



***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 State
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 or intentional acts of fiduciaries accountable to the probate
11 courts of the state, acting within their fiduciary capacity. The moneys
12 paid into the fund may be commingled with other assets being
13 managed by the Treasurer, but the Treasurer shall invest them in such
14 a way as to make them available for the purposes for which this fund
15 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 legislative committee having cognizance over judicial matters, the
24 Governor, Attorney General, Treasurer, Chief Justice of the Supreme
25 Court and the Chief Court Administrator;

26 (3) Shall receive, investigate and evaluate claims for reimbursement,
27 as well as determine the amount of reimbursement, the terms of
28 payment and the period over which payment shall be 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 Probate
50 Guaranty Fund. In those cases in which there are multiple fiduciaries,

51 a fiduciary who is also a beneficiary may recover from the fund if such
52 fiduciary did not in any way contribute to the loss sustained by the
53 estate. In those cases in which an estate has sustained a financial loss as
54 a result of the negligence of one or more beneficiaries, the negligent
55 beneficiary may recover from the fund a prorated amount if the
56 negligence of that beneficiary is less than fifty per cent of the total
57 negligence accounting for the loss. If the negligence of that beneficiary
58 is fifty per cent or greater, that beneficiary shall not be entitled to
59 receive any payment from the fund. If the loss attributable to any
60 beneficiary is less than fifty per cent, such beneficiary shall be entitled
61 to receive that percentage of his loss which was not caused by his own
62 negligence. No person, whether a beneficiary or a fiduciary, whose
63 intentional or reckless conduct has contributed to the loss, shall receive
64 any payment from the fund. Any aggrieved party may appeal a
65 decision or determination of the probate court in accordance with
66 sections 45a-186 to 45a-193, inclusive, of the general statutes. The
67 burden of proof regarding claims against a fiduciary and by a fiduciary
68 against any other party, within the context of sections 1 to 9, inclusive,
69 of this act, 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 the designee of the administrator, may
73 participate fully in that hearing, examine and cross-examine witnesses,
74 subpoena witnesses, and take any other action which any other party
75 could take in that hearing, including, but not limited to, the taking of
76 an appeal to 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 Probate Guaranty Fund on forms provided by
101 the administrator, containing sufficient information upon which the
102 administrator can make a determination of the issues, and shall be
103 sworn to by the claimant. The written claim shall include a certified
104 copy of all relevant orders of the probate court and any other
105 information required by the 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. As a condition of payment from the fund, the claimant
131 shall execute and deliver to the fund a subrogation agreement in form
132 and substance acceptable to the administrator. The agreement shall
133 empower the fund to assert the claimant's order of restitution against
134 responsible parties and responsible sources, up to the amount of
135 payments made by the fund to the claimant plus reasonable
136 administrative and collection costs incurred by the fund to enforce the
137 order. The fund may enforce the order of restitution in the same
138 manner as a judgment of the Superior Court. Upon the filing of an
139 application for the execution of such order and a copy of such order
140 certified by the Probate Court, the Superior Court may also award
141 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 Probate Guaranty Fund be liable
158 for losses incurred by the acts of the trustee of an inter vivos trust or
159 the acts of the holder of a power of attorney, despite the probate
160 court's assumption of jurisdiction over the inter vivos trust or power
161 of attorney. In the event that the probate court finds that a fiduciary
162 whose improper conduct resulted in losses to the estate, are protected
163 by the provisions of sections 1 to 9, inclusive, of this act is also an
164 attorney licensed to practice law in this state or any other professional
165 licensed by this state, no payment from the fund shall be made until
166 the Client Security Fund of the state or any other similar fund has
167 determined whether or not any portion of the beneficiary's loss shall be
168 paid by that fund. If the loss is subject to a payment by the Client
169 Security Fund, the Probate Guaranty Fund shall be responsible for no
170 more than one-half 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 Probate Guaranty Fund, but not to exceed
177 a sum equal to (1) twenty-five dollars, if the value of the assets of the
178 estate is less than fifty thousand dollars, and (2) fifty dollars, if the
179 value of the assets of the estate is equal to or greater than fifty
180 thousand dollars, unless payment is made as required, no coverage
181 under the Probate Guarantee Fund shall be provided. For any
182 fiduciary appointed before the effective date of this act, each probate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

279 remove such fiduciary.

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

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

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

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

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

301 (a) If no person has been designated in a will to be executor, or if the
302 person designated in the will to be executor has died or refuses to
303 accept or is incapable of accepting such trust, and no alternate or
304 successor has been named, the court shall commit the administration
305 of the estate, with the will annexed, to any person or persons in
306 accordance with the order of priority for the appointment of
307 administrators under subsection (c) of section 45a-303, except that any
308 person who is entitled to a bequest or devise under such will, or his or

309 her designee, shall have priority over a person who is not so entitled,
310 or on the objection of any one interested under such will or of any
311 creditor, which objection is found reasonable by the court, the court
312 may commit the administration of the estate, with the will annexed, to
313 any person whom the court deems proper. [, taking a probate bond]
314 Any such person so appointed may be required to give a probate bond
315 in such amount as the court deems necessary to protect the estate.

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

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

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

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

339 (2) When any person not domiciled in this state dies intestate,

340 administration may be granted by the Court of Probate determined
341 under the jurisdictional prerequisites provided in subsection (a) of
342 section 45a-287 for nondomiciliary testators, and the provisions of
343 subsection (d) of section 45a-287 regarding Probate Court costs
344 applicable to testate estates shall apply also to intestate estates granted
345 administration under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

585 (a) At any hearing for involuntary representation, the court shall
586 receive evidence regarding the condition of the respondent, including
587 a written report or testimony by one or more physicians licensed to
588 practice medicine in the state who have examined the respondent
589 within thirty days preceding the hearing. The report or testimony shall
590 contain specific information regarding the disability and the extent of

591 its incapacitating effect. The court may also consider such other
592 evidence as may be available and relevant, including but not limited to
593 a summary of the physical and social functioning level or ability of the
594 respondent, and the availability of support services from the family,
595 neighbors, community, or any other appropriate source. Such evidence
596 may include, if available, reports from the social work service of a
597 general hospital, municipal social worker, director of social service,
598 public health nurse, public health agency, psychologist, coordinating
599 assessment and monitoring agencies, or such other persons as the
600 court deems qualified to provide such evidence. The court may waive
601 the requirement that medical evidence be presented if it is shown that
602 the evidence is impossible to obtain because of the absence of the
603 respondent or his or her refusal to be examined by a physician or that
604 the alleged incapacity is not medical in nature. If this requirement is
605 waived, the court shall make a specific finding in any decree issued on
606 the petition stating why medical evidence was not required.

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

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

620 (d) When determining whether a conservator should be appointed
621 and in selecting a conservator to be appointed for the respondent, the
622 court shall be guided by the best interests of the respondent. In making

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

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

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

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

655 court may modify its decree upon any change in circumstances.

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

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

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

670 Guardians of the property, and limited guardians of the property, of
671 persons who are not minors and who are mentally retarded persons,
672 appointed as such guardians or limited guardians under chapter 779a
673 prior to October 1, 1982, shall serve on or after October 1, 1982, as
674 conservators of the estates of such persons as if appointed conservators
675 under the provisions of sections 45a-644 to 45a-662, inclusive, and in
676 accordance with the provisions of said sections. Any guardian of the
677 person or property of a minor person who is mentally retarded,
678 appointed under chapter 779a, prior to October 1, 1982, may continue
679 to serve as such guardian on or after October 1, 1982, as if appointed
680 under and in accordance with the provisions of sections 45a-132, 45a-
681 593 to 45a-597, inclusive, 45a-603 to 45a-662, inclusive, 45a-629 to 45a-
682 638, inclusive, relative to guardians of minors. Such guardianship shall
683 terminate upon the minor reaching the age of eighteen. Continuation
684 of the guardianship of the estate shall be by application made pursuant
685 to the provisions of sections 45a-644 to 45a-662, inclusive. Continuation
686 of the guardianship of the person shall be by application made

687 pursuant to the provisions of sections 45a-668 to 45a-684, inclusive.
688 Any guardian of the person of a mentally retarded person who is not a
689 minor, appointed under chapter 779a prior to October 1, 1982, may
690 continue to serve as such guardian after October 1, 1982. Upon filing of
691 a periodic account by any guardian appointed under the provisions of
692 chapter 779a, prior to October 1, 1982, the court [shall] may require a
693 probate bond in the same manner as under sections 45a-132, 45a-593 to
694 45a-597, inclusive, 45a-603 to 45a-622, inclusive, 45a-629 to 45a-638,
695 inclusive, or 45a-644 to 45a-662, inclusive. Failure to furnish a probate
696 bond, if required, or written acceptance of guardianship required
697 under the provisions of said sections, shall be cause for termination of
698 the continued service of the fiduciary provided for in this section.

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

JUD Committee Vote: Yea 40 Nay 0 JFS C/R FIN