



House of Representatives

File No. 686

General Assembly

February Session, 2000

(Reprint of File No. 586)

Substitute House Bill No. 5704
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
April 29, 2000

An Act Concerning The Creation Of A Fund To Protect Heirs And Beneficiaries.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) There is hereby established a Probate Guaranty
2 Fund, to be invested by the Treasurer and accounted for by the
3 Comptroller, and to be funded initially by funds transferred by the
4 Probate Court Administrator from the Probate Court Administration
5 Fund in such amounts as the Probate Court Administrator shall
6 determine, and periodically thereafter by fees paid into the fund by
7 various fiduciaries under the jurisdiction of the probate courts of this
8 state, as provided in section 5 of this act. The purpose of the fund is to
9 reimburse the public for certain losses suffered as a result of the
10 negligent, reckless or intentional acts of fiduciaries accountable to the
11 probate courts of the state, acting within their fiduciary capacity. The
12 moneys paid into the fund may be commingled with other assets being
13 managed by the Treasurer, but the Treasurer shall invest such moneys
14 in such a way as to make such moneys available for the purposes for
15 which the fund is created.

16 (b) The Probate Guaranty Fund shall be administered by the Probate
17 Court Administrator, who:

18 (1) Shall adopt rules and procedures to govern the operation of the
19 fund and the filing and processing of claims;

20 (2) Shall inform the public of the availability and the activities of the
21 fund and file an annual report on claims made and presented, as well
22 as amounts disbursed, to the cochairpersons and ranking members of
23 the joint standing committee of the General Assembly having
24 cognizance over judicial matters, the Governor, Attorney General,
25 Treasurer, Chief Justice of the Supreme Court and Chief Court
26 Administrator;

27 (3) Shall receive, investigate and evaluate claims for reimbursement,
28 as well as determine the amount of reimbursement, the terms of
29 payment and the period over which payment shall be made;

30 (4) May refer claims for restitution to the Attorney General,
31 pursuant to section 6 of this act;

32 (5) May enter into such contractual agreements as may be necessary
33 for the discharge of the fund's duties under this act, including the
34 hiring of legal counsel with the approval of the Attorney General;

35 (6) Shall prepare a budget and submit it to the executive committee
36 of the Probate Assembly not later than October 1, 2001, and annually
37 thereafter.

38 Sec. 2. (NEW) (a) Upon any interested party's application alleging
39 that a fiduciary has breached a fiduciary duty which has resulted in a
40 financial loss to an estate, or upon the probate court's own motion, the
41 probate court having jurisdiction over the fiduciary's estate shall, after
42 providing reasonable notice to the fiduciary and such other interested
43 parties as the probate court shall determine, hold a hearing to
44 determine whether such breach occurred and the actual loss sustained
45 by the estate. The judge shall determine the proportionate share of the

46 loss for which each person, including any fiduciary, claimant or other
47 party, is liable. In those cases in which there is only one fiduciary, if
48 that fiduciary has breached a fiduciary duty to an estate and that
49 fiduciary is also a beneficiary of the estate, such fiduciary shall not be
50 entitled to any payment from the Probate Guaranty Fund. In those
51 cases in which there are multiple fiduciaries, a fiduciary who is also a
52 beneficiary may recover from the fund if such fiduciary did not in any
53 way contribute to the loss sustained by the estate. If the loss
54 attributable to any beneficiary is less than fifty per cent, such
55 beneficiary shall be entitled to receive that percentage of the loss of
56 such beneficiary which was not caused by the negligence of such
57 beneficiary. If the negligence of any beneficiary is fifty per cent or
58 greater, such beneficiary shall not be entitled to receive any
59 payment from the fund. No person, whether a beneficiary or a
60 fiduciary, whose intentional or reckless conduct has contributed to the
61 loss, shall receive any payment from the fund. Any aggrieved party
62 may appeal a decision or determination of the probate court in
63 accordance with sections 45a-186 to 45a-193, inclusive, of the general
64 statutes. The claimant shall prove, by a preponderance of the evidence
65 that a breach of fiduciary has occurred and the estate has sustained
66 actual loss.

67 (b) The probate court shall provide the administrator of the fund
68 with notice of a hearing to be held pursuant to subsection (a) of this
69 section. The administrator, or the designee of the administrator, may
70 participate fully in that hearing, examine and cross-examine witnesses,
71 subpoena witnesses, and take any other action which any other party
72 could take in that hearing, including, but not limited to, the taking of
73 an appeal to the Superior Court.

74 (c) Any party to the probate court hearing under subsection (a) of
75 this section, including a successor fiduciary acting on behalf of the
76 estate, may seek an order of restitution from the probate court against
77 the fiduciary found by the probate court to have breached a fiduciary
78 duty resulting in a financial loss to an estate. Such order of restitution
79 may include, but shall not be limited to, orders of restoration or

80 surcharge or such other equitable or legal relief to which the petitioner
81 may be entitled. Following notice and hearing, the probate court shall
82 determine the amount of the order of restitution payable either to the
83 successor fiduciary on behalf of the entire estate or to the individual
84 parties. Any party aggrieved by the order of the probate court may
85 appeal to the Superior Court in accordance with the provisions of
86 sections 45a-186 to 45a-193, inclusive, of the general statutes. If no
87 timely appeal of the order is taken, such order shall be final and may
88 be enforced in the same manner as a judgment of the Superior Court.
89 The Superior Court may issue execution upon any final order in the
90 same manner as a judgment rendered by the Superior Court. Upon the
91 filing of an application for execution of such order and a copy of such
92 order certified by the probate court, the Superior Court may also
93 award interest and attorney's fees.

94 Sec. 3. (NEW) (a) If an order of restitution is not collectible from the
95 responsible parties or responsible sources, any person who is entitled
96 to receive funds pursuant to an order of restitution may submit a claim
97 for payment from the Probate Guaranty Fund on forms provided by
98 the administrator, containing sufficient information upon which the
99 administrator can make a determination of the issues. The claim shall
100 be sworn to by the claimant. The written claim shall include a certified
101 copy of all relevant orders of the probate court and any other
102 information required by the administrator.

103 (b) Upon receipt of the attested claim together with the certified
104 copy of the court documents and any other documentation required by
105 the administrator, the administrator or the designee of the
106 administrator shall inspect such documents for their veracity. Upon a
107 determination that such documents are complete and authentic, and a
108 determination that the claimant has otherwise complied with the
109 requirements of sections 1 to 9, inclusive, of this act and any rules and
110 procedures promulgated thereunder, the administrator shall
111 determine the amount to be paid to the claimant and shall issue an
112 invoice to the Comptroller authorizing and directing such payment
113 from the fund. Such payment shall not exceed one hundred thousand

114 dollars for the total losses caused by the fiduciary or cofiduciaries of an
115 estate, whether those losses involved one or more breaches of fiduciary
116 duty by one or more fiduciaries. The fund shall not pay any claim
117 involving any estate unless the mandatory fee has been paid to the
118 appropriate court in accordance with the provisions of section 5 of this
119 act.

120 (c) To receive payments under sections 1 to 9, inclusive, of this act,
121 the claimant shall demonstrate to the satisfaction of the administrator
122 that good faith efforts have been made to obtain restitution from the
123 responsible parties and from all other sources of payment, including
124 any probate bond, and that the amounts claimed are uncollectible from
125 such parties and sources. As a condition of payment from the fund, the
126 claimant shall execute and deliver to the fund a subrogation
127 agreement in form and substance acceptable to the administrator. The
128 agreement shall empower the fund to assert the claimant's order of
129 restitution against responsible parties and responsible sources, up to
130 the amount of payments made by the fund to the claimant plus
131 reasonable administrative and collection costs incurred by the fund to
132 enforce the order. The fund may enforce the order of restitution in the
133 same manner as a judgment of the Superior Court. Upon the filing of
134 an application for the execution of such order and a copy of such order
135 certified by the Probate Court, the Superior Court may also award
136 interest and attorney's fees.

137 (d) The fund shall have a lien upon the real and personal property
138 of the estate in which the breaching fiduciary had an interest as of the
139 date title to such property vested in the fiduciary. The amount of the
140 lien shall be the amount of the payment made to the claimant plus any
141 reasonable administrative and collection costs incurred by the fund,
142 minus any amounts collected by the fund from responsible parties and
143 sources. Upon satisfaction of that lien by the fiduciary or any other
144 person, the administrator shall execute a release of lien on behalf of the
145 fund, or may, in appropriate cases, substitute additional security for
146 property for which the fiduciary requests a release of lien. The lien
147 created by sections 1 to 9, inclusive, of this act shall not be valid as

148 against any bona fide purchaser, mortgagee, lienor or judgment
149 creditor provided they have no notice of such lien, unless and until
150 notice of such lien is filed or recorded in the town clerk's office where
151 such property is located.

152 Sec. 4. (NEW) In no event shall the Probate Guaranty Fund be liable
153 for losses incurred by the acts of the trustee of an inter vivos trust or
154 the acts of the holder of a power of attorney, despite the probate
155 court's assumption of jurisdiction over the inter vivos trust or power of
156 attorney. In the event that the probate court finds that a fiduciary
157 whose improper conduct resulted in losses to the estate is protected by
158 the provisions of sections 1 to 9, inclusive, of this act is also an attorney
159 licensed to practice law in this state or any other professional licensed
160 by this state, no payment from the fund shall be made until the Client
161 Security Fund of the state or any other similar fund has determined
162 whether or not any portion of the beneficiary's loss shall be paid by
163 that fund. If the loss is subject to a payment by the Client Security
164 Fund or any other similar fund, the Probate Guaranty Fund shall be
165 responsible for no more than one-half of the loss, not to exceed fifty
166 thousand dollars.

167 Sec. 5. (NEW) (a) A fiduciary of any estate appointed by a probate
168 court on or after the effective date of this act shall pay to the court, as a
169 condition of qualification of appointment, and annually thereafter on
170 the anniversary date of the appointment, a sum determined by the
171 administrator, from time to time, to be actuarially sufficient to
172 maintain the integrity of the Probate Guaranty Fund, but not to exceed
173 a sum equal to (1) twenty-five dollars, if the value of the assets of the
174 estate is less than fifty thousand dollars, and (2) fifty dollars, if the
175 value of the assets of the estate is equal to or greater than fifty
176 thousand dollars. Unless payment is made as required, no coverage
177 under the Probate Guaranty Fund shall be provided. For any fiduciary
178 appointed before the effective date of this act, each probate court shall
179 collect the same fee from each fiduciary at the time the fiduciary's
180 periodic account is heard when that fiduciary is a trustee, guardian or
181 conservator, and, when the fiduciary is an executor or administrator,

182 at the anniversary of the fiduciary's appointment. All successor
183 fiduciaries subsequently appointed by the probate courts shall also
184 make the same payment as a condition of their qualification for
185 appointment. Any such payment by any fiduciary or successor
186 fiduciary shall be paid as an expense of administration of the estate.
187 Any fiduciary who has prepaid a probate bond premium for more
188 than a one-year period, whose bond equals or exceeds the value of the
189 assets of the estate, shall not be subject to the payment of an additional
190 annual fee, provided the probate court has determined that further
191 protection by the fund is unnecessary. Notwithstanding the provisions
192 of this section, the fiduciary of a decedent's estate shall not be liable for
193 payment of any fee on the first anniversary date of such fiduciary's
194 qualification if such fiduciary files a final account within fourteen
195 months of such fiduciary's qualification and the probate court
196 subsequently approves such account; except that if such fiduciary fails
197 to file a final account within such fourteen-month period or if the
198 probate court fails to approve such account, such fiduciary shall be
199 liable for the payment of the annual fee as provided in this section
200 within ten days of notice that such fee is due and shall pay such annual
201 fee on any subsequent anniversary of such fiduciary's qualification.

202 (b) The trustees of inter vivos trusts, holders of a power of attorney
203 and any agency appointed as conservator, even if subject to the
204 jurisdiction of the probate court, shall not be obligated to make such
205 payments.

206 (c) The conservator of a ward or the guardian of a minor whose net
207 estate is less than five thousand dollars and whose monthly income is
208 less than one thousand dollars shall not be required to make payments
209 to the fund, but the beneficiaries of those estates shall nonetheless be
210 entitled to recovery under sections 1 to 9, inclusive, of this act.

211 Sec. 6. (NEW) The administrator may seek the assistance of the
212 Attorney General in attempting to recover from all responsible parties
213 any amount paid by the Probate Guaranty Fund to an injured party.
214 Any funds recovered, after the payment of the disbursements and

215 expenses of the Attorney General, shall be paid to the fund.

216 Sec. 7. (NEW) If the administrator of the Probate Guaranty Fund
217 determines, after an actuarial study, that the fund has a surplus
218 beyond that reasonably needed to carry out the purposes of the fund,
219 the administrator may request a transfer of that surplus to the Probate
220 Court Administration Fund, not to exceed the amount paid by the
221 Probate Court Administration Fund to the Probate Guaranty Fund.
222 Any further surplus shall be utilized to reduce the payments made by
223 the fiduciaries to the various probate courts pursuant to section 5 of
224 this act, or, in the alternative, may be used to increase the maximum
225 amount of payments made to injured parties under sections 1 to 9,
226 inclusive, of this act.

227 Sec. 8. (NEW) (a) In order to preserve the fiscal integrity of the
228 Probate Guaranty Fund, the administrator, in the sole discretion of the
229 administrator, may order payment from the fund in an amount less
230 than the actual loss incurred by the claimant or less than the order of
231 restitution awarded by the probate court.

232 (b) If the moneys deposited in the fund are insufficient to satisfy any
233 duly authorized claim or portion thereof, the administrator shall, when
234 sufficient moneys have been deposited in the fund, satisfy such unpaid
235 claims or portions thereof, in the order that such claims or portions
236 thereof were originally determined.

237 Sec. 9. (NEW) The remedies provided in sections 1 to 8, inclusive, of
238 this act are in addition to and not in derogation of or a substitute for
239 other rights and remedies that may exist.

240 Sec. 10. Section 45a-163 of the general statutes is repealed and the
241 following is substituted in lieu thereof:

242 (a) Upon the written application of any fiduciary described in
243 section 45a-164, after such notice which the court may order and after
244 hearing, the Court of Probate may authorize a person other than the
245 fiduciary to sell the whole or any part of or any interest in any personal

246 property of any incapable person, minor, missing person, deceased
247 person or trustee, or any property to which the fiduciary may hold
248 legal title in such capacity, if: (1) Such person has first given a probate
249 bond as required by the court and that [he] such person will faithfully
250 administer and account for the proceeds of the sale according to law;
251 and (2) the court finds that to grant the application would be in the
252 best interests of the parties in interest. If any party having an interest in
253 such personal property is not in being or is not ascertained or is under
254 a disability, the court shall appoint a guardian ad litem to represent the
255 interest of such party at the hearing, unless such party already is
256 represented by a guardian or by a conservator. Such order, and the
257 sale thereunder, shall be conclusive upon all persons then or thereafter
258 existing whose interests have been so represented.

259 (b) The person selling the personal property shall pay to the
260 fiduciary the sum for which such personal property was sold.

261 (c) The Court of Probate shall direct whether the sale shall be public
262 or private, and, if public, the notice thereof which shall be given, and,
263 if private, may authorize the sale at a price and upon terms, including
264 such mortgage or mortgages, as it considers reasonable or advisable.

265 Sec. 11. Section 45a-242 of the general statutes is repealed and the
266 following is substituted in lieu thereof:

267 (a) If any fiduciary becomes incapable of executing [his] such
268 fiduciary's trust, neglects to perform the duties of [his] such fiduciary's
269 trust, wastes the estate in [his] such fiduciary's charge, or fails to
270 furnish any additional or substitute probate bond ordered by the court,
271 the court of probate having jurisdiction may, upon its own motion, or
272 upon the application and complaint of any person interested or of the
273 surety upon the fiduciary's probate bond, after notice and a hearing,
274 remove such fiduciary.

275 (b) The court of probate, after notice and hearing, may accept or
276 reject the written resignation of any fiduciary, but such resignation
277 shall not be accepted until such fiduciary has fully and finally

278 accounted for the administration of [his] such fiduciary's trust to the
279 acceptance of such court.

280 (c) Trustees appointed by a testator to execute a trust created by will
281 and testamentary guardians may resign or be removed, and the
282 vacancies filled by the court having jurisdiction in the manner
283 provided under this section, unless otherwise provided by the will.

284 (d) Except as otherwise provided in subsection (c) of this section,
285 upon the death, removal or acceptance of the resignation of any
286 fiduciary before the completion of [his] the duties of a fiduciary, the
287 court of probate may appoint a suitable person to fill the resultant
288 vacancy. [and such] Such successor fiduciary [shall] may be required
289 to give a probate bond in such amount as the court deems necessary to
290 protect the estate.

291 (e) All suits in favor of or against the original fiduciary shall survive
292 to and may be prosecuted by or against the person appointed to
293 succeed [him] such fiduciary.

294 Sec. 12. Section 45a-290 of the general statutes is repealed and the
295 following is substituted in lieu thereof:

296 (a) If no person has been designated in a will to be executor, or if the
297 person designated in the will to be executor has died or refuses to
298 accept or is incapable of accepting such trust, and no alternate or
299 successor has been named, the court shall commit the administration
300 of the estate, with the will annexed, to any person or persons in
301 accordance with the order of priority for the appointment of
302 administrators under subsection (c) of section 45a-303, except that any
303 person who is entitled to a bequest or devise under such will, or his or
304 her designee, shall have priority over a person who is not so entitled,
305 or on the objection of any one interested under such will or of any
306 creditor, which objection is found reasonable by the court, the court
307 may commit the administration of the estate, with the will annexed, to
308 any person whom the court deems proper. [, taking a probate bond]
309 Any such person so appointed may be required to give a probate bond

310 in such amount as the court deems necessary to protect the estate.

311 (b) If during the settlement of an estate, the executor or the
312 administrator with the will annexed appointed by the court dies or
313 resigns or is removed from such trust, and no alternate or successor
314 has been named in the will, the court shall appoint an administrator of
315 the estate with the will annexed, de bonis non, subject to the same
316 provisions as to hearing, notice, waiver of or order dispensing with
317 notice, selection of the administrator and bond, as are stated in this
318 section and section 45a-286.

319 (c) If the person designated in the will to be executor has died or
320 refuses to accept or is incapable of accepting such trust, or if during the
321 settlement of the estate, the executor appointed by the court dies, or
322 resigns or is removed from such trust, and the will names an alternate
323 or a successor, the court shall appoint such alternate or successor
324 executor named in said will as executor, who shall have all the powers
325 and duties as provided in the will. Such appointment shall be subject
326 to the same provisions as to hearing, notice, waiver of or order
327 dispensing with notice, and bond, as are stated in this section and
328 sections 45a-286 and 45a-289.

329 Sec. 13. Section 45a-303 of the general statutes is repealed and the
330 following is substituted in lieu thereof:

331 (a) (1) When any person domiciled in this state dies intestate, the
332 court of probate in the district in which the deceased was domiciled at
333 his death shall have jurisdiction to grant letters of administration.

334 (2) When any person not domiciled in this state dies intestate,
335 administration may be granted by the Court of Probate determined
336 under the jurisdictional prerequisites provided in subsection (a) of
337 section 45a-287 for nondomiciliary testators, and the provisions of
338 subsection (d) of section 45a-287 regarding Probate Court costs
339 applicable to testate estates shall apply also to intestate estates granted
340 administration under this section.

341 (b) Upon application for letters of administration to the court of
342 probate having jurisdiction of the estate of an intestate decedent, the
343 court shall, before granting letters of administration, after notice
344 required by this section, hold a hearing. Notice of such hearing, either
345 public notice, personal notice or both as the court deems best, shall be
346 given to all persons interested in such estate, including the
347 Commissioner of Revenue Services in the case of a nondomiciliary
348 decedent, unless all persons so interested sign and file in court a
349 written waiver of such notice, or unless the court, for cause shown,
350 dispenses with such notice. The finding by the court that such estate is
351 not more than sufficient to pay the expenses of administration, the
352 funeral and last sickness shall be sufficient cause to dispense with such
353 notice.

354 (c) (1) Upon hearing as required by this section, the court of probate
355 having jurisdiction shall grant administration of the intestate
356 decedent's estate to any one or more persons or their designees
357 appointed in the following order, provided such person or persons are
358 entitled to share in the estate of the decedent: (A) The surviving
359 spouse, (B) any child of the decedent or any guardian of such child as
360 the court shall determine, (C) any grandchild of the decedent or any
361 guardian of such grandchild as the court shall determine, (D) the
362 decedent's parents, (E) any brother or sister of the decedent, (F) the
363 next of kin entitled to share in the estate, or, on their refusal, incapacity
364 or failure to give bond or upon the objection of any heir or creditor to
365 such appointment found reasonable by the court, to any other person
366 whom the court deems proper.

367 (2) If the intestate decedent lived out of the state leaving property
368 within the state, the court of probate having jurisdiction shall, upon
369 notice and hearing as required by this section, grant administration to
370 such person as the court deems proper.

371 (d) The court, upon granting any administration, [~~shall~~] may take a
372 probate bond from the administrator or any successor administrator
373 appointed by the Court of Probate in such amount as the court deems

374 necessary to protect the estate.

375 Sec. 14. Section 45a-316 of the general statutes is repealed and the
376 following is substituted in lieu thereof:

377 Whenever, upon the application of a creditor or other person
378 interested in the estate of a deceased person, it is found by the court of
379 probate having jurisdiction of the estate that the granting of
380 administration on the estate or the probating of the will of the
381 deceased will be delayed, or that it is necessary for the protection of
382 the estate of the deceased, the court may, with or without notice,
383 appoint a temporary administrator to hold and preserve the estate
384 until the appointment of an administrator or the probating of the will.
385 The court [shall] may require from such administrator a probate bond.
386 If the court deems it more expedient, it may order any deputy sheriff
387 or constable to take possession of the estate until the appointment of
388 an administrator or executor.

389 Sec. 15. Section 45a-326 of the general statutes is repealed and the
390 following is substituted in lieu thereof:

391 (a) During the settlement of the estate of any person who died
392 owning an undivided interest in any property not specifically devised
393 or bequeathed, the executor or administrator of the estate and the
394 owner or owners of the major portion of the other interest therein may
395 apply in writing to the court of probate having jurisdiction of the estate
396 to order partition of the same.

397 (b) Unless the petition for the partition of such interest in property is
398 signed by all the persons in interest, or the guardians of such of them
399 as are minors, or the conservators of such of them as are incapable
400 persons having conservators, the court shall, following public notice,
401 fully hear the case and make all orders as the interests of the parties
402 and the estate demand. In such case the court shall not order partition
403 unless upon full hearing it appears that the best interests of the estate
404 and of the parties concerned will be promoted thereby.

405 (c) If, upon such petition, it is the opinion of the court of probate
406 that a sale will better promote the interests of the owners, or that the
407 property cannot be beneficially divided for the purpose of distribution,
408 it may order the sale of any or all such property in such manner and
409 upon such notice as it deems expedient; but unless the petition for the
410 partition or sale of such interest in property is signed by all the persons
411 in interest, or the guardians of such of them as are minors, or the
412 conservators of such of them as are incapable persons having
413 conservators, the court shall, following public notice, fully hear the
414 case and make all orders as the interests of the parties and the estate
415 demand. In such case the court shall not order sale unless upon full
416 hearing it appears that the best interests of the estate and of the parties
417 concerned will be promoted thereby. An order to sell pursuant to this
418 section shall not be made until the executor, administrator or person
419 designated to sell gives a probate bond to secure the execution of his
420 trust according to the order of the court and according to law unless
421 the probate court dispenses with the requirement of a probate bond as
422 provided in section 45a-169.

423 (d) The court may appoint for the purpose of partitioning such
424 property a committee of three disinterested persons, who shall be
425 sworn and shall make a return of their actions to the court according to
426 the order thereof. Such partition, when so made and returned to and
427 accepted by the court, and all orders and decrees relating thereto, shall
428 bind all persons interested therein and their heirs.

429 (e) The portion set to the estate of the deceased person shall be
430 treated as if the same had been partitioned in the lifetime of such
431 deceased person by a court of competent jurisdiction.

432 (f) If the property so partitioned is real property, a copy of such
433 decree shall be recorded upon the land records of the town in which
434 such land is situated.

435 (g) If the name or residence of any party entitled to share in the
436 proceeds of property so sold is unknown to the court and cannot be

437 ascertained, it shall appoint a trustee for the share of such party. Such
438 trustee shall give a probate bond if ordered by the court, and shall hold
439 such share until demanded by the person or persons entitled thereto.

440 Sec. 16. Section 45a-451 of the general statutes is repealed and the
441 following is substituted in lieu thereof:

442 When a life estate in any personal property is given by will to one
443 with remainder to another, and there is no trustee named for such
444 property during the continuance of the life estate therein, the court of
445 probate having jurisdiction of such will may order the executor to
446 deliver such personal property to the person having the life estate
447 upon [his] the executor's giving a probate bond. It shall be the duty of
448 the person having the life estate thereupon to safely and properly keep
449 such property to be delivered to the person entitled to receive it on the
450 determination of the life estate therein. If such person fails to give
451 bond as provided in this section, the court shall appoint a trustee for
452 such property during the continuance of such life estate who shall give
453 a probate bond if ordered by the court. The annual expense of such
454 trust shall be chargeable upon the annual income of such property.

455 Sec. 17. Section 45a-473 of the general statutes is repealed and the
456 following is substituted in lieu thereof:

457 When a testator has appointed a trustee to execute a trust created by
458 [his] the testator's will, the court of probate having jurisdiction of the
459 settlement of [his] the testator's estate shall, unless otherwise provided
460 in the will, or excused by the court, require of such trustee a probate
461 bond. If any trustee refuses to give such bond, the refusal shall be
462 deemed a refusal to accept or perform the duties of such trust; but the
463 bond without surety of any public or charitable corporation or
464 cemetery association to which any bequest or devise is made in trust
465 shall be deemed sufficient. Whenever by any will it is provided that
466 the trustee or trustees thereunder shall not be required to give a
467 probate bond, or shall be required to give a bond which in the
468 judgment of the court of probate having jurisdiction is insecure or

469 inadequate, the court may, upon the application of any person
470 interested, require such trustee or trustees at any time to furnish a
471 probate bond in accordance with section 45a-139.

472 Sec. 18. Section 45a-474 of the general statutes is repealed and the
473 following is substituted in lieu thereof:

474 When any person has been appointed trustee of any estate, or holds
475 as trustee the proceeds of any estate sold, and no provision is made by
476 law or by the instrument under which his appointment is derived for
477 the contingency of his death or incapacity or for his refusal to accept
478 such trust or for his resignation of such trust, or when a trust has been
479 created by will and no trustee has been appointed in the will or when
480 more than one trustee has been appointed and thereafter a trustee so
481 appointed dies, becomes incapable, refuses to accept or resigns such
482 trust, the court of probate of the district within which the estate is
483 situated, or, when the trust has been created by will, in the district
484 having jurisdiction of such will, may, on the happening of any such
485 contingency, appoint some suitable person to fill such vacancy. [,
486 taking] The court may take from [him] such person a probate bond,
487 unless in the case of a will it is otherwise provided therein, in which
488 case the provisions of section 45a-473 shall apply.

489 Sec. 19. Section 45a-478 of the general statutes is repealed and the
490 following is substituted in lieu thereof:

491 (a) When any person having property has disappeared so that after
492 diligent search [his] such person's whereabouts cannot be ascertained,
493 the court of probate in the district in which [he] such person resided or
494 had [his] a domicile at the time of [his] such person's disappearance or,
495 if such person resided outside of this state, then in the district in which
496 any of [his] such person's property is situated, upon the application of
497 the spouse, or a relative, creditor or other person interested in the
498 property of such person, or the selectmen of the town where such
499 person last resided, or in which such property is situated, shall, after
500 public notice and a hearing thereon, appoint a trustee of the property

501 of such person.

502 (b) Diligent search shall be deemed to have been made for any
503 person who has disappeared while serving with the armed forces
504 when such person has been reported or listed as missing, missing in
505 action, interned in a neutral country or beleaguered, besieged or
506 captured by an enemy.

507 (c) Such trustee [, upon giving] may be required to furnish a probate
508 bond [.] in such amount as the court deems necessary for the
509 protection of the estate. Such trustee shall have charge of such
510 property, and [he] such trustee shall have the same powers, duties and
511 obligations as a conservator of the estate of an incapable person. With
512 the approval of the court of probate, such trustee may use any portion
513 of the income or principal of such property for the support of the
514 spouse and minor children of such person.

515 (d) Upon its own motion or upon the application of any interested
516 person, the court of probate may, after public notice and a hearing
517 thereon, remove, discharge, require an accounting from, or appoint a
518 successor to, such trustee.

519 (e) The court of probate may continue such trustee in office until
520 satisfactory proof of the death of such person is furnished, until
521 proceedings are taken to settle [his] the estate of such person on the
522 presumption of [his] death of such person under the provisions of
523 section 45a-329, or for a period of seven years from the time of the
524 disappearance of such person if [he] such person remains unheard of.

525 (f) In case of the reappearance of such person, the court of probate
526 shall, on [his] the application of such person, after hearing and public
527 notice thereof, order the restoration of such property to the person
528 entitled thereto and the discharge of such trustee, after acceptance of
529 the trustee's account.

530 Sec. 20. Section 45a-596 of the general statutes is repealed and the
531 following is substituted in lieu thereof:

532 (a) The surviving parent of any minor may by will appoint a person
533 or persons as guardian or coguardians of the person of such minor, a
534 guardian or coguardians of the estate or both. Such appointment shall
535 not supersede the previous appointment of a guardian made by the
536 court of probate having jurisdiction.

537 (b) The ward of a testamentary guardian may, when he or she is
538 over the age of twelve, apply to the court of probate in which such
539 ward resides, for the substitution of a guardian or coguardians of [his
540 person] such ward to supersede the testamentary guardian. The court
541 of probate may, upon such application and hearing, substitute such
542 guardian or coguardians chosen by such ward to be the guardian or
543 coguardians of the person of the ward.

544 (c) Any guardian or coguardians appointed pursuant to this section
545 shall receive the trust subject to the control of the court of probate as
546 specified in this section and subject to the provisions and restrictions to
547 which the trust was subject in the hands of the parent at the time of
548 [his] such parent's decease. A guardian or coguardians of the person
549 shall furnish a written acceptance of guardianship and, if the court
550 deems it necessary for the protection of the minor, a probate bond. A
551 guardian or coguardians of the estate [shall] may be required to
552 furnish a probate bond in such amount as the court deems necessary
553 for the protection of the estate. Upon such acceptance of guardianship
554 or furnishing such bond, such guardian or coguardians shall have the
555 same power over the person and estate of such minor as guardians
556 appointed by the court of probate.

557 Sec. 21. Subsection (b) of section 45a-629 of the general statutes, as
558 amended by section 5 of public act 99-84, is repealed and the following
559 is substituted in lieu thereof:

560 (b) If the court finds that there is no guardian of the estate of the
561 minor, it may appoint one or both of the parents or any guardian of the
562 person of the minor to be guardian of his or her estate. If neither parent
563 nor the guardian of the person of the minor will accept the

564 appointment, or if the parents or guardian of the person of the minor
565 are not proper persons to act as guardian of his or her estate, the court
566 may appoint any proper person or persons chosen by the minor if the
567 minor is twelve years of age or over. If the minor neglects to make
568 choice or fails to choose a proper person or persons or is not of
569 sufficient age, the court of probate shall appoint some proper person or
570 persons, who, as guardian of the estate of the minor, shall have charge
571 of all the minor's property, whether acquired before or after the
572 guardian's appointment, but shall have no control over such minor's
573 person. If any minor who has a guardian marries and owns or
574 thereafter acquires property, the guardianship of such property shall
575 continue during such person's minority. Any guardian so appointed
576 [shall] may be required to give a probate bond in such amount as the
577 court deems necessary for the protection of the estate.

578 Sec. 22. Section 45a-650 of the general statutes is repealed and the
579 following is substituted in lieu thereof:

580 (a) At any hearing for involuntary representation, the court shall
581 receive evidence regarding the condition of the respondent, including
582 a written report or testimony by one or more physicians licensed to
583 practice medicine in the state who have examined the respondent
584 within thirty days preceding the hearing. The report or testimony shall
585 contain specific information regarding the disability and the extent of
586 its incapacitating effect. The court may also consider such other
587 evidence as may be available and relevant, including but not limited to
588 a summary of the physical and social functioning level or ability of the
589 respondent, and the availability of support services from the family,
590 neighbors, community, or any other appropriate source. Such evidence
591 may include, if available, reports from the social work service of a
592 general hospital, municipal social worker, director of social service,
593 public health nurse, public health agency, psychologist, coordinating
594 assessment and monitoring agencies, or such other persons as the
595 court deems qualified to provide such evidence. The court may waive
596 the requirement that medical evidence be presented if it is shown that
597 the evidence is impossible to obtain because of the absence of the

598 respondent or his or her refusal to be examined by a physician or that
599 the alleged incapacity is not medical in nature. If this requirement is
600 waived, the court shall make a specific finding in any decree issued on
601 the petition stating why medical evidence was not required.

602 (b) Notwithstanding the provisions of section 45a-7, the court may
603 hold the hearing on the application at a place within the state other
604 than its usual courtroom if it would facilitate attendance by the
605 respondent.

606 (c) If the court finds by clear and convincing evidence that the
607 respondent is incapable of managing his or her affairs, the court shall
608 appoint a conservator of his or her estate unless it appears to the court
609 that such affairs are being managed properly without the appointment
610 of a conservator. If the court finds by clear and convincing evidence
611 that the respondent is incapable of caring for himself or herself, the
612 court shall appoint a conservator of his or her person unless it appears
613 to the court that the respondent is being cared for properly without the
614 appointment of a conservator.

615 (d) When determining whether a conservator should be appointed
616 and in selecting a conservator to be appointed for the respondent, the
617 court shall be guided by the best interests of the respondent. In making
618 such determination, the court shall consider whether the respondent
619 had previously made alternative arrangements for the care of his
620 person or for the management of his affairs, including, but not limited
621 to, the execution of a valid durable power of attorney, the appointment
622 of a health-care agent or other similar document. The respondent may,
623 by oral or written request, if at the time of the request he or she has
624 sufficient capacity to form an intelligent preference, nominate a
625 conservator who shall be appointed unless the court finds the
626 appointment of the nominee is not in the best interests of the
627 respondent. In such case, or in the absence of any such nomination, the
628 court may appoint any qualified person, authorized public official or
629 corporation in accordance with subsections (a) and (b) of section 45a-
630 644.

631 (e) Upon the request of the respondent or his or her counsel, made
632 within thirty days of the date of the decree, the court shall make and
633 furnish findings of fact to support its conclusion.

634 (f) [If the court appoints a conservator of the estate of the
635 respondent, it shall require a probate bond.] Any conservator so
636 appointed may be required to give a probate bond in such amount as
637 the court deems necessary for the protection of the estate. The court
638 may, if it deems it necessary for the protection of the respondent,
639 require a bond of any conservator of the person appointed hereunder.

640 (g) The court may limit the powers and duties of either the
641 conservator of the person or the conservator of the estate, to include
642 some, but not all, of the powers and duties set forth in subsections (a)
643 and (b) of section 45a-644, sections 45a-655 and 45a-656, and shall
644 make specific findings to justify such a limitation, in the best interests
645 of the ward. In determining whether or not any limitations should be
646 imposed, the court shall consider the abilities of the ward, the prior
647 appointment of any attorney-in-fact, health care agent, trustee or other
648 fiduciary acting on behalf of the ward, any support services which are
649 otherwise available to the ward, and any other relevant evidence. The
650 court may modify its decree upon any change in circumstances.

651 Sec. 23. Subsection (c) of section 45a-659 of the general statutes, as
652 amended by section 29 of public act 99-84, is repealed and the
653 following is substituted in lieu thereof:

654 (c) The conservator of the estate for the property in this state [shall]
655 may be required to give a probate bond in such amount as the court
656 deems necessary for the protection of the estate, and shall, within two
657 months after the date of his or her appointment, make and file in the
658 court of probate, under penalty of false statement, an inventory of all
659 the real property and tangible personal property in this state of the
660 incapable person, appraised or caused to be appraised, by such
661 conservator, at fair market value as of the date of the conservator's
662 appointment.

663 Sec. 24. Section 45a-668 of the general statutes is repealed and the
664 following is substituted in lieu thereof:

665 Guardians of the property, and limited guardians of the property, of
666 persons who are not minors and who are mentally retarded persons,
667 appointed as such guardians or limited guardians under chapter 779a
668 prior to October 1, 1982, shall serve on or after October 1, 1982, as
669 conservators of the estates of such persons as if appointed conservators
670 under the provisions of sections 45a-644 to 45a-662, inclusive, and in
671 accordance with the provisions of said sections. Any guardian of the
672 person or property of a minor person who is mentally retarded,
673 appointed under chapter 779a, prior to October 1, 1982, may continue
674 to serve as such guardian on or after October 1, 1982, as if appointed
675 under and in accordance with the provisions of sections 45a-132, 45a-
676 593 to 45a-597, inclusive, 45a-603 to 45a-662, inclusive, 45a-629 to 45a-
677 638, inclusive, relative to guardians of minors. Such guardianship shall
678 terminate upon the minor reaching the age of eighteen. Continuation
679 of the guardianship of the estate shall be by application made pursuant
680 to the provisions of sections 45a-644 to 45a-662, inclusive. Continuation
681 of the guardianship of the person shall be by application made
682 pursuant to the provisions of sections 45a-668 to 45a-684, inclusive.
683 Any guardian of the person of a mentally retarded person who is not a
684 minor, appointed under chapter 779a prior to October 1, 1982, may
685 continue to serve as such guardian after October 1, 1982. Upon filing of
686 a periodic account by any guardian appointed under the provisions of
687 chapter 779a, prior to October 1, 1982, the court [shall] may require a
688 probate bond in the same manner as under sections 45a-132, 45a-593 to
689 45a-597, inclusive, 45a-603 to 45a-622, inclusive, 45a-629 to 45a-638,
690 inclusive, or 45a-644 to 45a-662, inclusive. Failure to furnish a probate
691 bond, if required, or written acceptance of guardianship required
692 under the provisions of said sections, shall be cause for termination of
693 the continued service of the fiduciary provided for in this section.

694 Sec. 25. This act shall take effect October 1, 2001.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Cost (Probate Court Administration Fund)

Affected Agencies: Probate Courts (Judicial Department), Offices of the State Treasurer, State Comptroller, and Attorney General

Municipal Impact: None

Explanation

State Impact:

Passage of the bill as amended would result in costs between \$1 – 1.5 million to the Probate Court Administration Fund (PCAF), which is a nonGeneral Fund account within the Judicial Department. It is anticipated that the PCAF, which covers all the expenses of the probate court system, will provide the “seed money” for the establishment of the Probate Guaranty Fund (PGF). There will also be potential staffing costs associated with the administration of the fund. Finally, there will be an increase in workload for the probate courts with regard to claims against the fund.

The bill as amended establishes the Probate Guaranty Fund to reimburse the public for certain losses resulting from the negligence or intentional acts of fiduciaries. According to the bill as amended, whenever the probate court determines that a fiduciary has breached his duties resulting in a financial loss to an estate, the court may order restitution and any injured beneficiary may claim funds from the PGF.

This fund will consist of the aforementioned seed money and annual fees (\$50 - \$100) paid by fiduciaries who are accountable to the probate courts. The State Treasurer will be responsible for investing these monies.

Currently, fiduciaries must purchase bonds to insure against estates. In the event of breaches of fiduciary duties, injured parties pursue the bond companies to recover their losses. The purpose of the PGF would be to cover up to the first \$100,000 of such a loss. The remaining value of an estate would still have to be insured by additional bonds that are considerably more expensive than the PGF fee. The probate courts have indicated that over a five-year period, total default by fiduciaries was approximately \$6 million.

It should be noted that while the PCAF has experienced recent growth, the phase out of the succession tax is expected to have a negative impact on the PCAF. The PCAF fund balance in FY 1995 and FY 1999 was \$10.5 million and \$17.9 million respectively. At this time the Probate Court Administrator is unclear as to how much will be collected in fees, how many claims will result from the establishment of the PGF, and the extent of any PGF surplus. Nevertheless, passage of the bill as amended places greater demands on the PCAF.

House "A" makes a number of technical and clarifying changes to the bill. In addition, the amendment (1) requires a fiduciary to prove his claim by a preponderance of the evidence, (2) eliminates specific examples of reasonable efforts to collect the loss from sources other than the fund, (3) requires the fund to pay only one-half of a loss up to \$50,000 if a fund similar to the Client Security Fund will pay part of the loss, and (4) specifies the amount of the fund's lien against a breaching fiduciary.

OLR Amended Bill Analysis

sHB 5704 (as amended by House "A")*

AN ACT CONCERNING THE CREATION OF A FUND TO PROTECT HEIRS AND BENEFICIARIES.**SUMMARY:**

This bill creates a Probate Guaranty Fund to reimburse the public for certain losses resulting from the negligent, reckless, or intentional acts of fiduciaries who are accountable to the probate courts, other than trustees of *inter vivos* trusts or holders of a power of attorney. It creates procedures for the probate court to find that a fiduciary breached his duty and caused a financial loss to an estate, allows the court to order restitution, and allows an injured beneficiary to claim money from the fund. The bill's remedies are in addition to any existing rights and remedies.

The probate court administrator administers the fund and provides initial funding from the Probate Administration Fund. Fiduciaries and successor fiduciaries must pay a fee to the fund as a condition of appointment, if they are appointed by the probate court on or after October 1, 2001. Fiduciaries appointed before October 1, 2001 must pay the fee after this date when the court hears the fiduciary's periodic account or at the anniversary of appointment. The treasurer invests the funds and the comptroller accounts for them. The treasurer can commingle the money with other assets but she must invest it in a way that makes it available for the purposes of the Probate Guaranty Fund.

The bill also eliminates the requirement that certain fiduciaries post a bond and instead allows the probate court discretion to require a bond. The fiduciaries affected include those acting as administrators and executors of decedent's estates, successor fiduciaries, trustees of testamentary trusts, trustees for disappeared persons, guardians of the estates of minors or mentally retarded persons, and conservators. The bill specifies that the bond is in an amount necessary to protect the estate.

*House Amendment "A" (1) specifies that the fund reimburses losses caused by reckless as well as negligent and intentional fiduciary acts, (2) requires a fiduciary to prove his claim by a preponderance rather than a fair preponderance of the evidence, (3) specifies that a beneficiary whose negligence is less than 50% of the loss can recover the amount of the loss not caused by his negligence rather than a prorated amount, (4) eliminates specific examples of reasonable efforts to collect the loss from sources other than the fund such as filing to sue on a probate bond and bona fide negotiations, (5) requires the fund to pay only one-half of a loss up to \$50,000 if a fund similar to the Client Security Fund will pay part of the loss, (6) makes the amount of the fund's lien against a breaching fiduciary equal to the amount paid to the claimant plus certain costs reduced by funds collected from responsible sources rather than the amount of the estate's loss including interest and attorney's fees minus payments to the estate by responsible sources, and (7) makes technical changes.

EFFECTIVE DATE: October 1, 2001

PROBATE COURT ADMINISTRATOR

The bill requires the probate court administrator to:

1. adopt rules and procedures to govern the fund's operation and the filing and processing of claims;
2. inform the public about the fund;
3. file an annual report with the chairmen and ranking members of the Judiciary Committee, governor, attorney general, treasurer, chief justice of the Supreme Court, and chief court administrator about claims and amounts disbursed;
4. investigate and evaluate claims for reimbursement and determine the amount, terms, and period of payments to be made; and
5. annually, beginning October 1, 2001, prepare and submit a budget to the executive committee of the Probate Assembly.

In addition, he can refer claims to the attorney general and enter contracts as needed to discharge the fund's duties, including hiring legal counsel with the attorney general's approval.

PROBATE COURT HEARING ON BREACH OF DUTY

Under the bill, the probate court with jurisdiction over a fiduciary's estate can hold a hearing on an alleged breach of fiduciary duty that has resulted in financial loss to an estate. It can do so on its own motion or on the application of any interested party. It must give reasonable notice to the fiduciary and other interested parties, and it must also notify the fund administrator. The administrator (or his designee) can participate fully in the hearing, examine and cross-examine witnesses, subpoena witnesses, and take the same actions as other parties at the hearing, including appealing to the Superior Court.

The claimant must prove a breach of fiduciary duty occurred causing a loss to the estate by a preponderance of the evidence. The judge must determine the proportionate share of the loss for which each person (including a fiduciary, claimant, or any party) is liable. Any aggrieved party can appeal the decision under the normal procedures for appeals from probate courts.

ELIGIBILITY FOR PAYMENTS

A beneficiary cannot receive any payment from the fund if he is the estate's only fiduciary and he breached his fiduciary duty to it. But a fiduciary who is a beneficiary can recover if other fiduciaries were solely responsible for the loss. No person whose intentional or reckless conduct contributed to the loss can recover from the fund. A negligent beneficiary can recover only if his negligence is less than 50% of the reason for the loss. In that case, he can recover the percentage of his loss that was not caused by his own negligence. A beneficiary whose negligence is at least 50% of the reason for the loss cannot recover from the fund.

RESTITUTION ORDERS

Under the bill, any party to the hearing (including a successor fiduciary acting for the estate) can seek a restitution order against a fiduciary once the probate court has found that a breach of fiduciary duty resulted in a financial loss to the estate. The restitution order can include an order of restoration, surcharge, or other equitable or legal relief. The court must provide notice and a hearing before determining the amount of the order. The order is payable either to the successor

fiduciary or to the individual parties. Any party can appeal to the Superior Court under the normal procedures for appeals from the probate court. The order becomes final if there is no timely appeal. The order can be enforced like any Superior Court judgment. The Superior Court can issue execution on a final order as it does with other judgments, and it can award interest and attorney's fees.

CLAIMS TO THE PROBATE GUARANTY FUND

Under the bill, a person entitled to receive funds under a restitution order who cannot collect from the responsible parties can submit a claim to the fund. The fund does not cover losses from acts of a trustee of an *inter vivos* trust (see BACKGROUND) or acts of holders of a power of attorney, even if the probate court assumes jurisdiction over them.

The administrator must provide application forms and the claimant must provide enough sworn information for the administrator to make a determination. The application must include a certified copy of all relevant probate court orders and any other information the administrator requires. The administrator (or his designee) must determine that the application is complete, authentic, and complies with the bill and any other rules and procedures.

To receive a payment, a claimant must satisfy the administrator that he made good faith efforts to obtain restitution from responsible parties and other sources of payment, including probate bonds, but could not collect.

The administrator determines the amount to be paid and issues an invoice to the treasurer for payment from the fund. Payment cannot exceed \$100,000 for total losses whether caused by one or more fiduciaries or one or more breaches of duty. The bill does not allow payments to an estate unless its fiduciary has paid the bill's required fee.

If a claimant is eligible for an award and the fiduciary is an attorney or other state-licensed professional, the fund must determine whether the Client Security Fund or a similar fund will pay any portion of the beneficiary's loss. If the Client Security Fund or similar fund makes a payment, the Probate Guaranty Fund is responsible for no more than one-half of the loss, up to \$50,000.

The administrator has discretion to order a payment that is less than the actual loss or the restitution order to preserve the fund's fiscal integrity. If the fund is insufficient to satisfy all or part of an authorized claim, the administrator must satisfy claims in the order they were originally determined when sufficient money is deposited in the fund.

CONDITIONS ON AWARDS

Under the bill, a person receiving a payment from the fund must assign to the fund any claims against third parties for reimbursement for the fiduciary's misconduct. Under this agreement, the fund can assert the restitution order against responsible parties and sources up to the amount of payments made by the fund and the reasonable administrative and collection costs of enforcing the order. The fund may enforce the restitution order in the same manner as a Superior Court judgment. The Superior Court can award interest and attorneys fees when an application for executing the order is filed and a copy is certified by the probate court.

Under the bill, the fund also has a lien on real and personal property of the estate in which the breaching fiduciary had an interest as of the date the property vested in that fiduciary. The amount of the lien is the amount of the payment to the claimant plus reasonable administrative and collection costs but reduced by any payments collected by the fund from responsible parties or sources. The administrator must release the lien when it is satisfied. He can, in appropriate cases, substitute additional security for property that the fiduciary requests to have released from the lien. The lien is not valid against a good faith purchaser, mortgagee, lienor, or judgment creditor if that person does not have notice of the lien and it is not filed or recorded at the town clerk's office where the property is located.

FIDUCIARY FEES

The bill requires fiduciaries and successor fiduciaries appointed on or after October 1, 2001 to pay an annual fee determined by the administrator to be actuarially sufficient to maintain the fund's integrity but not more than (1) \$25 for an estate with less than \$50,000 in assets or (2) \$50 for a larger estate. Fiduciaries appointed before October 1, 2001 must pay the fee when the court hears the fiduciary's

periodic account or on the anniversary of appointment. The payment is an expense of administering the estate.

A fiduciary of a decedent's estate need not pay the fee on the first anniversary of his qualification if (1) he files a final account within 14 months of his qualification and (2) the probate court approves the account. (It is not clear whether the beneficiaries in this case are protected by the fund for losses.) If these conditions are not met, he must pay the annual fee within 10 days of notice that the fee is due.

Also, a fiduciary who prepaid a probate bond premium for more than one year with a value of at least the value of the assets of the estate need not pay the fee if the probate court determines the fund's protection is unnecessary. Trustees of *inter vivos* trusts, holders of a power of attorney, and state agencies appointed as conservators do not pay the fee even if they are subject to the jurisdiction of the probate court. A conservator of a ward or guardian of a minor with a net estate of less than \$5,000 and monthly income of less than \$1,000 need not pay the fee but his beneficiaries are entitled to recover under this bill.

SURPLUS FUNDS

If the administrator determines after an actuarial study that the fund has a surplus beyond what is reasonable for the fund's purpose, he can transfer the surplus to the Probate Administration Fund (up to the amount the Probate Administration Fund paid to the Probate Guaranty Fund). Any additional surplus must be used to reduce the payments required from fiduciaries under the bill or to increase the maximum amount of payments to injured parties.

ASSISTANCE OF THE ATTORNEY GENERAL

The administrator can seek the attorney general's assistance in recovering from responsible parties the amounts paid by the fund. Any recovered funds are paid to the Probate Guaranty Fund after covering disbursements and the attorney general's expenses.

BACKGROUND

Client Security Fund

Under statutory authority, the courts established a Client Security Fund to reimburse clients for losses resulting from the dishonest conduct of attorneys practicing law in this state in the course of an attorney-client relationship.

Inter Vivos Trusts

“Inter vivos trusts” are those created and becoming effective during the settlor's lifetime.

Probate Assembly

The Probate Assembly is the assembly of all of the probate court judges. It meets to consider matters affecting the probate courts, including court administration and the improvement and uniformity of procedure and practice. The assembly can make recommendations to the probate court administrator.

Legislative History

The House referred the bill to the Appropriations Committee on April 17 and the committee reported the bill favorably on April 18. The House referred the bill to the Joint Committee on Legislative Management on April 20 and the committee reported the bill favorably on April 24.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute Change of Reference

Yea 40 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report

Yea 38 Nay 3

Appropriations Committee

Joint Favorable Report

Yea 27 Nay 17

Joint Committee on Legislative Management

Joint Favorable Report

Yea 17 Nay 10