

# Legislative Analysis



## APPEALS FROM PROBATE COURT

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**House Bill 5503 (reported from committee as H-1)**  
**Sponsor: Rep. Klint Kesto**

Analysis available at  
<http://www.legislature.mi.gov>

**Senate Bill 632 (reported as H-1)**  
**Sponsor: Sen. Tonya Schuitmaker**

*(Enacted as Public Acts 287 and 186 of 2016)*

**House Committee: Judiciary**  
**Senate Committee: Judiciary (SB 632)**  
**Complete to 6-3-16**

## REVISED SUMMARY:

### Senate Bill 632:

- Specifies that the Court of Appeals (COA) would have jurisdiction on appeals from final judgments and final orders from the probate court, as a matter of right.
- Deletes certain probate court final judgments or orders from the matters that are appealable to the COA only by application for leave to appeal.
- Deletes a provision under which another court that had concurrent jurisdiction with the probate court may hear the action by appeal or review after the matter was transferred to probate court.
- Specifies that, after an appeal of right from the probate court was filed with the COA, further proceedings in pursuance of the probate court's judgment, order, or sentence, would be stayed for 21 days, or until the appeal was determined if a motion for stay pending appeal were granted.
- Repeals Sections 861 and 863, which provide for appeals from probate court to the COA in certain matters, and to the circuit court in other matters.

House Bill 5503 deletes a provision under which another court that had concurrent jurisdiction with the probate court may hear the action by appeal or review after the matter was transferred to probate court.

The bills are tie-barred to each other and each would take effect 90 days after enactment. A more detailed description follows.

House Bill 5503 would amend the Estates and Protected Individuals Code (MCL 700.1303). Currently, if the probate court has concurrent jurisdiction of an action or proceeding that is pending in another court, on the motion of a party and after a finding and order on the jurisdictional issue, the other court may order removal of the action or proceeding to the probate court. If the action or proceeding is removed to the probate court, the other court must forward to the probate court the original of all papers in the action or proceeding. After that transfer, the other court may not hear the action or proceeding, *except by appeal or review as provided by law or state supreme court rule*. The bill would

delete the exception that pertains to appeal or review. (The bill is identical to Senate Bill 633; that bill was passed by the Senate.)

**Senate Bill 632** amends the Revised Judicature Act (600.308 et al.). A detailed description follows.

#### Appeals as of Right

Under the RJA, the Court of Appeals has jurisdiction on appeals from all final judgments from the circuit court and Court of Claims, except as otherwise provided. Those matters are appealable to the Court of Appeals (COA) as a matter of right. The COA also has jurisdiction on appeals from orders of the probate court from which an appeal as of right may be taken under Section 861.

The bill specifies, instead, that the COA would have jurisdiction on appeals from all final judgments and final orders from the circuit court, Court of Claims, and probate court, except as otherwise provided. A final judgment or final order from those courts would be appealable as a matter of right.

(Section 861, which the bill would repeal, allows a party to a proceeding in the probate court to appeal certain orders as a matter of right to the Court of Appeals. Those include a final order affecting the rights or interests of any interested person in an estate or trust; an order entered before January 1, 1998, in an adoption proceeding under the Michigan Adoption Code; certain orders entered before January 1, 1998, by the former juvenile division of the probate court; and a final order in a condemnation case entered before January 1, 1998, under the Drain Code.)

#### Appeals by Application

Under the RJA, the COA has jurisdiction on appeal from certain orders and judgments that are reviewable only on application for leave to appeal granted by the COA. These include both of the following:

- A final judgment or order of the circuit court in an appeal from an order, sentence, or judgment of the probate court under Section 863.
- An order, sentence, or judgment of the probate court, if the probate court certified the issue or issues under Section 863(3).

The bill would delete those matters from the orders and judgments that are reviewable by the Court of Appeals only on application for leave to appeal.

(Section 863, which the bill would repeal, allows a person aggrieved by an order, sentence, or judgment of the probate court, other than an order appealable under Section 861, to appeal the matter to the circuit court in the county in which the order, sentence, or judgment is rendered. Under subsection (3), a party may appeal directly to the COA upon certification of the issue or issues by the probate judge. Appeals under Section 863 are by application and not as a matter of right.)

### Concurrent Jurisdiction

Under the RJA, in an action or proceeding pending in any other Michigan court of which the probate court and the other court have concurrent jurisdiction, the judge of the other court, upon motion of a party and after a finding and order on the jurisdictional issue, may by order remove the action or proceeding to the probate court. If the matter is removed to the probate court, the judge of the other court must forward to the probate court the original of all papers in the action or proceeding and thereafter proceedings may not be had before the other court, except by appeal or review provided by law or state supreme court rule. The bill would delete that exception for appeal or review.

### Stay of Proceedings

Under the RJA, after an appeal is claimed and notice of the appeal is given at the probate court, all further proceedings in pursuance of the appealed judgment, order, or sentence must cease until the appeal is determined, except as otherwise provided for certain cases. The bill provides instead that, after an appeal of right from a judgment or order of the probate court was filed with the COA and notice of the appeal was filed with the probate court, all further proceedings in pursuance of the judgment, order, or sentence would be stayed for 21 days or, if a motion for stay pending appeal were granted, until the appeal was determined.

## **BRIEF DISCUSSION OF THE ISSUES:**

There is a confusing system currently in place in Michigan regarding appeals of probate court decisions. Probate courts handle wills, administer estates and trusts, appoint guardians and conservators, and order treatment for mentally ill and developmentally disabled persons. Depending on the type of claim, under statutory provisions and court rules, some appeals must be filed in circuit court, while others may go directly to the Court of Appeals (COA). The bills address the issue by streamlining the appeals process; simply put, the COA would have jurisdiction over all final judgments and final orders from the probate court.

In a day when many courts operate under a concurrent jurisdiction plan, meaning that the circuit court judges and probate judges preside over cases in both of the courts, many feel that it would be more appropriate to appeal all final orders or judgments to the COA rather than to the circuit court that is part of the concurrent jurisdiction plan. Other benefits have been noted as well:

- The bill would eliminate the problem of attorneys, and people representing themselves, from filing in the wrong court and missing the deadline, and therefore the opportunity, in which to file an appeal by right. Though an appeal by leave may still be filed, it is reported that appeal by leave is a more cumbersome process and may not be successful since the appellate court has discretion to accept or deny the case.
- The review and analysis by the COA tends to be more detailed as many judges at the circuit court level might have only a passing knowledge of the types of issues handled by the probate court, for example, trusts.

- The bills are expected to increase the COA caseload by a relatively small amount (approximately five percent, according to the State Court Administrative Office). With such a low increase, no additional judges would need to be added.
- Though a motion for a stay pending appeal is allowed after a final probate decision, neither statute or court rule provide a time limit for the stay. The bill would treat stays of appeals from probate court consistently with how court rules deal with stays of appeal from the circuit court—no longer than 21 days.
- The bills improve the functioning of the court system by eliminating the current bifurcated system governing appeals from probate court.
- Non-final orders, such as interlocutory appeals, would be determined by Supreme Court rule.

Some concerns were raised regarding the impact on low-income persons as the filing fees are higher in the COA for those claims that currently go to the circuit court. However, it was noted that though claims now going to the COA would see a higher filing fee, not as many motions are filed in the COA as in circuit court; therefore, the overall increase in costs for a claim that would now go to the COA may be minimal.

#### **FISCAL IMPACT:**

The bills would not appear to have a fiscal impact on state or local government.

#### **POSITIONS:**

A representative of the Probate and Estate Planning Section of the State Bar of Michigan testified in support of the bills. (5-17-16)

State Bar of Michigan indicated support for the bills. (5-17-16)

Michigan Probate Judges Association indicated support for the bills. (5-17 & 5-24-16)

Supreme Court Administrative Officer (SCAO) indicated support for the bills. (5-24-16)

The Civil Procedure & Courts Committee of the State Bar of Michigan adopted a position of support for SB 632 and 633 (identical to HB 5503). (1-16-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.