



# House of Representatives

General Assembly

**File No. 745**

January Session, 2009

Substitute House Bill No. 6625

*House of Representatives, April 20, 2009*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE COURTS OF PROBATE.***

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

1 Section 1. Section 45a-77 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) The Probate Court Administrator may attend to any matters that  
4 the Probate Court Administrator considers necessary for the efficient  
5 operation of the courts of probate and for the expeditious dispatch and  
6 proper conduct of the business of such courts. The Probate Court  
7 Administrator shall administer and enforce the provisions of this  
8 chapter and the regulations issued under this section, and shall ensure  
9 performance of the duties of judges of probate and clerks of the courts  
10 of probate in accordance with the provisions of this chapter and such  
11 regulations. The Probate Court Administrator may make  
12 recommendations to the General Assembly for legislation for the  
13 improvement of the administration of the courts of probate.

14 (b) (1) The Probate Court Administrator may issue and shall enforce

15 regulations, provided such regulations are approved in accordance  
16 with subsection (c) of this section. Such regulations shall be binding on  
17 all courts of probate and shall concern the following matters for the  
18 administration of the probate court system: (A) Auditing, accounting,  
19 statistical, billing, recording, filing and other court procedures; (B)  
20 reassignment and transfer of cases; (C) training of court personnel and  
21 continuing education programs for judges of probate and court  
22 personnel; and (D) the enforcement of the provisions of this chapter  
23 and the regulations issued pursuant to this section, including, but not  
24 limited to, recovery of expenses associated with any such enforcement,  
25 as permitted by such regulations.

26 (2) The Probate Court Administrator may adopt regulations, in  
27 accordance with chapter 54, provided such regulations are approved in  
28 accordance with subdivision (1) of subsection (c) of this section. Such  
29 regulations shall be binding on all courts of probate and shall concern:  
30 (A) The availability of judges; (B) court facilities, personnel and  
31 records; (C) hours of court operation; and (D) telephone service.

32 (c) (1) Either the Probate Court Administrator or the executive  
33 committee of the Connecticut Probate Assembly may propose  
34 regulations authorized under subsection (b) of this section. Any  
35 regulation proposed by the Probate Court Administrator shall be  
36 submitted to the executive committee of the Connecticut Probate  
37 Assembly for approval. Any regulation proposed by the executive  
38 committee of the Connecticut Probate Assembly shall be submitted to  
39 the Probate Court Administrator for approval. If either the Probate  
40 Court Administrator or the executive committee of the Connecticut  
41 Probate Assembly fails to approve a proposed regulation, such  
42 proposed regulation may be submitted to a panel of three Superior  
43 Court judges appointed by the Chief Justice of the Supreme Court. The  
44 panel of judges, after consideration of the positions of the Probate  
45 Court Administrator and the executive committee of the Connecticut  
46 Probate Assembly, shall either approve the proposed regulation or  
47 reject the proposed regulation.

48 (2) Any proposed new regulation and any change in an existing  
49 regulation issued under this section on or after July 1, 2007, shall be  
50 submitted to the joint standing committee of the General Assembly  
51 having cognizance of matters relating to the judiciary for approval or  
52 disapproval in its entirety, provided, if more than one proposed new  
53 regulation or change in an existing regulation is submitted at the same  
54 time, said committee shall approve or disapprove all such proposed  
55 new regulations and changes in existing regulations together in their  
56 entirety. Unless disapproved by said committee within ninety days of  
57 the date of such submittal, each such regulation shall become effective  
58 on the date specified in such regulation, but not in any event until  
59 ninety days after promulgation.

60 (d) The Probate Court Administrator shall regularly review the  
61 auditing, accounting, statistical, billing, recording, filing,  
62 administrative and other procedures of the courts of probate.

63 (e) The Probate Court Administrator shall, personally, or by an  
64 authorized designee of the Probate Court Administrator who has been  
65 admitted to the practice of law in this state for at least five years, visit  
66 each court of probate at least once during each two-year period to  
67 examine the records and files of such court in the presence of the judge  
68 of the court or the judge's authorized designee. The Probate Court  
69 Administrator shall make any additional inquiries that the Probate  
70 Court Administrator considers appropriate to ascertain whether the  
71 business of the court, including the charging of costs and payments to  
72 the State Treasurer, has been conducted in accordance with law, rules  
73 of the courts of probate, regulations issued under this section and the  
74 canons of judicial ethics, and to obtain information concerning the  
75 business of the courts of probate which is necessary for the Probate  
76 Court Administrator to perform properly the duties of the office.

77 Sec. 2. Subsection (b) of section 45a-92 of the general statutes is  
78 repealed and the following is substituted in lieu thereof (*Effective*  
79 *October 1, 2009*):

80 (b) The personal representative of each person who holds the office

81 of judge of probate, at any time during any calendar year, and dies  
 82 while in office, or within twenty-four months after ceasing to hold  
 83 office, shall file with the Probate Court Administrator, on or before  
 84 [March] April first next following such death, a statement signed  
 85 under penalty of false statement showing the actual gross receipts and  
 86 itemized costs of the decedent's office for the preceding calendar year  
 87 and the decedent's net income from that office for such calendar year.  
 88 The personal representative shall file with the Probate Court  
 89 Administrator on or before [March] April first of the second year  
 90 following said death a statement signed under penalty of false  
 91 statement showing the net income to the decedent's estate from such  
 92 office for the preceding calendar year.

93 Sec. 3. Subsection (c) of section 45a-92 of the general statutes is  
 94 repealed and the following is substituted in lieu thereof (*Effective*  
 95 *October 1, 2009*):

96 (c) Each judge of probate or personal representative, except a judge  
 97 of probate who is the Probate Court Administrator, shall at the time of  
 98 filing such returns pay to the State Treasurer to be credited to the fund  
 99 established by section 45a-82, a percentage of the annual net income  
 100 from such office based on the following table in which the percentage  
 101 appearing in the left column shall first be multiplied by the minimum  
 102 annual compensation of a high volume court as provided in subsection  
 103 (k) of this section, as in effect on the first day of July of the calendar  
 104 year for which an assessment is due pursuant to this section, the  
 105 product of which shall then be multiplied by the applicable percentage  
 106 appearing in the right column:

|    |   |             |
|----|---|-------------|
| T1 | First 20% of the compensation assessment rate |             |
| T2 | of a high volume court                        | \$1 nominal |
| T3 | Next 6.67%                                    | 5%          |
| T4 | Next 6.66%                                    | 10%         |
| T5 | Next 6.67%                                    | 15%         |
| T6 | Next 6.67%                                    | 25%         |
| T7 | Next 6.66%                                    | 35%         |

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|     |   |     |
|-----|---|-----|
| T8  | Next 13.34%   | 50% |
| T9  | Next 33.33%   | 75% |
| T10 | Next 33.67%   | 80% |
| T11 | Next 66.67%   | 85% |
| T12 | Next 133.33%  | 95% |
| T13 |   |     |
| T14 | Excess over 333.67%, up to the maximum amount computed at 97.5% |     |
| T15 | by the Probate Court Administrator.                             |     |
| T16 |   |     |
| T17 | All over the maximum amount computed at 100% by the Probate     |     |
| T18 | Court Administrator.  |     |

107 As used in this subsection, "maximum amount" means the amount of  
108 annual net income from such office which, when applying the  
109 percentage payments set forth above, shall result in the judge of  
110 probate retaining as net compensation, after the payment of the above  
111 amounts, no more than the product resulting from the multiplication  
112 of seventy-two dollars by the annual weighted-workload of the court,  
113 as defined in regulations issued by the Probate Court Administrator  
114 pursuant to subdivision (1) of subsection (b) of section 45a-77, as  
115 amended by this act, but not to exceed the compensation of a high  
116 volume court as set forth in subsection (k) of this section, provided this  
117 limitation shall not apply to those courts described in subsection (k) of  
118 this section. Such payment shall be deemed to be a necessary expense  
119 of such office, but shall not be deductible from the gross income for the  
120 purpose of determining net income of such office under this section.  
121 Notwithstanding the provisions of this subsection, the annual  
122 minimum compensation of a judge of probate shall be no less than the  
123 product resulting from the multiplication of fifteen dollars by the  
124 annual weighted-workload of the court, as defined in regulations  
125 issued by the Probate Court Administrator pursuant to subdivision (1)  
126 of subsection (b) of section 45a-77, as amended by this act, or no less  
127 than the judge's average compensation for the three-year period from  
128 January 1, 1996, to December 31, 1998, provided there was no break in  
129 the judge's service after such three-year period, but, in no event shall

130 that minimum compensation exceed that provided pursuant to  
131 subsection (k) of this section.

132 Sec. 4. Subsection (h) of section 45a-92 of the general statutes is  
133 repealed and the following is substituted in lieu thereof (*Effective*  
134 *October 1, 2009*):

135 (h) If the amount already paid was less than the amount due, such  
136 person shall, on or before [March] April first of the succeeding  
137 calendar year, pay to the State Treasurer the entire deficiency. If the  
138 amount already paid was more than the amount due, such person  
139 shall either, at his election and pursuant to regulations promulgated by  
140 the State Treasurer, be entitled to a refund of such excess payment to  
141 be paid from the fund provided by section 45a-82, or a credit in the  
142 amount of the overpayment to be charged against the future  
143 obligations of such person to said fund.

144 Sec. 5. Subsection (b) of section 45a-186 of the general statutes is  
145 repealed and the following is substituted in lieu thereof (*Effective from*  
146 *passage*):

147 (b) Each person who files an appeal pursuant to this section shall  
148 [serve] mail a copy of the complaint [on] to the court of probate that  
149 rendered the order, denial or decree appealed from and serve a copy of  
150 the complaint on each interested party. The failure of any person to  
151 make such service shall not deprive the Superior Court of jurisdiction  
152 over the appeal. Notwithstanding the provisions of section 52-50,  
153 service of the copy of the complaint shall be by state marshal, constable  
154 or an indifferent person. Service shall be in hand or by leaving a copy  
155 [at the court of probate that rendered the order being appealed, or by  
156 leaving a copy] at the place of residence of the interested party being  
157 served or at the address for the interested party on file with said court  
158 of probate, except that service on a respondent or conserved person in  
159 an appeal from an action under part IV of chapter 802h shall be in  
160 hand by a state marshal, constable or an indifferent person.

161 Sec. 6. Section 45a-316 of the general statutes is repealed and the

162 following is substituted in lieu thereof (*Effective October 1, 2009*):

163 (a) Whenever, upon the application of a creditor or other person  
164 interested in the estate of a deceased person, it is found by the court of  
165 probate having jurisdiction of the estate that the granting of  
166 administration on the estate or the probating of the will of the  
167 deceased person will be delayed, or that it is necessary for the  
168 protection of the estate of the deceased person, the court may, with or  
169 without notice, appoint a temporary administrator to hold and  
170 preserve the estate until the appointment of an administrator or the  
171 probating of the will. The court shall require from such administrator a  
172 probate bond. If the court deems it more expedient, [it] the court may  
173 order any state marshal or constable to take possession of the estate  
174 until the appointment of an administrator or executor.

175 (b) Any person found by the court to have sufficient interest in the  
176 estate of a deceased person may apply to the court of probate for the  
177 appointment of a temporary administrator for the limited purpose of  
178 obtaining financial or medical information concerning the deceased  
179 person, including, but not limited to, medical information and records  
180 necessary for the investigation of a potential cause of action of the  
181 estate, or a potential cause of action of an heir, devisee, legatee or  
182 beneficiary of the deceased person. The court may grant the  
183 application if the court finds that such appointment would be in the  
184 interests of the estate or in the interests of an heir, devisee, legatee or  
185 beneficiary of the deceased person. The court shall limit the authority  
186 of the temporary administrator to disclose the information obtained by  
187 the temporary administrator, as appropriate, and may issue an  
188 appropriate order for the disclosure of such information. Any order  
189 appointing a temporary administrator under this subsection, and any  
190 certificate of the appointment of a fiduciary issued by the clerk of the  
191 court, shall indicate (1) the duration of the temporary administrator's  
192 appointment, and (2) that such temporary administrator has no  
193 authority over the assets of the deceased person.

This act shall take effect as follows and shall amend the following sections:

|           |                        |            |
|-----------|------------------------|------------|
| Section 1 | <i>October 1, 2009</i> | 45a-77     |
| Sec. 2    | <i>October 1, 2009</i> | 45a-92(b)  |
| Sec. 3    | <i>October 1, 2009</i> | 45a-92(c)  |
| Sec. 4    | <i>October 1, 2009</i> | 45a-92(h)  |
| Sec. 5    | <i>from passage</i>    | 45a-186(b) |
| Sec. 6    | <i>October 1, 2009</i> | 45a-316    |

**Statement of Legislative Commissioners:**

In section 6, "of a deceased person" was inserted for accuracy.

**JUD**      *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:**

| <b>Agency Affected</b> | <b>Fund-Effect</b> | <b>FY 10 \$</b> | <b>FY 11 \$</b> |
|------------------------|--------------------|-----------------|-----------------|
| Probate Court          | PCAF - See Below   | See Below       | See Below       |

Note: PCAF=Probate Court Administration Fund

**Municipal Impact:** None

**Explanation**

The bill makes a number of changes to the statutes governing probate courts, the majority of which do not result in any fiscal impact.

**Section 3** could result in a decrease in compensation of certain probate judges who discontinue service and become re-elected at a later date. To the extent this occurs, there is a minimal cost savings to the Probate Court Administration Fund.

**Section 6** authorizes the appointment of a temporary administrator for the purpose of obtaining financial or medical information. There is a \$150 probate fee associated with the issuance of such status, though it is anticipated that this section would apply to few applications and as such any potential revenue gains would be minimal.

**The Out Years**

The annualized ongoing fiscal impact identified above would remain constant into the future as probate fees and judges' salaries are set by statute.

**OLR Bill Analysis**

**sHB 6625**

***AN ACT CONCERNING THE COURTS OF PROBATE.***

**SUMMARY:**

This bill authorizes a probate court to appoint someone it finds to have a sufficient interest in an estate as a temporary administrator to obtain financial or medical information on a deceased person to investigate whether the estate or an heir, devisee, legatee, or beneficiary has a cause of action.

The bill delays by one month the deadline for (1) filing certain financial information with the probate court administrator about a probate judge who died while holding, or within 24 months after holding, office and (2) paying a percentage of probate judge's net income to the state treasurer for deposit into the Probate Court Administration Fund.

The bill specifies that a judge's minimum compensation cannot be calculated by using the average compensation for the three year-period from January 1, 1996 to December 31, 1998 unless there was no break in service after the three-year period.

The bill requires that those who appeal from a probate court decision mail, instead of serve, a copy of the complaint to the probate court that made the decision.

It also makes technical changes.

**EFFECTIVE DATE:** October 1, 2009, except that the provision dealing with appeals to the Superior Court becomes effective upon passage.

**TEMPORARY ADMINISTRATOR**

The bill authorizes any one who has sufficient interest in the estate to apply to probate court for appointment as a temporary administrator for the limited purpose of obtaining financial or medical information concerning a deceased person. This includes obtaining medical information and records necessary to investigate (1) a potential cause of action the estate may have or (2) a potential cause of action of an heir, devisee, legatee, or beneficiary of the deceased person.

The bill allows a court to grant an application that it finds would be in the interests of the estate or of an heir, devisee, legatee, or beneficiary of the deceased person.

The court must limit the temporary administrator's authority to disclose information he or she obtains, and may issue an appropriate order regarding disclosure.

Any order appointing a temporary administrator, and any certificate of the appointment of a fiduciary the court clerk issues, must (1) indicate the duration of the appointment, and (2) specify that the temporary administrator has no authority over the deceased person's assets.

**DEADLINES FOR FILING CERTAIN FINANCIAL INFORMATION**

The bill changes the deadline for filing certain financial information with the probate court administrator in connection with the death of a probate judge while in office or within 24 months after holding office. The bill requires the judge's personal representative to file a statement showing the actual gross receipts and itemized costs of operating the decedent's office for the preceding calendar year and the decedent's net income from that office for such calendar year by April 1<sup>st</sup> instead of March 1<sup>st</sup> of the year following the judge's death. It also requires the representative to file a statement showing the net income to the decedent's estate from the probate court office for the preceding calendar year by April first instead of March first of the second year

following the judge's death.

### **DEADLINE FOR SUBMITTING DEFICIENCY TO STATE TREASURER**

The law requires a probate court judge to pay to the state treasurer a percentage of his or her annual net income, based on a statutory formula, to be credited to the Probate Court Administration Fund. The bill requires that if the amount already paid was less than the amount due, the judge must submit his or her payment by April 1<sup>st</sup> instead of March 1<sup>st</sup> of the next calendar year.

### **PROBATE JUDGE'S MINIMUM COMPENSATION**

The law establishes a formula for determining a probate judge's compensation and specifies that it may not be less than a certain level as determined by one of two different methods. Under current law, the annual minimum compensation may not be less than (1) the product resulting from multiplying \$15 by the court's annual weighted-workload, as defined in regulations issued by the probate court administrator or (2) the judge's average compensation for the three-year period from January 1, 1996 to December 31, 1998. The bill specifies that the average compensation for the three-year period may not be used to calculate a judge's minimum compensation unless there was no break in service after the three-year period.

### **BACKGROUND**

#### ***Related Legislation***

HB 6027, reported favorably by the Judiciary Committee alters the way probate court judges are compensated and makes other significant changes to the probate court system.

HB 6387, reported favorably by the Judiciary Committee, changes the way probate court judges are compensated, replaces the 117 probate court districts with 36, and makes other significant changes to the probate court system.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (04/01/2009)