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PROBATE COURT ADMINISTRATOR

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To: Senate Co-Chair Andrew McDonald
House Co-Chair Michael Lawlor
Senate Ranking Member John Kissel
House Ranking Member Arthur O'Neill
Honorable Members of the Judiciary Committee

From: Judge James J. Lawlor
Probate Court Administrator

Re: RB 698 An Act Concerning the Calculation, Reduction and Waiver
of Probate Fees

Date: March 19, 2008

I appreciate the opportunity to testify on RB 698 An Act Concerning the Calculation, Reduction and Waiver of Probate Fees. This bill concerns the statutory probate fees charged to decedents' estates under §45a-107. The Office of the Probate Court Administrator supports some of the concepts presented in this bill but believes that additional changes are required.

The operations of the state's 117 probate courts are funded through statutory fees charged to the users of the courts. Prior to July 1, 2005, probate fees in decedents' estates were generally calculated with reference to the gross estate for purposes of the Connecticut succession tax. In 2005, the succession tax was repealed, and a revised estate and gift tax was put in place. The gross estate for estate tax purposes then became the primary basis for determining probate fees. The estate tax statutes define "gross estate" as the *federal* gross estate. These changes have, we believe inadvertently, resulted in a number of changes to the computation of probate fees.

Previously life insurance on the life of the decedent was exempt from the succession tax, and therefore not included in computing probate fees. However, life insurance is includable in the federal gross estate. Therefore the calculation of probate fees now includes life insurance. The bill before you seeks to remove life insurance from the computation, and we support that effort. However, we believe that other important changes to §45a-107 are also required.

By statute the gross estate for succession tax purposes included real and tangible personal property only if located within the state. However, the federal gross estate includes real and tangible property located anywhere within the United States. Thus probate fees are now calculated, in some instances, on property outside the state, and over which our probate courts have no jurisdiction. This result, which we believe to be unconstitutional, has drawn considerable and justifiable criticism from the public and the bar. However, we believe that the bill before you offers only a partial solution to the problem.

The bill does not address the problem confronting the estates of a non-domiciliary decedents owning real or tangible personal property in Connecticut. While the bill would include the property in the state, it would not exclude intangible property of the decedent. Intangibles are generally deemed to be located at the place of domicile. Thus, in the case of a non-domiciliary they would generally not be part of the Connecticut probate estate and not subject to the jurisdiction of our courts. However, they would be part of the federal gross estate and, under the bill as written, part of the basis for costs for determining Connecticut probate fees.

Subsection 4 of section 1 should also be eliminated. This provision was enacted in 1997 in response to the phase-out of the succession tax. However, it never became applicable until the succession tax was ultimately repealed in 2005. By that time circumstances had changed considerably. At present this provision creates a double charge, as the property described is already part of the gross estate for estate tax purposes, and is subject to probate fees on that basis. As a duplicative charge, this provision should be eliminated.

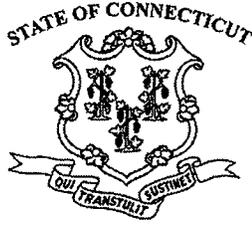
It should be noted that at least two other bills seek to address these same issues. Attached is a copy of Bill 165 that was recently JFS'd out of the Insurance and Real Estate Committee. In addition, section 1 of Bill 696, which we have proposed and which is before you today for public hearing, would also correct this problem. We believe, however, that Bill 696 offers a more comprehensive approach. With the incorporation of this language we believe the bill before you would be significantly improved, correcting some serious inequities in the existing law.

This bill would also permit the court to waive probate fees in decedents' estates under certain circumstances. The requirements are that the basis for costs be less than ten thousand dollars, that a full estate be opened, and that the fiduciary submit an affidavit indicating that there are no cash assets. In such

circumstances the court could "reduce or waive" the probate fees, after consultation with the Probate Court Administrator.

We do not believe that the bill offers a proper basis for a fee waiver. In past decades there was much criticism of the lack of uniformity in the area of probate fees. It was this criticism that caused the legislature to establish the present statutory scheme in order to create uniformity. Our statutes properly provide for waiver of probate fees, if it is determined that the person responsible for paying them is indigent and would be denied access to the court absent a waiver. This is not at all the situation described in this bill. In fact, it is unclear what problem this provision seeks to resolve. We do not believe that the judges should be afforded the discretion to waive fees for such an ill-defined purpose.

Thank you for affording us the opportunity to testify.



General Assembly

***Proposed Substitute
Bill No. 165***

February Session, 2008

LCO No. 2944

***AN ACT CONCERNING THE FEES OF THE PROBATE COURT
SYSTEM.***

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

1 Section 1. Section 45a-107 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2008*):

3 (a) The basic costs for all proceedings in the settlement of the estate
4 of any deceased person, including succession and estate tax
5 proceedings, shall be in accordance with the provisions of this section.

6 (b) For estates in which proceedings were commenced on or after
7 [April 1, 1998] July 1, 2008, costs shall be computed as follows:

8 (1) The basis for costs shall be (A) the greatest of (i) the gross estate
9 for succession tax purposes, as provided in section 12-349, (ii) the
10 inventory, including all supplements thereto, (iii) the Connecticut
11 taxable estate, as defined in section 12-391, or (iv) the gross estate for
12 estate tax purposes, as provided in chapters 217 and 218, [whichever is

13 greater] minus the permitted reductions specified in subdivisions (4) to
14 (6), inclusive, of this subsection, plus (B) all damages recovered for
15 injuries resulting in death minus any hospital and medical expenses
16 for treatment of such injuries resulting in death minus any hospital
17 and medical expenses for treatment of such injuries that are not
18 reimbursable by medical insurance and minus the attorney's fees and
19 other costs and expenses of recovering such damages. Any portion of
20 the basis for costs that is determined by property passing to the
21 surviving spouse shall be reduced by fifty per cent. Except as provided
22 in subdivision (3) of this subsection, in no case shall the minimum cost
23 be less than twenty-five dollars.

24 (2) Except as provided in subdivisions (3) [and (4)] to (6), inclusive,
25 of this subsection, costs shall be assessed in accordance with the
26 following table:

Basis for Computation Of Costs	Total Cost
0 to \$500	\$25
\$501 to \$1,000	\$50
\$1,000 to \$10,000	\$50, plus 1% of all in excess of \$1,000
\$10,000 to \$500,000	\$150, plus .35% of all in excess of \$10,000
\$500,000 to \$4,754,000	\$1,865, plus .25% of all in excess of \$500,000
\$4,754,000 and over	\$12,500

27

28 (3) Notwithstanding the provisions of subdivision (1) of this
29 subsection, if the basis for costs is less than ten thousand dollars and a
30 full estate is opened, the minimum cost shall be one hundred fifty
31 dollars.

32 (4) [In estates where the gross taxable estate is less than six hundred

33 thousand dollars, in which no succession tax return is required to be
34 filed, a probate fee of .1 per cent shall be charged against non-solely-
35 owned real estate, in addition to any other fees computed under this
36 section.] In the case of a decedent domiciled in this state at the date of
37 death, the gross estate for estate tax purposes shall, for the purpose of
38 determining the basis for costs under subdivision (1) of this subsection,
39 be reduced by the fair market value of any real or tangible personal
40 property owned by the decedent located outside this state, and the
41 amount of any indebtedness secured by a mortgage or lien on real
42 property located in this state.

43 (5) In the case of a decedent not domiciled in this state but who
44 owned real or tangible personal property located in this state at the
45 date of death, for the purpose of determining the basis for costs under
46 subdivision (1) of this subsection, the fair market value of such real or
47 tangible personal property located in this state shall be included in the
48 gross estate for estate tax purposes. The value of any such real
49 property shall be reduced by the amount of any indebtedness secured
50 by a mortgage or lien on such real property.

51 (6) The gross estate for estate tax purposes shall not, for the purpose
52 of determining the basis for costs under subdivision (1) of this
53 subsection, include any life insurance proceeds.

54 (c) For estates in which proceedings were commenced on or after
55 April 1, 1998, and prior to July 1, 2008, costs shall be computed as
56 follows:

57 (1) The basis for costs shall be (A) the greatest of (i) the gross estate
58 for succession tax purposes, as provided in section 12-349, (ii) the
59 inventory, including all supplements thereto, (iii) the Connecticut
60 taxable estate, as defined in section 12-391, or (iv) the gross estate for
61 estate tax purposes, as provided in chapters 217 and 218, plus (B) all
62 damages recovered for injuries resulting in death, minus any hospital
63 and medical expenses for treatment of such injuries resulting in death,
64 minus any hospital and medical expenses for treatment of such injuries

65 that are not reimbursable by medical insurance, and minus the
66 attorney's fees and other costs and expenses of recovering such
67 damages. Any portion of the basis for costs, that is determined by
68 property passing to the surviving spouse, shall be reduced by fifty per
69 cent. Except as provided in subdivision (3) of this subsection, in no
70 case shall the minimum cost be less than twenty-five dollars.

71 (2) Except as provided in subdivisions (3) and (4) of this subsection,
72 costs shall be assessed in accordance with the following table:

<u>Basis for Computation</u>	<u>Total Cost</u>
<u>Of Costs</u>	
<u>0 to \$500</u>	<u>\$25</u>
<u>\$501 to \$1,000</u>	<u>\$50</u>
<u>\$1,000 to \$10,000</u>	<u>\$50, plus 1% of all</u> <u>in excess of \$1,000</u>
<u>\$10,000 to \$500,000</u>	<u>\$150, plus .35% of all</u> <u>in excess of \$10,000</u>
<u>\$500,000 to \$4,754,000</u>	<u>\$1,865, plus .25% of all</u> <u>in excess of \$500,000</u>
<u>\$4,754,000 and over</u>	<u>\$12,500</u>

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74 (3) Notwithstanding the provisions of subdivision (1) of this
75 subsection, if the basis for costs is less than ten thousand dollars and a
76 full estate is opened, the minimum cost shall be one hundred fifty
77 dollars.

78 (4) In estates where the gross taxable estate is less than six hundred
79 thousand dollars, in which no succession tax return is required to be
80 filed, a probate fee of one-tenth of one per cent shall be charged against
81 nonsolely-owned real estate, in addition to any other fees computed
82 under this section.

83 [(c)] (d) For estates in which proceedings were commenced on or
84 after July 1, 1993, and prior to April 1, 1998, costs shall be computed as

85 follows:

86 (1) The basis for costs shall be: (A) The gross estate for succession
87 tax purposes, as provided in section 12-349, or the inventory, including
88 all supplements thereto, whichever is greater, plus (B) all damages
89 recovered for injuries resulting in death minus any hospital and
90 medical expenses for treatment of such injuries that are not
91 reimbursable by medical insurance and minus the attorney's fees and
92 other costs and expenses of recovering such damages. Any portion of
93 the basis for costs that is determined by property passing to the
94 surviving spouse shall be reduced by fifty per cent. Except as provided
95 in subdivision (3) of this subsection, in no case shall the minimum cost
96 be less than ten dollars.

97 (2) Except as provided in subdivision (3) of this subsection, costs
98 shall be assessed in accordance with the following table:

Basis for Computation Of Costs	Total Cost
0 to \$1,000	\$10.00
\$1,000 to \$10,000	\$10, plus 1% of all in excess of \$1,000
\$10,000 to \$500,000	\$100, plus .30% of all in excess of \$10,000
\$500,000 to \$4,715,000	\$1,570, plus .20% of all in excess of \$500,000
\$4,715,000 and over	\$10,000

99

100 (3) If the basis for costs is less than ten thousand dollars and a full
101 estate is opened, the minimum cost shall be one hundred dollars.

102 [(d)] (e) For estates in which proceedings were commenced on or
103 after July 1, 1983, and prior to July 1, 1993, costs shall be computed as
104 follows:

105 (1) The basis for costs shall be: (A) The gross estate for succession
106 tax purposes, as provided in section 12-349, minus one-third of the first
107 fifty thousand dollars of any part of the gross estate for succession tax
108 purposes that passes other than by will or under the laws of intestacy,
109 plus (B) all damages recovered for injuries resulting in death minus
110 any hospital and medical expenses for treatment of such injuries that
111 are not reimbursable by medical insurance and minus the attorney's
112 fees and other costs and expenses of recovering such damages.

113 (2) Costs shall be assessed in accordance with the following table:

Basis for Computation Of Costs	Total Cost
0 to \$1,000	\$10.00
\$1,000 to \$10,000	\$10, plus 1% of all in excess of \$1,000
\$10,000 to \$100,000	\$100, plus .30% of all in excess of \$10,000
\$100,000 to \$200,000	\$370, plus .25% of all in excess of \$100,000
\$200,000 to \$500,000	\$620, plus .2% of all in excess of \$200,000
\$500,000 to \$1,000,000	\$1,220, plus .15% of all in excess of \$500,000
\$1,000,000 to \$5,000,000	\$1,970, plus .125% of all in excess of \$1,000,000
\$5,000,000 and over	\$6,970, plus .1% of all in excess of \$5,000,000

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115 [(e)] (f) For estates in which proceedings were commenced prior to
116 July 1, 1983, costs shall be computed as follows:

With respect to any estate in which any proceedings	Costs computed under:
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were commenced or
succession tax documents filed:

Prior to January 1, 1968	Section 45-17 of the 1961 supplement to the general statutes
Prior to July 1, 1969, but on or after January 1, 1968	Section 45-17a of the 1967 supplement to the general statutes
Prior to July 1, 1978, but on or after July 1, 1969	Section 45-17a of the 1969 supplement to the general statutes
Prior to July 1, 1983, but on or after July 1, 1978	Section 45-17a of the general statutes, revised to January 1, 1983

117

118 [(f)] (g) If more than one hearing is held in any matter under this
119 section, an additional charge of twenty-five dollars shall be payable to
120 the court by the estate, or, in the discretion of the court, by any
121 interested party against whom the court shall assess such additional
122 charge.

123 [(g)] (h) If the total time of any one hearing in the matter exceeds
124 one hour, an additional charge of twenty-five dollars per hour for each
125 hour in excess of the first hour shall be payable to the court by the
126 estate, or at the discretion of the court by any interested party against
127 whom the court shall assess the additional charge, provided the
128 additional charge shall not exceed three hundred dollars.

129 [(h)] (i) A charge of fifty dollars shall be payable to the court by any
130 creditor applying to the Court of Probate pursuant to section 45a-364
131 or 45a-401 for consideration of a claim. If such claim is allowed by the
132 court, the court may order the fiduciary to reimburse the charge from

133 the estate.

134 [(i)] (j) A charge of fifty dollars for an appeal shall be payable to the
135 court by the appellant.

136 [(j)] (k) A charge of fifty dollars plus the actual costs of rescheduling
137 the adjourned hearing shall be payable to the court by any party who
138 requests an adjournment of a scheduled hearing or whose failure to
139 appear necessitates an adjournment, provided the court may waive the
140 charge and costs for cause shown.

141 [(k)] (l) In no event shall any fee exceed ten thousand dollars for any
142 estate in which proceedings were commenced prior to April 1, 1998,
143 and twelve thousand five hundred dollars for any estate in which
144 proceedings were commenced on or after April 1, 1998.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008</i>	45a-107