



General Assembly

February Session, 2000

Raised Bill No. 5704

LCO No. 1521

Referred to Committee on Judiciary

Introduced by:
(JUD)

An Act Concerning The Creation 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 one
3 Comptroller, and to be funded initially by funds transferred by the
4 Probate Court Administrator from the Probate Administration Fund in
5 such amounts as he shall determine, and periodically thereafter by
6 fees paid into the fund by various fiduciaries under the jurisdiction of
7 the probate courts of this state, as provided in section 5 of this act. The
8 purpose of the fund is to reimburse the public for certain losses
9 suffered as a result of the negligent or intentional acts of fiduciaries
10 accountable to the probate courts of the state, acting within their
11 fiduciary capacity. The monies paid into the fund may be commingled
12 with other assets being managed by the Treasurer, but the Treasurer
13 shall invest them in such a way as to make them available for the
14 purposes for which this fund is created.

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

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

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

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

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

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

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

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

47 only one fiduciary, if that fiduciary has breached a fiduciary duty to an
48 estate and that fiduciary is also a beneficiary of the estate, such
49 fiduciary shall not be entitled to any payment from the fund. In those
50 cases in which there are multiple fiduciaries, a fiduciary who is also a
51 beneficiary may recover from the fund if such fiduciary did not in any
52 way contribute to the loss sustained by the estate. In those cases in
53 which an estate has sustained a financial loss as a result of the
54 negligence of one or more beneficiaries, the negligent beneficiary may
55 recover from the fund a prorated amount if the negligence of that
56 beneficiary is less than fifty per cent of the total negligence accounting
57 for the loss. If the negligence of that beneficiary is fifty per cent or
58 greater, that beneficiary shall not be entitled to receive any payment
59 from the fund. If the loss attributable to any beneficiary is less than
60 fifty per cent, such beneficiary shall be entitled to receive that
61 percentage of his loss which was not caused by his own negligence.
62 No person, whether a beneficiary or a fiduciary, whose intentional or
63 reckless conduct has contributed to the loss, shall receive any payment
64 from the fund. Any aggrieved party may appeal a decision or
65 determination of the probate court in accordance with sections 45a-186
66 to 45a-193, inclusive, of the general statutes. The burden of proof
67 regarding claims against a fiduciary and by a fiduciary against any
68 other party, within the context of sections 1 to 9, inclusive, of this act,
69 shall be by a fair preponderance of the evidence.

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

77 (c) Any party to the probate court hearing referred to in subsection
78 (a) of this section, including a successor fiduciary acting on behalf of
79 the estate, may seek an order of restitution from the probate court

80 against the fiduciary found by the probate court to have breached a
81 fiduciary duty resulting in a financial loss to an estate. Such order of
82 restitution may include, but shall not be limited to, orders of
83 restoration or surcharge or such other equitable or legal relief to which
84 the petitioner may be entitled. Following notice and hearing, the
85 probate court shall determine the amount of the order of restitution
86 payable either to the successor fiduciary on behalf of the entire estate
87 or to the individual parties. Any party aggrieved by the order of the
88 probate court may appeal to the Superior Court in accordance with the
89 provisions of section 45a-186 to 45a-193, inclusive, of the general
90 statutes. If no timely appeal of the order is taken, such order shall be
91 final and may be enforced in the same manner as a judgment of the
92 Superior Court. The Superior Court may issue execution upon any
93 final order in the same manner as a judgment rendered by the Superior
94 Court. Upon the filing of an application for execution of such order
95 and a copy of such order certified by the probate court, the Superior
96 Court may also award interest and attorney's fees.

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

106 (b) Upon receipt of said attested claim together with said certified
107 copy of the court documents and any other documentation required by
108 the administrator, the administrator or the designee of the
109 administrator shall inspect such documents for their veracity. Upon a
110 determination that such documents are complete and authentic, and a
111 determination that the claimant has otherwise complied with the
112 requirements of this act and any regulations promulgated thereunder,

113 the administrator shall determine the amount to be paid to the
114 claimant and shall issue an invoice to the Comptroller authorizing and
115 directing such payment from the fund. Such payment shall not exceed
116 one hundred thousand dollars for the total losses caused by the
117 fiduciary or cofiduciaries of an estate, whether those losses involved
118 one or more breaches of fiduciary duty by one or more fiduciaries. The
119 fund shall not pay any claim involving any estate unless the
120 mandatory fee has been paid to the appropriate court in accordance
121 with the provisions of section 5 of this act.

122 (c) To receive payments under sections 1 to 9, inclusive, of this act,
123 the claimant shall also demonstrate to the administrator the reasonable
124 attempts made to gain restitution from the responsible parties and all
125 other available sources of payment. Such an attempt shall be deemed
126 reasonable if a demand for payment has been made upon the
127 responsible party and other available sources of payment, including
128 the filing of an application for permission to sue on a probate bond, if
129 any, bona fide negotiations have been attempted, and no restitution
130 has been made within six months of such demand. As a condition of
131 payment from the fund, the claimant shall execute and deliver to the
132 fund a subrogation agreement in form and substance acceptable to the
133 administrator. The agreement shall empower the fund to assert the
134 claimant's order of restitution against responsible parties and
135 responsible sources, up to the amount of payments made by the fund
136 to the claimant plus reasonable administrative and collection costs
137 incurred by the fund to enforce the order. The fund may enforce the
138 order of restitution in the same manner as a judgement of the Superior
139 Court. Upon the filing of an application for the execution of such order
140 and a copy of such order certified by the Probate Court, The Superior
141 Court may also award interest and attorney's fees.

142 (d) The fund shall have a lien upon the real and personal property
143 of the estate in which the breaching fiduciary had an interest as of the
144 date title to said property vested in the said fiduciary. The amount of
145 the lien shall be the gross amount of the loss to the estate resulting

146 from the fiduciary's improper conduct, including interest and
147 attorney's fees as otherwise allowed by law or this act, but
148 subsequently reduced by any third party payments to the estate or
149 injured beneficiaries. Upon satisfaction of that lien by the fiduciary or
150 any other person, the administrator shall execute a release of lien on
151 behalf of the fund, or may, in appropriate cases, substitute additional
152 security for property for which the fiduciary requests a release of lien.
153 The lien created by this act shall not be valid as against any bona fide
154 purchaser, mortgagee, lienor or judgment creditor provided they have
155 no notice of this lien, unless and until notice of such lien is filed or
156 recorded in the town clerk's office.

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

171 Sec. 5. (NEW) (a) A fiduciary of any estate appointed by a probate
172 court on or after the effective date of this act shall pay to the court, as a
173 condition of qualification of appointment, and annually thereafter on
174 the anniversary date of the appointment, a sum determined by the
175 administrator, from time to time, to be actuarially sufficient to
176 maintain the integrity of the fund, but not to exceed a sum equal to (1)
177 twenty-five dollars, if the value of the assets of the estate is less than
178 fifty thousand dollars and (2) fifty dollars, if the value of the assets of

179 the estate is equal to or greater than fifty thousand dollars, unless
180 payment is made as required, no coverage under the Probate
181 Guarantee Fund shall be provided. For any fiduciary appointed before
182 the effective date of this act, each probate court shall collect the same
183 fee from each fiduciary at the time the fiduciary's periodic account is
184 heard when that fiduciary is a trustee, guardian or conservator, and,
185 when the fiduciary is an executor or administrator, at the annual
186 anniversary of the fiduciary's appointment. All successor fiduciaries
187 subsequently appointed by the probate courts shall also make the
188 same payment as a condition of their qualification for appointment.
189 Any such payment by any fiduciary or successor fiduciary shall be
190 paid as an expense of administration of the estate. Any fiduciary who
191 has prepaid a probate bond premium for more than a one-year period,
192 whose bond equals or exceeds the value of the assets of the state, shall
193 not be subject to the payment of an additional annual fee, as long as
194 the probate court has determined that further protection by the fund is
195 unnecessary. Notwithstanding the provisions of this section, the
196 fiduciary of a decedent's estate shall not be liable for payment of any
197 fee on the first anniversary date of such fiduciary's qualification, if
198 such fiduciary files a final account within fourteen months of such
199 fiduciary's qualification and the probate court subsequently approves
200 such account; except that if such fiduciary fails to file a final account
201 within such fourteen month period or if the probate court fails to
202 approve such account, such fiduciary shall be liable for the payment of
203 the annual fee as provided in this section within ten days of notice that
204 such fee is due and shall pay such annual fee on any subsequent
205 anniversary of such fiduciary's qualification.

206 (b) The trustees of inter vivos trusts and holders of a power of
207 attorney, even if subject to the jurisdiction of the probate court, shall
208 not be obligated to make such payments.

209 (c) The conservator of a ward or the guardian of a minor whose net
210 estate is less than five thousand dollars and whose monthly income is
211 less than one thousand dollars shall not be required to make payments

212 to the fund, but the beneficiaries of those estates shall nonetheless be
213 entitled to recovery under sections 1 to 9, inclusive, of this act.

214 Sec. 6. (NEW) The administrator may seek the assistance of the
215 Attorney General in attempting to recover from all responsible parties
216 any amount paid by the fund to an injured party. Any funds
217 recovered, after the payment of the disbursements and expenses of the
218 Attorney General, shall be paid to the fund.

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

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

234 (b) If the money deposited in the fund is insufficient to satisfy any
235 duly authorized claim or portion thereof, the administrator shall, when
236 sufficient money has been deposited in the fund, satisfy such unpaid
237 claims or portions thereof, in the order that such claims or portions
238 thereof were originally determined.

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

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

244 (a) Upon the written application of any fiduciary described in
245 section 45a-164, after such notice which the court may order and after
246 hearing, the Court of Probate may authorize a person other than the
247 fiduciary to sell the whole or any part of or any interest in any personal
248 property of any incapable person, minor, missing person, deceased
249 person or trustee, or any property to which the fiduciary may hold
250 legal title in such capacity, if: (1) Such person has first given a probate
251 bond as required by the court and that [he] such person will faithfully
252 administer and account for the proceeds of the sale according to law;
253 and (2) the court finds that to grant the application would be in the
254 best interests of the parties in interest. If any party having an interest in
255 such personal property is not in being or is not ascertained or is under
256 a disability, the court shall appoint a guardian ad litem to represent the
257 interest of such party at the hearing, unless such party already is
258 represented by a guardian or by a conservator. Such order, and the
259 sale thereunder, shall be conclusive upon all persons then or thereafter
260 existing whose interests have been so represented.

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

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

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

269 (a) If any fiduciary becomes incapable of executing [his] such
270 fiduciary's trust, neglects to perform the duties of [his] such fiduciary's
271 trust, wastes the estate in [his] such fiduciary's charge, or fails to
272 furnish any additional or substitute probate bond ordered by the court,

273 the court of probate having jurisdiction may, upon its own motion, or
274 upon the application and complaint of any person interested or of the
275 surety upon the fiduciary's probate bond, after notice and a hearing,
276 remove such fiduciary.

277 (b) The court of probate, after notice and hearing, may accept or
278 reject the written resignation of any fiduciary, but such resignation
279 shall not be accepted until such fiduciary has fully and finally
280 accounted for the administration of [his] such fiduciary's trust to the
281 acceptance of such court.

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

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

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

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

297 (a) If no person has been designated in a will to be executor, or if the
298 person designated in the will to be executor has died or refuses to
299 accept or is incapable of accepting such trust, and no alternate or
300 successor has been named, the court shall commit the administration
301 of the estate, with the will annexed, to any person or persons in
302 accordance with the order of priority for the appointment of

303 administrators under subsection (c) of section 45a-303, except that any
304 person who is entitled to a bequest or devise under such will, or his or
305 her designee, shall have priority over a person who is not so entitled,
306 or on the objection of any one interested under such will or of any
307 creditor, which objection is found reasonable by the court, the court
308 may commit the administration of the estate, with the will annexed, to
309 any person whom the court deems proper. [taking a probate bond]
310 Any such person so appointed may be required to give a probate bond
311 in such amount as the court deems necessary to protect the estate.

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

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

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

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

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

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

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

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

372 (d) The court, upon granting any administration, [shall] may take a
373 probate bond from the administrator or any successor administrator
374 appointed by the Court of Probate in such amount as the court deems
375 necessary to protect the estate.

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

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

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

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

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

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

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

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

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

436 (g) If the name or residence of any party entitled to share in the
437 proceeds of property so sold is unknown to the court and cannot be
438 ascertained, it shall appoint a trustee for the share of such party. Such
439 trustee shall give a probate bond if ordered by the court, and shall hold
440 such share until demanded by the person or persons entitled thereto.

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

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

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

458 When a testator has appointed a trustee to execute a trust created by
459 [his] the testator's will, the court of probate having jurisdiction of the

460 settlement of [his] the testator's estate shall, unless otherwise provided
461 in the will, or excused by the court, require of such trustee a probate
462 bond. If any trustee refuses to give such bond, the refusal shall be
463 deemed a refusal to accept or perform the duties of such trust; but the
464 bond without surety of any public or charitable corporation or
465 cemetery association to which any bequest or devise is made in trust
466 shall be deemed sufficient. Whenever by any will it is provided that
467 the trustee or trustees thereunder shall not be required to give a
468 probate bond, or shall be required to give a bond which in the
469 judgment of the court of probate having jurisdiction is insecure or
470 inadequate, the court may, upon the application of any person
471 interested, require such trustee or trustees at any time to furnish a
472 probate bond in accordance with section 45a-139.

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

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

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

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

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

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

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

520 (e) The court of probate may continue such trustee in office until
521 satisfactory proof of the death of such person is furnished, until
522 proceedings are taken to settle [his] the estate of such person on the
523 presumption of [his] death of such person under the provisions of

524 section 45a-329, or for a period of seven years from the time of the
525 disappearance of such person if [he] such person remains unheard of.

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

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

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

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

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

555 or furnishing such bond, such guardian or coguardians shall have the
556 same power over the person and estate of such minor as guardians
557 appointed by the court of probate.

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

561 (a) When a minor is entitled to property, the court of probate for the
562 district in which the minor resides may assign a time and place for a
563 hearing on the appointment of a guardian of the estate of the minor.
564 The court shall cause reasonable notice of hearing to be given to (1) the
565 parents or guardian of the person of the minor, (2) the minor, if the
566 minor is twelve years of age or older, and (3) such other persons as it
567 determines. Any person entitled to notice of the hearing may waive
568 such notice.

569 (b) If the court finds that there is no guardian of the estate of the
570 minor, it may appoint one or both of the parents or any guardian of the
571 person of the minor to be guardian of his or her estate. If neither parent
572 nor the guardian of the person of the minor will accept the
573 appointment, or if the parents or guardian of the person of the minor
574 are not proper persons to act as guardian of his or her estate, the court
575 may appoint any proper person or persons chosen by the minor if the
576 minor is twelve years of age or over. If the minor neglects to make
577 choice or fails to choose a proper person or persons or is not of
578 sufficient age, the court of probate shall appoint some proper person or
579 persons, who, as guardian of the estate of the minor, shall have charge
580 of all the minor's property, whether acquired before or after the
581 guardian's appointment, but shall have no control over such minor's
582 person. If any minor who has a guardian marries and owns or
583 thereafter acquires property, the guardianship of such property shall
584 continue during such person's minority. Any guardian so appointed
585 [shall] may be required to give a probate bond in such amount as the
586 court deems necessary for the protection of the estate.

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

589 (a) At any hearing for involuntary representation, the court shall
590 receive evidence regarding the condition of the respondent, including
591 a written report or testimony by one or more physicians licensed to
592 practice medicine in the state who have examined the respondent
593 within thirty days preceding the hearing. The report or testimony shall
594 contain specific information regarding the disability and the extent of
595 its incapacitating effect. The court may also consider such other
596 evidence as may be available and relevant, including but not limited to
597 a summary of the physical and social functioning level or ability of the
598 respondent, and the availability of support services from the family,
599 neighbors, community, or any other appropriate source. Such evidence
600 may include, if available, reports from the social work service of a
601 general hospital, municipal social worker, director of social service,
602 public health nurse, public health agency, psychologist, coordinating
603 assessment and monitoring agencies, or such other persons as the
604 court deems qualified to provide such evidence. The court may waive
605 the requirement that medical evidence be presented if it is shown that
606 the evidence is impossible to obtain because of the absence of the
607 respondent or his or her refusal to be examined by a physician or that
608 the alleged incapacity is not medical in nature. If this requirement is
609 waived, the court shall make a specific finding in any decree issued on
610 the petition stating why medical evidence was not required.

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

615 (c) If the court finds by clear and convincing evidence that the
616 respondent is incapable of managing his or her affairs, the court shall
617 appoint a conservator of his or her estate unless it appears to the court
618 that such affairs are being managed properly without the appointment

619 of a conservator. If the court finds by clear and convincing evidence
620 that the respondent is incapable of caring for himself or herself, the
621 court shall appoint a conservator of his or her person unless it appears
622 to the court that the respondent is being cared for properly without the
623 appointment of a conservator.

624 (d) When determining whether a conservator should be appointed
625 and in selecting a conservator to be appointed for the respondent, the
626 court shall be guided by the best interests of the respondent. In making
627 such determination, the court shall consider whether the respondent
628 had previously made alternative arrangements for the care of his
629 person or for the management of his affairs, including, but not limited
630 to, the execution of a valid durable power of attorney, the appointment
631 of a health-care agent or other similar document. The respondent may,
632 by oral or written request, if at the time of the request he or she has
633 sufficient capacity to form an intelligent preference, nominate a
634 conservator who shall be appointed unless the court finds the
635 appointment of the nominee is not in the best interests of the
636 respondent. In such case, or in the absence of any such nomination, the
637 court may appoint any qualified person, authorized public official or
638 corporation in accordance with subsections (a) and (b) of section 45a-
639 644.

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

643 (f) [If the court appoints a conservator of the estate of the
644 respondent, it shall require a probate bond.] Any conservator so
645 appointed may be required to give a probate bond in such amount as
646 the court deems necessary for the protection of the estate. The court
647 may, if it deems it necessary for the protection of the respondent,
648 require a bond of any conservator of the person appointed hereunder.

649 (g) The court may limit the powers and duties of either the
650 conservator of the person or the conservator of the estate, to include

651 some, but not all, of the powers and duties set forth in subsections (a)
652 and (b) of section 45a-644, sections 45a-655 and 45a-656, and shall
653 make specific findings to justify such a limitation, in the best interests
654 of the ward. In determining whether or not any limitations should be
655 imposed, the court shall consider the abilities of the ward, the prior
656 appointment of any attorney-in-fact, health care agent, trustee or other
657 fiduciary acting on behalf of the ward, any support services which are
658 otherwise available to the ward, and any other relevant evidence. The
659 court may modify its decree upon any change in circumstances.

660 Sec. 23. Section 45a-659 of the general statutes, as amended by
661 section 29 of public act 99-84, is repealed and the following is
662 substituted in lieu thereof:

663 (a) If any person domiciled out of and owning real property or
664 tangible personal property in this state is incapable of managing his or
665 her affairs, the court of probate for the district in which the property or
666 some part of it is situated may, on the written application of a
667 husband, wife or relative or of a conservator, committee or guardian
668 having charge of the person or estate of the incapable person in the
669 state where the incapable person is domiciled and after notice
670 pursuant to section 45a-649 or such reasonable notice as the court may
671 order, and a hearing as required pursuant to section 45a-650 appoint a
672 conservator of the estate for the real property and tangible personal
673 property in this state of the incapable person pursuant to section
674 45a-650.

675 (b) If a conservator of the estate has been appointed for such an
676 incapable person in the state of such person's domicile, (1) the court
677 may, on application of the out-of-state conservator to act as
678 conservator for real or tangible personal property of the incapable
679 person in this state, appoint such person as conservator of the estate
680 without a hearing, on presentation to the court of a certified copy of
681 the conservator's appointment in the state of the incapable person's
682 domicile, and (2) if the application is for the appointment of a person

683 other than the out-of-state conservator to act as conservator of the
684 estate, the court, at its hearing on the application, may accept a
685 certified copy of the out-of-state appointment of a conservator as
686 evidence of incapacity. As used in this subsection, a "conservator of the
687 estate" in an out-of-state jurisdiction includes any person serving in the
688 equivalent capacity in such state.

689 (c) The conservator of the estate for the property in this state [shall]
690 may be required to give a probate bond in such amount as the court
691 deems necessary for the protection of the estate, and shall, within two
692 months after the date of his or her appointment, make and file in the
693 court of probate, under penalty of false statement, an inventory of all
694 the real property and tangible personal property in this state of the
695 incapable person, appraised or caused to be appraised, by such
696 conservator, at fair market value as of the date of the conservator's
697 appointment.

698 (d) The proceeds of any sale of either real or tangible personal
699 property, or both, may be transferred to the conservator, committee or
700 guardian having charge of the person and estate of the incapable
701 person in the state where the incapable person is domiciled, following
702 the application and proceedings which are required by section 45a-635.

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

705 Guardians of the property, and limited guardians of the property, of
706 persons who are not minors and who are mentally retarded persons,
707 appointed as such guardians or limited guardians under chapter 779a
708 prior to October 1, 1982, shall serve on or after October 1, 1982, as
709 conservators of the estates of such persons as if appointed conservators
710 under the provisions of sections 45a-644 to 45a-662, inclusive, and in
711 accordance with the provisions of said sections. Any guardian of the
712 person or property of a minor person who is mentally retarded,
713 appointed under chapter 779a, prior to October 1, 1982, may continue
714 to serve as such guardian on or after October 1, 1982, as if appointed

715 under and in accordance with the provisions of sections 45a-132, 45a-
716 593 to 45a-597, inclusive, 45a-603 to 45a-662, inclusive, 45a-629 to 45a-
717 638, inclusive, relative to guardians of minors. Such guardianship shall
718 terminate upon the minor reaching the age of eighteen. Continuation
719 of the guardianship of the estate shall be by application made pursuant
720 to the provisions of sections 45a-644 to 45a-662, inclusive. Continuation
721 of the guardianship of the person shall be by application made
722 pursuant to the provisions of sections 45a-668 to 45a-684, inclusive.
723 Any guardian of the person of a mentally retarded person who is not a
724 minor, appointed under chapter 779a prior to October 1, 1982, may
725 continue to serve as such guardian after October 1, 1982. Upon filing of
726 a periodic account by any guardian appointed under the provisions of
727 chapter 779a, prior to October 1, 1982, the court [shall] may require a
728 probate bond in the same manner as under sections 45a-132, 45a-593 to
729 45a-597, inclusive, 45a-603 to 45a-622, inclusive, 45a-629 to 45a-638,
730 inclusive, or 45a-644 to 45a-662, inclusive. Failure to furnish a probate
731 bond, if required, or written acceptance of guardianship required
732 under the provisions of said sections, shall be cause for termination of
733 the continued service of the fiduciary provided for in this section.

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

Statement of Purpose:

To establish a Probate Guaranty Fund to protect estate beneficiaries against unscrupulous or negligent actions of fiduciaries if fiduciary does not have the ability to compensate beneficiary for his misconduct and every probate fiduciary shall be obligated to pay an annual fee into the Probate Guaranty Fund to protect assets up to \$100,000.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]