

SECOND REGULAR SESSION

# HOUSE BILL NO. 1362

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SCHEVE.

Pre-filed January 3, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2990L.011

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### AN ACT

To repeal sections 198.090 and 208.010, RSMo, and to enact in lieu thereof three new sections relating to the elderly.

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

Section A. Sections 198.090 and 208.010, RSMo, are repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 198.090, 198.528, and 208.010, to read as  
3 follows:

198.090. 1. An operator may make available to any resident the service of holding in  
2 trust personal possessions and funds of the resident and shall, as authorized by the resident,  
3 expend the funds to meet the resident's personal needs. In providing this service the operator  
4 shall:

5 (1) At the time of admission, provide each resident or [his] **the resident's** next of kin  
6 or legal guardian with a written statement explaining the resident's rights regarding personal  
7 funds;

8 (2) Accept funds and personal possessions from or for a resident for safekeeping and  
9 management, only upon written authorization by the resident or by [his] **the resident's** designee,  
10 or guardian in the case of an adjudged incompetent;

11 (3) Deposit any personal funds received from or on behalf of a resident in an account  
12 separate from the facility's funds, except that [an amount to be established by rule of the division  
13 of aging] **up to fifty dollars** may be kept in a petty cash fund for the resident's personal needs;

14 (4) Keep a written account, available to a resident and [his] **the resident's** designee or  
15 guardian, maintained on a current basis for each resident, with written receipts, for all personal

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

16 possessions and funds received by or deposited with the facility and for all disbursements made  
17 to or on behalf of the resident;

18 (5) Provide each resident or [his] **the resident's** designee or guardian with a quarterly  
19 accounting of all financial transactions made on behalf of the resident;

20 (6) Within five days of the discharge of a resident, provide the resident, or [his] **the**  
21 **resident's** designee or guardian, with an up-to-date accounting of the resident's personal funds  
22 and return to the resident the balance of his **or her** funds and all his **or her** personal possessions;

23 (7) Upon the death of a resident who has been a recipient of aid, assistance, care,  
24 services, or who has had moneys expended on his **or her** behalf by the department of social  
25 services, provide the department a complete account of all the resident's personal funds within  
26 sixty days from the date of death.

27

28 The total amount paid to the decedent or expended upon [his] **the resident's** behalf by the  
29 department shall be a debt due the state and recovered from the available funds upon the  
30 department's claim on such funds. The department shall make a claim on the funds within sixty  
31 days from the date of the accounting of the funds by the facility. The nursing facility shall pay  
32 the claim made by the department of social services from the resident's personal funds within  
33 sixty days. Where the name and address are reasonably ascertainable, the department of social  
34 services shall give notice of the debt due the state to the person whom the recipient had  
35 designated to receive the quarterly accounting of all financial transactions made under this  
36 section, or the resident's guardian or conservator or the person or persons listed in nursing home  
37 records as a responsible party or the fiduciary of the resident's estate. If any funds are available  
38 after the department's claim, the remaining provisions of this section shall apply to the balance,  
39 unless the funds belonged to a person other than the resident, in which case the funds shall be  
40 paid to that person;

41 (8) Upon the death of a resident who has not been a recipient of aid, assistance, care,  
42 services, or who has not had moneys expended on his **or her** behalf by the department of social  
43 services or the department has not made a claim on the funds, provide the fiduciary of resident's  
44 estate, at the fiduciary's request, a complete account of all the resident's personal funds and  
45 possessions and deliver to the fiduciary all possessions of the resident and the balance of the  
46 resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such  
47 funds or possessions, the operator shall notify the department that the funds remain unclaimed.  
48 Such unclaimed funds or possessions shall be disposed of as follows:

49 (a) If the unclaimed funds or possessions have a value totaling one hundred and fifty  
50 dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund  
51 to be used for the benefit of all residents of the facility by providing the residents social or

52 educational activities. The facility shall keep an accounting of the acquisitions and expenditure  
53 of these funds; or

54 (b) If the unclaimed funds or possessions have a value greater than one hundred and fifty  
55 dollars, the funds or possessions shall be immediately presumed to be abandoned property under  
56 sections 447.500 to 447.585, RSMo, and the procedures provided for in those sections shall  
57 apply notwithstanding any other provisions of those sections which require a period greater than  
58 two years for a presumption of abandonment;

59 (9) Upon ceasing to be the operator of a facility, all funds and property held in trust  
60 pursuant to this section shall be transferred to the new operator in accordance with sound  
61 accounting principles, and a closeout report signed by both the outgoing operator and the  
62 successor operator shall be prepared. The closeout report shall include a list of current balances  
63 of all funds held for residents respectively and an inventory of all property held for residents  
64 respectively. If the outgoing operator refuses to sign the closeout report, [he] **the operator** shall  
65 state in writing the specific reasons for his **or her** failure to so sign, and the successor operator  
66 shall complete the report and attach an affidavit stating that the information contained therein  
67 is true to the best of his **or her** knowledge and belief. Such report shall be retained with all other  
68 records and accounts required to be maintained under this section;

69 (10) Not be required to invest any funds received from or on behalf of a resident, nor to  
70 increase the principal of any such funds.

71 2. Any owner, operator, manager, employee, or affiliate of an owner or operator who  
72 receives any personal property or anything else of value from a resident, shall, if the thing  
73 received has a value of ten dollars or more, make a written statement giving the date it was  
74 received, from whom it was received, and its estimated value. Statements required to be made  
75 pursuant to this subsection shall be retained by the operator and shall be made available for  
76 inspection by the department, or by the department of mental health when the resident has been  
77 placed by that department, and by the resident, and [his] **the resident's** designee or legal  
78 guardian. Any person who fails to make a statement required by this subsection is guilty of a  
79 class C misdemeanor.

80 3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in  
81 one calendar year receive any personal property or anything else of value from the residents of  
82 any facility which have a total estimated value in excess of one hundred dollars.

83 4. Subsections 2 and 3 of this section shall not apply if the property or other thing of  
84 value is held in trust in accordance with subsection 1 of this section, is received in payment for  
85 services rendered or pursuant to the terms of a lawful contract, or is received from a resident who  
86 is related to the recipient within the fourth degree of consanguinity or affinity.

87 5. Any operator who fails to maintain records or who fails to maintain any resident's

88 personal funds in an account separate from the facility's funds as required by this section shall  
89 be guilty of a class C misdemeanor.

90 6. Any operator, or any affiliate or employee of an operator, who puts to his **or her** own  
91 use or the use of the facility or otherwise diverts from the resident's use any personal funds of  
92 the resident shall be guilty of a class A misdemeanor.

93 7. Any person having reasonable cause to believe that a misappropriation of a resident's  
94 funds or property has occurred may report such information to the department.

95 8. For each report the division shall attempt to obtain the name and address of the  
96 facility, the name of the facility employee, the name of the resident, information regarding the  
97 nature of the misappropriation, the name of the complainant, and any other information which  
98 might be helpful in an investigation.

99 9. Upon receipt of a report, the department shall initiate an investigation.

100 10. If the investigation indicates probable misappropriation of property or funds of a  
101 resident, the investigator shall refer the complaint together with his report to the department  
102 director or [his] **the director's** designee for appropriate action.

103 11. Reports shall be confidential, as provided under section 660.320, RSMo.

104 12. Anyone, except any person participating in or benefiting from the misappropriation  
105 of funds, who makes a report pursuant to this section or who testifies in any administrative or  
106 judicial proceeding arising from the report shall be immune from any civil or criminal liability  
107 for making such a report or for testifying except for liability for perjury, unless such person acted  
108 negligently, recklessly, in bad faith, or with malicious purpose.

109 13. Within five working days after a report required to be made under this section is  
110 received, the person making the report shall be notified in writing of its receipt and of the  
111 initiation of the investigation.

112 14. No person who directs or exercises any authority in a facility shall evict, harass,  
113 dismiss or retaliate against a resident or employee because [he] **the resident** or any member of  
114 [his] **the resident's** family has made a report of any violation or suspected violation of laws,  
115 ordinances or regulations applying to the facility which he **or she** has reasonable cause to believe  
116 has been committed or has occurred.

117 15. The department shall maintain the employee disqualification list and place on the  
118 employee disqualification list the names of any persons who have been finally determined by the  
119 department, pursuant to section 660.315, RSMo, to have misappropriated any property or funds  
120 of a resident while employed in any facility.

**198.528. Within thirty days of the submission of the final inspection report to the  
2 administrator of a long-term care facility, the final inspection report shall be published in  
3 the local newspaper for the location of the long-term care facility. Such report shall include**

4 **a definition of the level of class deficiencies and identification of the number of class**  
5 **deficiencies by class of deficiency.**

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  
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 subsection 2 of this section shall not apply to  
49 a transfer, other than a transfer to claimant's spouse, made prior to March 26, 1981, when the  
50 claimant furnishes convincing evidence that the uncompensated value of the disposed of resource  
51 or any part thereof is no longer possessed or owned by the person to whom the resource was  
52 transferred;

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

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

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

71 husband or wife, if the value of his or her property, or the value of his or her interest in property,  
72 together with that of such husband and wife, exceeds such amount;

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

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

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

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

105 5. In determining the total property owned pursuant to subdivision (5) of subsection 2  
106 of this section, or resources, of any person claiming or for whom public assistance is claimed,

107 there shall be disregarded any life insurance policy, or prearranged funeral or burial contract, or  
108 any two or more policies or contracts, or any combination of policies and contracts, which  
109 provides for the payment of one thousand five hundred dollars or less upon the death of any of  
110 the following:

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

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

114

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

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

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

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

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

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

142 (5) That beginning in January, 1990, the amount specified in subdivision (3) of this

143 subsection shall be increased by the percentage increase in the consumer price index for all urban  
144 consumers between September, 1988, and the September before the calendar year involved; and

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

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

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

152 9. Beginning October 1, 1989, when determining eligibility for assistance pursuant to  
153 this chapter there shall be disregarded unless otherwise provided by federal or state statutes, the  
154 home of the applicant or recipient when the home is providing shelter to the applicant or  
155 recipient, or his or her spouse or dependent child. The division of family services shall establish  
156 by rule or regulation in conformance with applicable federal statutes and regulations a definition  
157 of the home and when the home shall be considered a resource that shall be considered in  
158 determining eligibility.

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

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