letter marking a burial space. If the
117 beneficiary, as defined in chapter 436, RSMo, of an irrevocable prearranged
118 funeral or burial contract receives any public assistance benefits pursuant to this
119 chapter and if the purchaser of such contract or his or her successors in interest
120 cancel or amend the contract so that any person will be entitled to a refund, such
121 refund shall be paid to the state of Missouri up to the amount of public assistance
122 benefits provided pursuant to this chapter with any remainder to be paid to those
123 persons designated in chapter 436, RSMo.

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

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

- 142 (1) A claimant or person for whom benefits are claimed; or
143 (2) The spouse of a claimant or person for whom benefits are claimed with
144 whom he or she is living.

145 If the value of such policies exceeds one thousand five hundred dollars, then the
146 total value of such policies may be considered in determining resources; except
147 that, in the case of temporary assistance for needy families, there shall be