

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 758
HOUSE BILL 944

AN ACT TO INCLUDE CONSIDERATION OF PERSONAL PROPERTY TRANSFERS IN
DETERMINING MEDICAID AND SPECIAL ASSISTANCE ELIGIBILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-60, as recodified in Chapter 275 of the 1981 Session Laws, is rewritten to read:

"§ 108A-60. Transfer of property for purposes of qualifying for State-county special assistance for adults; periods of ineligibility. — (a) Any person, otherwise eligible, who, either while receiving State-county special assistance or within one year prior to the date of applying for assistance, unless some other time period is mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest therein, either by himself or through his legal representative, for the purpose of retaining or establishing eligibility for State-county special assistance, shall be ineligible to receive assistance thereafter as set forth in subsection (c) of this section.

Countable real and personal property shall be real property, excluding a homesite, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for State-county special assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest therein, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of retaining or establishing eligibility for State-county special assistance unless the person, or his legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person who, by himself or through his legal representative, sells, gives, assigns or transfers real or personal property or an interest therein for the purpose of retaining or establishing eligibility for State-county special assistance, as provided in subsection (a) of this section, shall be ineligible to receive assistance thereafter until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of such person for maintenance and support, including medical expenses, paid or incurred, or shall be ineligible in accordance with the following schedule, whichever is sooner:

- (1) For uncompensated value of at least one thousand dollars (\$1,000) but not more than six thousand dollars (\$6,000), a one-year period of ineligibility from date of sale, gift, assignment or transfer;
- (2) For uncompensated value of more than six thousand dollars (\$6,000) but not more than twelve thousand dollars (\$12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer;
- (3) For uncompensated value of more than twelve thousand dollars (\$12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer, plus one additional month of ineligibility for each five hundred dollar

(\$500.00) increment or portion thereof by which the uncompensated value exceeds twelve thousand dollars (\$12,000), but in no event to exceed three years.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, or any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving State-county special assistance or within one year of making application for such assistance and the consequences of the sale, gift, assignment or transfer of such tangible personal property shall be determined under the provisions of subsections (c), (f) and (g) of this section.

(e) The presumption created by subsections (b) and (d) may be overcome if the person receiving or applying for State-county special assistance, or his legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for such assistance.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation received for the property or interest, if any. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) In the event that there is more than one sale, gift, assignment or transfer of property or an interest therein by a person receiving State-county special assistance or within one year of the date of an application for such assistance, unless some other time period is mandated by controlling federal law, the uncompensated value for the purposes of subsection (c) shall be the aggregate uncompensated value of all sales, gifts, assignments and transfers. The date which is the midpoint between the date of the first and the last sale, gift, assignment or transfer shall be the date from which the period of ineligibility shall be determined under subsection (c)."

Sec. 2. G.S. 108A-80, as found in Chapter 275 of the 1981 Session Laws, is rewritten to read:

"§ 108A-80. Transfer of property for purposes of qualifying for medical assistance; periods of ineligibility. — (a) Any person, otherwise eligible, who, either while receiving medical assistance benefits or within one year prior to the date of applying for medical assistance benefits, unless some other time period is mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest therein, either by himself or through his legal representative, for the purpose of retaining or establishing eligibility for medical assistance benefits, shall be ineligible to receive medical assistance benefits thereafter as set forth in subsection (c) of this section.

Countable real and personal property includes real property, excluding a homesite, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for medical assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest therein, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of retaining or establishing eligibility for medical assistance benefits unless the

person, or his legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person who, by himself or through his legal representative, sells, gives, assigns or transfers real or personal property or an interest therein for the purpose of retaining or establishing eligibility for medical assistance benefits, as provided in subsection (a) of this section, shall be ineligible to receive these benefits thereafter until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of the person for his maintenance and support, including medical expenses, paid or incurred, or shall be ineligible in accordance with the following schedule, whichever is sooner:

- (1) For uncompensated value of at least one thousand dollars (\$1,000) but not more than six thousand dollars (\$6,000), a one-year period of ineligibility from date of sale, gift, assignment or transfer;
- (2) For uncompensated value of more than six thousand dollars (\$6,000) but not more than twelve thousand dollars (\$12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer;
- (3) For uncompensated value of more than twelve thousand dollars (\$12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer, plus one additional month of ineligibility for each five hundred dollar (\$500.00) increment or portion thereof by which the uncompensated value exceeds twelve thousand dollars (\$12,000), but in no event to exceed three years.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, of any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving medical assistance or within one year of making application for such assistance and the consequences of the sale, gift, assignment or transfer of such tangible personal property shall be determined under the provisions of subsections (c), (f) and (g) of this section.

(e) The presumptions created by subsections (b) and (d) may be overcome if the person receiving or applying for medical assistance, or his legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for medical assistance benefits.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation, if any, received for the property or interest. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) In the event that there is more than one sale, gift, assignment or transfer of property or an interest therein by a person receiving medical assistance or within one year of the date of an application for medical assistance, unless some other time period is mandated by controlling federal law, the uncompensated value, for the purposes of subsection (c), shall be the aggregate uncompensated value of all sales, gifts, assignments and transfers. The date which is the midpoint between the date of the first and last sale, gift, assignment or transfer shall be the date from which the period of ineligibility shall be determined under subsection (c).

(h) This section shall not apply to applicants for or recipients of aid to families with dependent children or to persons entitled to medical assistance by virtue of their eligibility for aid to families with dependent children."

Sec. 3. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 4. This act shall become effective October 1, 1981, and shall apply to applications pending on that date except that this act shall not apply to any transfer of personal property made prior to the date of ratification of this act.

In the General Assembly read three times and ratified, this the 1st day of July, 1981.