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BILL



ANALYSIS

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Senate Bill 632 (as enacted)  
House Bill 5503 (as enacted)  
Sponsor: Senator Tonya Schuitmaker (S.B. 632)  
Representative Klint Kesto (H.B. 5503)  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 186 of 2016**  
**PUBLIC ACT 287 of 2016**

Date Completed: 9-30-16

### **RATIONALE**

The Michigan Court of Appeals (COA) has jurisdiction on appeals from all final judgments from the circuit court and Court of Claims but traditionally has had appellate jurisdiction only from certain orders of the probate court. Other probate court matters have been appealable to the circuit court. This bifurcated system of appeals from the probate court has been confusing to people who have matters before the probate court and to lawyers representing clients in those cases. In addition, in some counties probate court judges and circuit court judges work side-by-side and share jurisdiction, so appeals from probate court to circuit court are essentially heard in the same court as the ruling or order being appealed. It was suggested that all appeals from the probate court should be to the Court of Appeals, just as matters from the circuit court are appealed to the COA.

### **CONTENT**

**Senate Bill 632 amended the Revised Judicature Act (RJA) to do the following:**

- **Specify that the Court of Appeals has jurisdiction on appeals from final judgments and final orders from the probate court, as a matter of right.**
- **Delete certain probate court final judgments or orders from the matters that are appealable to the Court of Appeals only by application for leave to appeal.**
- **Delete a provision under which another court that had concurrent jurisdiction with the probate court could hear the action by appeal or review after the matter was transferred to probate court.**
- **Specify that, after an appeal of right from the probate court is filed with the Court of Appeals, further proceedings in pursuance of the probate court's judgment, order, or sentence, will be stayed for 21 days, or until the appeal is determined if a motion for stay pending appeal is granted.**

**The bill also repealed Sections 861 and 863, which provided for appeals from probate court to the Court of Appeals in certain matters, and to the circuit court in other matters.**

**House Bill 5503 amends the Estates and Protected Individuals Code (EPIC) to delete 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.**

Senate Bill 632 took effect on September 27, 2016. House Bill 5503 will take effect on December 26, 2016.

## **Senate Bill 632**

### **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 as a matter of right. The Court of Appeals also previously had jurisdiction on appeals from orders of the probate court from which an appeal as of right was allowed under Section 861.

The bill specifies, instead, that the Court of Appeals has 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 is appealable as a matter of right.

(Section 861, which the bill repealed, allowed a party to a proceeding in the probate court to appeal certain orders as a matter of right to the Court of Appeals. Those included 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 Act, the Court of Appeals has jurisdiction on appeal from certain orders and judgments that are reviewable only on application for leave to appeal granted by the Court. Previously, these included 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 deleted 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 repealed, allowed 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 was rendered. Under subsection (3), a party could appeal directly to the Court of Appeals upon certification of the issue or issues by the probate judge. Appeals under Section 863 were 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 has 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. The bill deleted an exception to this provision for appeal or review provided by law or Supreme Court rule.

### **Stay of Proceedings**

Under the bill, after an appeal of right from a judgment or order of the probate court is filed with the Court of Appeals and notice of the appeal is filed with the probate court, all further proceedings in pursuance of the judgment, order, or sentence will be stayed for 21 days or, if a motion for stay pending appeal is granted, until the appeal is determined.

Previously, after an appeal was claimed and notice of the appeal was given at the probate court, all further proceedings in pursuance of the appealed judgment, order, or sentence were required to cease until the appeal was determined, except as otherwise provided for certain cases.

### **House Bill 5503**

Under EPIC, 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 Supreme Court rule. The bill deletes that exception for appeal or review.

MCL 600.308 et al. (S.B. 632)  
700.1303 (H.B. 5503)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The bills will reduce confusion and streamline the appeals process regarding matters appealed from the probate court. The former system, in which some appeals from the probate court went to the COA and some went to the circuit court, was cumbersome and difficult to understand. Some matters in the same case, for instance, were appealable to different courts. In some cases, litigants may have missed their filing deadline for an appeal by directing it to the wrong court. In addition, over the years, jurisdiction of the probate court and circuit court has been blurred by various statutory changes and court reforms. For instance, probate judges sometimes act with the authority of circuit court judges by hearing cases before the family division of circuit court. Also, some circuits have plans of concurrent jurisdiction in which probate judges and circuit judges preside over cases in both of those courts. Given these situations, it made little sense to have matters in probate court proceedings appealed to the circuit court.

By providing that probate court cases are appealable to the COA, and not to circuit court, the bills will simplify the appeals process, make it easier for all interested parties to understand, and make the system more practical and predictable. The legislation also allows courts to use their resources more efficiently by preventing incorrect appeals filings and avoiding the need to spend time and attention redirecting them to the proper court.

#### **Supporting Argument**

Senate Bill 632 provides clarity and consistency regarding stays pending appeals in probate cases. Stays of circuit court rulings in civil cases are governed by Michigan Court Rule (MCR), while stays of probate court decisions are governed by both court rule and statute. While the court rules provide for an automatic 21-day stay on the enforcement of a civil judgment from circuit court, neither the court rules nor statute provided for an automatic stay for a definite period of time in appeals from the probate court.

Specifically, under MCR Chapter 2 (Civil Procedure), "execution may not issue on a judgment and proceedings may not be taken for its enforcement until 21 days after a final judgment...is entered in the case" (MCR 2.614). (Chapter 2 governs procedure in all civil proceedings in all courts except where the limited jurisdiction of a court makes a rule inherently inapplicable or where a rule applicable to a specific court or specific type of proceeding provides a different procedure.) Under MCR Chapter 5 (Probate Court), orders for certain probate proceedings are not stayed pending appeal unless ordered by the court on motion for good cause (MCR 5.802). Under the RJA, after an appeal was claimed and notice of the appeal was given at the probate court, further proceedings in pursuance of the appealed judgment, order, or sentence had to cease until the appeal was determined, except as otherwise provided for certain cases. By providing that, after an appeal of right is filed with the Court of Appeals, further proceedings in pursuance of the judgment, order, or sentence of the probate court will be stayed for 21 days (or until

the appeal is granted, if a motion for stay pending appeal is granted), the bill treats stays of appeals from probate court consistently with how court rules deal with stays of appeal from the circuit court.

Legislative Analyst: Patrick Affholter

**FISCAL IMPACT**

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.