

Legislative Analysis



APPEALS FROM PROBATE COURT

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House Bill 5503 as introduced
Sponsor: Rep. Klint Kesto

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

Senate Bill 632 (as passed the Senate without amendment)
Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary
Senate Committee: Judiciary (SB 632)
Complete to 5-9-10

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.

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.

FISCAL IMPACT:

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

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

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