



***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 such moneys  
14 in such a way as to make such moneys available for the purposes for  
15 which the fund is created.

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

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

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

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

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

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

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

38 Sec. 2. (NEW) (a) Upon any interested party's application alleging  
39 that a fiduciary has breached a fiduciary duty which may have  
40 resulted in a financial loss to an estate, or upon the probate court's own  
41 motion, the probate court having jurisdiction over the fiduciary's estate  
42 shall, after providing reasonable notice to the fiduciary and such other  
43 interested parties as the probate court shall determine, hold a hearing  
44 to determine whether such breach occurred and the actual loss  
45 sustained by the estate. The judge shall determine the proportionate  
46 share of the loss for which each person, including any fiduciary,  
47 claimant or other party, is liable. In those cases in which there is only  
48 one fiduciary, if that fiduciary has breached a fiduciary duty to an  
49 estate and that fiduciary is also a beneficiary of the estate, such  
50 fiduciary shall not be entitled to any payment from the Probate  
51 Guaranty Fund. In those cases in which there are multiple fiduciaries,

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

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

79 (c) Any party to the probate court hearing under subsection (a) of  
80 this section, including a successor fiduciary acting on behalf of the  
81 estate, may seek an order of restitution from the probate court against  
82 the fiduciary found by the probate court to have breached a fiduciary  
83 duty resulting in a financial loss to an estate. Such order of restitution  
84 may include, but shall not be limited to, orders of restoration or  
85 surcharge or such other equitable or legal relief to which the petitioner

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

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

108       (b) Upon receipt of the attested claim together with the certified  
109 copy of the court documents and any other documentation required by  
110 the administrator, the administrator or the designee of the  
111 administrator shall inspect such documents for their veracity. Upon a  
112 determination that such documents are complete and authentic, and a  
113 determination that the claimant has otherwise complied with the  
114 requirements of sections 1 to 9, inclusive, of this act and any  
115 regulations promulgated thereunder, the administrator shall  
116 determine the amount to be paid to the claimant and shall issue an  
117 invoice to the Comptroller authorizing and directing such payment  
118 from the fund. Such payment shall not exceed one hundred thousand  
119 dollars for the total losses caused by the fiduciary or cofiduciaries of an

120 estate, whether those losses involved one or more breaches of fiduciary  
121 duty by one or more fiduciaries. The fund shall not pay any claim  
122 involving any estate unless the mandatory fee has been paid to the  
123 appropriate court in accordance with the provisions of section 5 of this  
124 act.

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

145 (d) The fund shall have a lien upon the real and personal property  
146 of the estate in which the breaching fiduciary had an interest as of the  
147 date title to such property vested in the fiduciary. The amount of the  
148 lien shall be the gross amount of the loss to the estate resulting from  
149 the fiduciary's improper conduct, including interest and attorney's fees  
150 as otherwise allowed by law or sections 1 to 9, inclusive, of this act, but  
151 subsequently reduced by any third party payments to the estate or  
152 injured beneficiaries. Upon satisfaction of that lien by the fiduciary or  
153 any other person, the administrator shall execute a release of lien on

154 behalf of the fund, or may, in appropriate cases, substitute additional  
155 security for property for which the fiduciary requests a release of lien.  
156 The lien created by sections 1 to 9, inclusive, of this act shall not be  
157 valid as against any bona fide purchaser, mortgagee, lienor or  
158 judgment creditor provided they have no notice of such lien, unless  
159 and until notice of such lien is filed or recorded in the town clerk's  
160 office.

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

175       Sec. 5. (NEW) (a) A fiduciary of any estate appointed by a probate  
176 court on or after the effective date of this act shall pay to the court, as a  
177 condition of qualification of appointment, and annually thereafter on  
178 the anniversary date of the appointment, a sum determined by the  
179 administrator, from time to time, to be actuarially sufficient to  
180 maintain the integrity of the Probate Guaranty Fund, but not to exceed  
181 a sum equal to (1) twenty-five dollars, if the value of the assets of the  
182 estate is less than fifty thousand dollars, and (2) fifty dollars, if the  
183 value of the assets of the estate is equal to or greater than fifty  
184 thousand dollars. Unless payment is made as required, no coverage  
185 under the Probate Guaranty Fund shall be provided. For any fiduciary  
186 appointed before the effective date of this act, each probate court shall  
187 collect the same fee from each fiduciary at the time the fiduciary's

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

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

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

219 Sec. 6. (NEW) The administrator may seek the assistance of the  
220 Attorney General in attempting to recover from all responsible parties

221 any amount paid by the Probate Guaranty Fund to an injured party.  
222 Any funds recovered, after the payment of the disbursements and  
223 expenses of the Attorney General, shall be paid to the fund.

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

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

240 (b) If the moneys deposited in the fund are insufficient to satisfy any  
241 duly authorized claim or portion thereof, the administrator shall, when  
242 sufficient moneys have been deposited in the fund, satisfy such unpaid  
243 claims or portions thereof, in the order that such claims or portions  
244 thereof were originally determined.

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

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

250 (a) Upon the written application of any fiduciary described in  
251 section 45a-164, after such notice which the court may order and after

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

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

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

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

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

283 (b) The court of probate, after notice and hearing, may accept or

284 reject the written resignation of any fiduciary, but such resignation  
285 shall not be accepted until such fiduciary has fully and finally  
286 accounted for the administration of [his] such fiduciary's trust to the  
287 acceptance of such court.

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

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

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

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

304 (a) If no person has been designated in a will to be executor, or if the  
305 person designated in the will to be executor has died or refuses to  
306 accept or is incapable of accepting such trust, and no alternate or  
307 successor has been named, the court shall commit the administration  
308 of the estate, with the will annexed, to any person or persons in  
309 accordance with the order of priority for the appointment of  
310 administrators under subsection (c) of section 45a-303, except that any  
311 person who is entitled to a bequest or devise under such will, or his or  
312 her designee, shall have priority over a person who is not so entitled,  
313 or on the objection of any one interested under such will or of any  
314 creditor, which objection is found reasonable by the court, the court  
315 may commit the administration of the estate, with the will annexed, to

316 any person whom the court deems proper. [, taking a probate bond]  
317 Any such person so appointed may be required to give a probate bond  
318 in such amount as the court deems necessary to protect the estate.

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

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

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

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

342 (2) When any person not domiciled in this state dies intestate,  
343 administration may be granted by the Court of Probate determined  
344 under the jurisdictional prerequisites provided in subsection (a) of  
345 section 45a-287 for nondomiciliary testators, and the provisions of  
346 subsection (d) of section 45a-287 regarding Probate Court costs  
347 applicable to testate estates shall apply also to intestate estates granted

348 administration under this section.

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

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

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

379 (d) The court, upon granting any administration, [shall] may take a

380 probate bond from the administrator or any successor administrator  
381 appointed by the Court of Probate in such amount as the court deems  
382 necessary to protect the estate.

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

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

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

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

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

412 and of the parties concerned will be promoted thereby.

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

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

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

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

443 (g) If the name or residence of any party entitled to share in the

444 proceeds of property so sold is unknown to the court and cannot be  
445 ascertained, it shall appoint a trustee for the share of such party. Such  
446 trustee shall give a probate bond if ordered by the court, and shall hold  
447 such share until demanded by the person or persons entitled thereto.

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

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

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

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

476 judgment of the court of probate having jurisdiction is insecure or  
477 inadequate, the court may, upon the application of any person  
478 interested, require such trustee or trustees at any time to furnish a  
479 probate bond in accordance with section 45a-139.

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

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

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

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

508 public notice and a hearing thereon, appoint a trustee of the property  
509 of such person.

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

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

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

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

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

538 Sec. 20. Section 45a-596 of the general statutes is repealed and the

539 following is substituted in lieu thereof:

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

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

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

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

568 (b) If the court finds that there is no guardian of the estate of the  
569 minor, it may appoint one or both of the parents or any guardian of the  
570 person of the minor to be guardian of his or her estate. If neither parent

571 nor the guardian of the person of the minor will accept the  
572 appointment, or if the parents or guardian of the person of the minor  
573 are not proper persons to act as guardian of his or her estate, the court  
574 may appoint any proper person or persons chosen by the minor if the  
575 minor is twelve years of age or over. If the minor neglects to make  
576 choice or fails to choose a proper person or persons or is not of  
577 sufficient age, the court of probate shall appoint some proper person or  
578 persons, who, as guardian of the estate of the minor, shall have charge  
579 of all the minor's property, whether acquired before or after the  
580 guardian's appointment, but shall have no control over such minor's  
581 person. If any minor who has a guardian marries and owns or  
582 thereafter acquires property, the guardianship of such property shall  
583 continue during such person's minority. Any guardian so appointed  
584 [shall] may be required to give a probate bond in such amount as the  
585 court deems necessary for the protection of the estate.

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

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

605 the evidence is impossible to obtain because of the absence of the  
606 respondent or his or her refusal to be examined by a physician or that  
607 the alleged incapacity is not medical in nature. If this requirement is  
608 waived, the court shall make a specific finding in any decree issued on  
609 the petition stating why medical evidence was not required.

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

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

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

638 644.

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

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

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

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

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

670 appointment.

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

673 Guardians of the property, and limited guardians of the property, of  
674 persons who are not minors and who are mentally retarded persons,  
675 appointed as such guardians or limited guardians under chapter 779a  
676 prior to October 1, 1982, shall serve on or after October 1, 1982, as  
677 conservators of the estates of such persons as if appointed conservators  
678 under the provisions of sections 45a-644 to 45a-662, inclusive, and in  
679 accordance with the provisions of said sections. Any guardian of the  
680 person or property of a minor person who is mentally retarded,  
681 appointed under chapter 779a, prior to October 1, 1982, may continue  
682 to serve as such guardian on or after October 1, 1982, as if appointed  
683 under and in accordance with the provisions of sections 45a-132, 45a-  
684 593 to 45a-597, inclusive, 45a-603 to 45a-662, inclusive, 45a-629 to 45a-  
685 638, inclusive, relative to guardians of minors. Such guardianship shall  
686 terminate upon the minor reaching the age of eighteen. Continuation  
687 of the guardianship of the estate shall be by application made pursuant  
688 to the provisions of sections 45a-644 to 45a-662, inclusive. Continuation  
689 of the guardianship of the person shall be by application made  
690 pursuant to the provisions of sections 45a-668 to 45a-684, inclusive.  
691 Any guardian of the person of a mentally retarded person who is not a  
692 minor, appointed under chapter 779a prior to October 1, 1982, may  
693 continue to serve as such guardian after October 1, 1982. Upon filing of  
694 a periodic account by any guardian appointed under the provisions of  
695 chapter 779a, prior to October 1, 1982, the court [shall] may require a  
696 probate bond in the same manner as under sections 45a-132, 45a-593 to  
697 45a-597, inclusive, 45a-603 to 45a-622, inclusive, 45a-629 to 45a-638,  
698 inclusive, or 45a-644 to 45a-662, inclusive. Failure to furnish a probate  
699 bond, if required, or written acceptance of guardianship required  
700 under the provisions of said sections, shall be cause for termination of  
701 the continued service of the fiduciary provided for in this section.

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

**JUD** **Committee Vote:** Yea 40 Nay 0 JFS C/R FIN  
**FIN** **Committee Vote:** Yea 38 Nay 3 JFS-LCO  
**APP** **Committee Vote:** Yea 27 Nay 17 JF  
**LM** **Committee Vote:** Yea 17 Nay 10 JF