



Senate

General Assembly

File No. 686

January Session, 2009

Senate Bill No. 1160

Senate, April 16, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE INTEREST EARNED ON LAWYERS' CLIENTS' FUNDS ACCOUNT PROGRAM.

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

1 Section 1. Section 51-81c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) A program for the use of interest earned on lawyers' clients'
4 funds accounts is hereby established. The organization administering
5 the program shall use such interest to provide funding for (1) the
6 delivery of legal services to the poor by nonprofit corporations whose
7 principal purpose is providing legal services to the poor, and (2) law
8 school scholarships based on financial need. Each lawyer and law firm
9 having a clients' funds account shall participate in the program. On
10 and after July 1, 2005, each entity, other than a borrower, having an
11 account established to receive loan proceeds from a mortgage lender,
12 as defined in this subsection, shall participate in the program. Under
13 the program, funds in accounts established to receive such loan
14 proceeds, regardless of the amount or period held, and [clients'] a

15 client's funds that [are less than ten thousand dollars in amount or
16 expected to be held for a period of not more than sixty business days]
17 the client's lawyers and law firms determine, in good faith, cannot earn
18 income for the client in excess of the costs incurred to secure such
19 income, shall be deposited by participating lawyers, law firms and
20 entities in interest-bearing accounts specifically established pursuant to
21 the program. Funds deposited in such accounts shall be subject to
22 withdrawal upon request by the depositor and without delay. The
23 interest earned on such accounts shall be paid to an organization
24 qualified under Section 501(c)(3) of the Internal Revenue Code of 1986,
25 or any subsequent corresponding internal revenue code of the United
26 States, as from time to time amended, which shall be designated to
27 administer the program by the judges of the Superior Court pursuant
28 to subsection [(b)] (d) of this section. Nothing in this section shall
29 prevent (A) a lawyer or law firm from depositing a client's funds,
30 regardless of the amount of such funds or the period for which such
31 funds are expected to be held, in a separate interest-bearing account
32 established on behalf of and for the benefit of the client, or (B) an entity
33 from depositing a person's loan proceeds, regardless of the amount of
34 such proceeds or the period for which such proceeds are expected to
35 be held, in a separate interest-bearing account established on behalf of
36 and for the benefit of the person. The organization administering the
37 program shall mail to each lawyer, law firm and entity participating in
38 the program a detailed annual report of all funds disbursed under the
39 program including the amount disbursed to each recipient of funds.
40 Any recipient of funds under the program which, using program
41 funds, represents a party in an action filed after July 1, 1992, against
42 the state or any officer or agency thereof and is awarded attorney's fees
43 in such action by the court, shall reimburse the program for the
44 amount of attorney's fees received in proportion to the percentage of
45 program funds used for the litigation. No recipient of funds under the
46 program may use such funds to pay the occupational tax imposed
47 pursuant to section 51-81b on behalf of any attorney. As used in this
48 section, "mortgage lender" means any person engaged in the business
49 of making mortgage loans, including, but not limited to, a bank, out-

50 of-state bank, Connecticut credit union, federal credit union, out-of-
51 state credit union, mortgage lender or mortgage correspondent lender
52 required to be licensed under sections 36a-485 to 36a-498a, inclusive.

53 (b) For the purpose of determining under subsection (a) of this
54 section whether a lawyer or law firm cannot earn income for the client
55 in excess of the costs incurred to secure such income, the lawyer or law
56 firm shall consider the following factors: (1) The amount of the funds
57 to be deposited; (2) the expected duration of the deposit, including the
58 likelihood of delay in resolving the relevant transaction, proceeding or
59 matter for which the funds are held; (3) the rates of interest, dividends
60 or yield at eligible institutions where the funds are to be deposited; (4)
61 the costs associated with establishing and administering interest-
62 bearing accounts or other appropriate investments for the benefit of
63 the client, including service charges, minimum balance requirements
64 or fees imposed by the eligible institutions; (5) the costs of the services
65 of the lawyer or law firm in connection with establishing and
66 maintaining the account or other appropriate investments; (6) the costs
67 of preparing any tax reports required for income earned on the funds
68 in the account or other appropriate investments; and (7) any other
69 circumstances that affect the capability of the funds to earn income for
70 the client in excess of the costs incurred to secure such income.

71 (c) No lawyer shall be subject to a complaint that the attorney is
72 guilty of misconduct for determining in good faith to deposit funds in
73 the interest earned on lawyers' clients' funds account in accordance
74 with this section.

75 [(b)] (d) The judges of the Superior Court shall adopt rules to
76 implement the program for the use of interest earned on lawyers'
77 clients' funds accounts, provided nothing in this section shall grant to
78 the judges of the Superior Court or any other judicial authority any
79 legislative, regulatory or rule-making authority over banks, insurance
80 companies or other financial institutions.

81 [(c)] (e) The program shall not require the banking corporations or
82 financial institutions receiving such funds, holding such accounts and

83 paying interest on such accounts to the depositors of the account to
 84 perform any additional administrative functions or assume any
 85 additional responsibilities or obligations in connection with the
 86 program or the accounts so maintained.

87 [(d)] (f) An advisory panel shall be established to perform the
 88 functions described in subsection [(e)] (g) of this section consisting of
 89 five members to be selected as follows: Three members shall be
 90 appointed by the Governor, one of whom shall be an executive
 91 director of a nonprofit corporation which provides legal services to the
 92 poor in this state; and two members shall be appointed by the
 93 cochairpersons of the joint standing committee of the General
 94 Assembly having cognizance of matters relating to the judiciary. Each
 95 member of the panel shall serve for a term which is coterminous with
 96 the term of the member's appointing authority. A vacancy shall be
 97 filled by the original appointing authority for the balance of the
 98 unexpired term.

99 [(e)] (g) The advisory panel shall: (1) Consult with and make
 100 recommendations to the tax-exempt organization administering the
 101 program regarding the implementation and administration of the
 102 program, including the methods of allocation and the allocation of
 103 funds to be disbursed under the program; (2) review and evaluate, and
 104 monitor the impact of the program; and (3) report on the program to
 105 the joint standing committees of the General Assembly having
 106 cognizance of matters relating to the judiciary and to banks and to the
 107 Chief Court Administrator, as may from time to time be requested by
 108 such committees or administrator.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	51-81c

JUD *Joint Favorable*

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.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill revises the guidelines for participation in the Interest on Lawyers' Trust Accounts program, which the Connecticut Bar Foundation administers in order to support civil legal defense for indigent persons. These revisions could enhance revenue to the program. Since the program is not administered by a governmental entity, there is no fiscal impact to either the state or municipalities under the bill.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 1160*****AN ACT CONCERNING THE INTEREST EARNED ON LAWYERS' CLIENTS' FUNDS ACCOUNT PROGRAM.*****SUMMARY:**

This bill alters funding for legal services for the poor and low-income law school scholarship applicants by extending participation requirements in the Interest on Lawyers Trust Accounts (IOLTA). Currently, lawyers and mortgage lenders may deposit in interest-bearing IOLTA accounts client's funds and loan proceeds that are (1) less than \$10,000 or (2) expected to be held for 60 days or less.

The bill allows IOLTA participation for clients' fund and mortgage lender proceeds regardless of the amount or the expected duration of the deposit. Lawyers can participate unless they determine in good faith that they can earn income for the client that exceeds the cost of setting a separate account for the client. As under existing law, lawyers and mortgage lenders (1) must promptly turn funds over to their client on request and (2) can choose to deposit a client's funds or loan proceeds, regardless of the amount or period for which they are expected to be held, in a separate interest-bearing account established for the benefit of that client.

Lawyers who determine in good faith to deposit funds in IOLTA accounts cannot be disciplined for doing so.

EFFECTIVE DATE: October 1, 2009

FACTORS TO BE CONSIDERED IN DECIDING WHETHER TO PARTICIPATE

Under the bill, lawyers must consider the following in determining whether to deposit a client's funds into an IOLTA account:

1. the amount of the funds to be deposited;
2. the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding, or matter for which the funds are held;
3. the rates of interest, dividends, or yield at eligible institutions where the funds are to be deposited;
4. the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements, or fees imposed by the eligible institutions;
5. the costs of the lawyer or law firm's services in connection with establishing and maintaining the account or other appropriate investments;
6. the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and
7. any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income.

BACKGROUND

IOLTA

IOLTA is a method of raising money for charitable purposes, primarily for funding legal services for the poor. In Connecticut, interest earned on IOLTA accounts is managed by the Connecticut Bar Foundation, which distributes it to legal services providers and low income law students who have applied for scholarships.

Related Bill

SSB 1157 increases the attorney occupational tax from \$450 to \$600 and directs the revenue from the tax increase go to IOLTA.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (03/27/2009)