

CHAPTER 265—S.F.No. 2386

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CHAPTER 266—S.F.No. 2112

An act relating to human services; authorizing an exception to the prohibition on asset transfers for certain charitable gifts; amending Minnesota Statutes 2003 Supplement, section 256B.0595, subdivision 1b.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2003 Supplement, section 256B.0595, subdivision 1b, is amended to read:

Subd. 1b. **PROHIBITED TRANSFERS.** (a) Notwithstanding any contrary provisions of this section, this subdivision applies to transfers involving recipients of medical assistance that are made on or after July 1, 2003, and to all transfers involving persons who apply for medical assistance on or after July 1, 2003, if the transfer occurred within 72 months before the person applies for medical assistance, except that this subdivision does not apply to transfers made prior to July 1, 2003. A person, a person's spouse, or any person, court, or administrative body with legal authority to act in place of, on behalf of, at the direction of, or upon the request of the person or the person's spouse, may not give away, sell, dispose of, or reduce ownership or control of any income, asset, or interest therein for less than fair market value for the purpose of establishing or maintaining medical assistance eligibility. This applies to all transfers, including those made by a community spouse after the month in which the institutionalized spouse is determined eligible for medical assistance. For purposes of determining eligibility for medical assistance services, any transfer of such income or assets for less than fair market value within 72 months before or any time after a person applies for medical assistance may be considered. Any such transfer is presumed to have been made for the purpose of establishing or maintaining medical assistance eligibility, and the person is ineligible for medical assistance services for the period of time determined under subdivision 2b, unless the person furnishes convincing evidence to establish that the transaction was exclusively for another purpose or unless the transfer is permitted under subdivision 3b or 4b.

Convincing evidence of any one of the following facts shall establish that a gift that is a charitable contribution to an organization described in section 170(c) of the Internal Revenue Code of 1986, as amended, was made exclusively for a purpose other than establishing or maintaining medical assistance eligibility, unless at the time of the gift the donor or donor's spouse was receiving long-term care services, was advised by

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a medical professional of the need for long-term care services, or was a medical assistance applicant or recipient:

(1) the donor made one or more gifts to the same donee organization more than 180 days prior to the date of the gift in question; or

(2) the gift was made to an organization for which the donor had provided volunteer services, acknowledged in writing by the organization, prior to the date of the gift.

A person may alternatively establish with other convincing evidence that a charitable gift was made exclusively for a purpose other than establishing or maintaining medical assistance eligibility.

(b) This section applies to transfers to trusts. The commissioner shall determine valid trust purposes under this section. Assets placed into a trust that is not for a valid purpose shall always be considered available for the purposes of medical assistance eligibility, regardless of when the trust is established.

(c) This section applies to transfers of income or assets for less than fair market value, including assets that are considered income in the month received, such as inheritances, court settlements, and retroactive benefit payments or income to which the person or the person's spouse is entitled but does not receive due to action by the person, the person's spouse, or any person, court, or administrative body with legal authority to act in place of, on behalf of, at the direction of, or upon the request of the person or the person's spouse.

(d) This section applies to payments for care or personal services provided by a relative, unless the compensation was stipulated in a notarized written agreement that was in existence when the service was performed, the care or services directly benefited the person, and the payments made represented reasonable compensation for the care or services provided. A notarized written agreement is not required if payment for the services was made within 60 days after the service was provided.

(e) This section applies to the portion of any income, asset, or interest therein that a person, a person's spouse, or any person, court, or administrative body with legal authority to act in place of, on behalf of, at the direction of, or upon the request of the person or the person's spouse, transfers to any annuity that exceeds the value of the benefit likely to be returned to the person or the person's spouse while alive, based on estimated life expectancy, using the life expectancy tables employed by the supplemental security income program, or based on a shorter life expectancy if the annuitant had a medical condition that would shorten the annuitant's life expectancy and that was diagnosed before funds were placed into the annuity. The agency may request and receive a physician's statement to determine if the annuitant had a diagnosed medical condition that would shorten the annuitant's life expectancy. If so, the agency shall determine the expected value of the benefits based upon the physician's statement instead of using a life expectancy table. This section applies to an annuity described in this paragraph purchased on or after March 1, 2002, that:

(1) is not purchased from an insurance company or financial institution that is subject to licensing or regulation by the Minnesota Department of Commerce or a similar regulatory agency of another state;

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- (2) does not pay out principal and interest in equal monthly installments; or
- (3) does not begin payment at the earliest possible date after annuitization.

(f) Transfers under this section shall affect determinations of eligibility for all medical assistance services or long-term care services, whichever receives federal approval.

EFFECTIVE DATE. This section is effective upon publication of a notice in the State Register of receipt of federal approval for the 72-month lookback period described in paragraph (a).

Presented to the governor May 18, 2004

Signed by the governor May 28, 2004, 4:50 p.m.

CHAPTER 267—S.F.No. 676

An act relating to retirement; statewide and major local public pension plans; making various changes of an administrative nature; setting various limitations and requirements for public employees police and fire retirement plan disability benefit applications; modifying permanent disability benefits provisions; resolving one person and small group pension problems; reducing the early retirement age for the judges retirement plan; authorizing a shorter vesting schedule for the Marine on St. Croix Volunteer Firefighters Relief Association; revising the salary maximum for the executive secretary of the Minneapolis Firefighters Relief Association; permitting single Teachers Retirement Association members to make survivor benefit designations; authorizing retirement coverage discontinuation by an elected county official; continuing retirement coverage by the general employees retirement plan of the Public Employees Retirement Association for Anoka County Achieve Program and the Government Training Services; including in privatized public employee retirement coverage employees of the Fair Oaks Lodge, Wadena, and RenVilla Nursing Home; extending the expiration date on certain prior military service credit purchases; temporarily exempting Metropolitan Airports Commission police from reemployed annuitant earnings limitation; ratifying certain Bellingham volunteer firefighter relief association annuity purchases; including the Lake Johanna fire department employees in Public Employees Retirement Association coverage; expanding the health care savings plan; modifying the department of transportation pilots retirement plan; authorizing shorter vesting periods for defined contribution volunteer firefighter relief associations; modifying Minneapolis Police Relief Association provisions; amending Minnesota Statutes 2002, sections 3A.03, subdivision 2; 69.77, subdivision 4; 352.01, subdivision 13; 352.113, subdivisions 4, 6, 8, by adding a subdivision; 352.12, subdivisions 1, 6; 352.22, subdivisions 2, 3; 352.27; 352.275, subdivision 1; 352.86, subdivision 1; 352.91, subdivision 3g; 352.95, subdivisions 1, 2, 4; 352.98; 352B.01, subdivisions 3a, 11, by adding a subdivision; 352B.10, subdivisions 1, 2, 3, 4, 5; 352B.105; 352B.11, subdivisions 1, 2, by adding subdivisions; 352D.065, subdivision 2; 352D.075, subdivisions 2, 3, by adding a subdivision; 353.01, subdivisions 2b, 10, 12a, 12b, 16, 16a; 353.33, subdivisions 4, 6, 6b, 7, by adding a subdivision; 353.37; subdivision 3, by adding a subdivision; 353.656, subdivision 5, by adding subdivisions; 354.05, subdivisions 2, 22, 35; 354.07, subdivision 9; 354.091; 354.096, subdivision 1; 354.42, subdivision 7; 354.44, subdivisions 4, 5, 6; 354.46,

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