



Senate

General Assembly

File No. 587

February Session, 2016

Senate Bill No. 143

Senate, April 12, 2016

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING STATE AGENCY COMPLIANCE WITH PROBATE COURT ORDERS.

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

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) Each state agency
2 shall recognize, apply and enforce any order, denial or decree of a
3 Probate Court that is applicable to any determination made by the
4 state agency in a contested case. Any state agency aggrieved by an
5 order, denial or decree of a Probate Court that is applicable to such a
6 determination may appeal therefrom to the Superior Court in
7 accordance with section 45a-186 of the general statutes, as amended by
8 this act.

9 (b) For the purposes of this section, "state agency" means an agency,
10 as defined in section 4-166 of the general statutes, and "contested case"
11 means a contested case, as defined in section 4-166 of the general
12 statutes.

13 Sec. 2. Section 45a-186 of the general statutes is repealed and the

14 following is substituted in lieu thereof (*Effective October 1, 2016*):

15 (a) Except as provided in sections 45a-187 and 45a-188, any person
16 aggrieved by any order, denial or decree of a Probate Court in any
17 matter, unless otherwise specially provided by law, may, not later than
18 forty-five days after the mailing of an order, denial or decree for a
19 matter heard under any provision of section 45a-593, 45a-594, 45a-595
20 or 45a-597, sections 45a-644 to 45a-677, inclusive, or sections 45a-690 to
21 45a-705, inclusive, and not later than thirty days after mailing of an
22 order, denial or decree for any other matter in a Probate Court, appeal
23 therefrom to the Superior Court. Such an appeal shall be commenced
24 by filing a complaint in the superior court in the judicial district in
25 which such Probate Court is located, or, if the Probate Court is located
26 in a probate district that is in more than one judicial district, by filing a
27 complaint in a superior court that is located in a judicial district in
28 which any portion of the probate district is located, except that (1) an
29 appeal under subsection (b) of section 12-359, subsection (b) of section
30 12-367, [or] subsection (b) of section 12-395 or section 1 of this act shall
31 be filed in the judicial district of Hartford, and (2) an appeal in a matter
32 concerning removal of a parent as guardian, termination of parental
33 rights or adoption shall be filed in any superior court for juvenile
34 matters having jurisdiction over matters arising in any town within
35 such probate district. The complaint shall state the reasons for the
36 appeal. A copy of the order, denial or decree appealed from shall be
37 attached to the complaint. Appeals from any decision rendered in any
38 case after a recording is made of the proceedings under section 17a-
39 498, 17a-543, 17a-543a or 17a-685, sections 45a-644 to 45a-667v,
40 inclusive, or section 51-72 or 51-73 shall be on the record and shall not
41 be a trial de novo.

42 (b) Each person who files an appeal pursuant to this section shall
43 serve a copy of the complaint on each interested party. The failure of
44 any person to make such service shall not deprive the Superior Court
45 of jurisdiction over the appeal. Notwithstanding the provisions of
46 section 52-50, service of the copy of the complaint shall be by state
47 marshal, constable or an indifferent person. Service shall be in hand or

48 by leaving a copy at the place of residence of the interested party being
49 served or at the address for the interested party on file with the
50 Probate Court, except that service on a respondent or conserved
51 person in an appeal from an action under part IV of chapter 802h shall
52 be in hand by a state marshal, constable or an indifferent person.

53 (c) In addition to the notice given under subsection (b) of this
54 section, each person who files an appeal pursuant to this section shall
55 mail a copy of the complaint to the Probate Court that rendered the
56 order, denial or decree appealed from. The Probate Court and the
57 judge of probate that rendered the order, denial or decree appealed
58 from shall not be made parties to the appeal and shall not be named in
59 the complaint as parties.

60 (d) Not later than fifteen days after a person files an appeal under
61 this section, the person who filed the appeal shall file or cause to be
62 filed with the clerk of the Superior Court a document containing (1) the
63 name, address and signature of the person making service, and (2) a
64 statement of the date and manner in which a copy of the complaint
65 was served on each interested party and mailed to the Probate Court
66 that rendered the order, denial or decree appealed from.

67 (e) If service has not been made on an interested party, the Superior
68 Court, on motion, shall make such orders of notice of the appeal as are
69 reasonably calculated to notify any necessary party not yet served.

70 (f) A hearing in an appeal from probate proceedings under section
71 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685,
72 45a-650, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699,
73 45a-703, [or] 45a-717 or section 1 of this act shall commence, unless a
74 stay has been issued pursuant to subsection (g) of this section, not later
75 than ninety days after the appeal has been filed.

76 (g) The filing of an appeal under this section shall not, of itself, stay
77 enforcement of the order, denial or decree from which the appeal is
78 taken. A motion for a stay may be made to the Probate Court or the
79 Superior Court. The filing of a motion with the Probate Court shall not

80 preclude action by the Superior Court.

81 (h) Nothing in this section shall prevent any person aggrieved by
 82 any order, denial or decree of a Probate Court in any matter, unless
 83 otherwise specially provided by law, from filing a petition for a writ of
 84 habeas corpus, a petition for termination of involuntary representation
 85 or a petition for any other available remedy.

86 (i) (1) Except for matters described in subdivision (3) of this
 87 subsection, in any appeal filed under this section, the appeal may be
 88 referred by the Superior Court to a special assignment probate judge
 89 appointed in accordance with section 45a-79b, who is assigned by the
 90 Probate Court Administrator for the purposes of such appeal, except
 91 that such appeal shall be heard by the Superior Court if any party files
 92 a demand for such hearing in writing with the Superior Court not later
 93 than twenty days after service of the appeal.

94 (2) An appeal referred to a special assignment probate judge
 95 pursuant to this subsection shall proceed in accordance with the rules
 96 for references set forth in the rules of the judges of the Superior Court.

97 (3) The following matters shall not be referred to a special
 98 assignment probate judge pursuant to this subsection: Appeals under
 99 sections 17a-75 to 17a-83, inclusive, section 17a-274, sections 17a-495 to
 100 17a-528, inclusive, sections 17a-543, 17a-543a, 17a-685 to 17a-688,
 101 inclusive, and section 1 of this act, children's matters as defined in
 102 subsection (a) of section 45a-8a, sections 45a-644 to 45a-663, inclusive,
 103 45a-668 to 45a-684, inclusive, and 45a-690 to 45a-700, inclusive, and
 104 any matter in a Probate Court heard on the record in accordance with
 105 sections 51-72 and 51-73.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	New section
Sec. 2	October 1, 2016	45a-186

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:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Children & Families, Dept.; Department of Developmental Services; Social Services, Dept.	GF - Potential Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires state agencies to recognize, apply, and enforce any probate court orders, denials or decrees. To the extent that state agencies are not currently complying with such orders, this bill may result in a cost to the agencies to comply. In addition, to the extent that the Probate Court order potentially violates federal law or jeopardizes federal funding, it is likely the affected agency would appeal the decision.

The Out Years

The potential fiscal impact identified above would continue into the future subject to the extent to which state agencies are not in compliance.

OLR Bill Analysis**SB 143*****AN ACT CONCERNING STATE AGENCY COMPLIANCE WITH PROBATE COURT ORDERS.*****SUMMARY:**

This bill requires state agencies to recognize, apply, and enforce any probate court orders, denials, or decrees that apply to agency determinations in contested cases. It allows state agencies aggrieved by such a probate court decision to appeal to Hartford Superior Court.

It appears that the bill is not limited to cases where a state agency is a party to probate court proceedings.

EFFECTIVE DATE: October 1, 2016

STATE AGENCY APPEALS OF PROBATE DECISIONS

Under the bill, state agency appeals of probate decisions must generally follow the same procedures as apply to most other probate appeals. But unlike most probate appeals, state agency appeals under the bill must be brought to Hartford Superior Court, rather than the Superior Court in the judicial district where the probate court is located.

Also, as is currently the case for certain probate appeals, the bill:

1. requires hearings on such an appeal to begin within 90 days after the appeal is filed, unless the probate court or Superior Court has granted a stay and
2. prohibits the Superior Court from referring the appeal to a special assignment probate judge.

DEFINITIONS

Under the bill, a “state agency” refers to an agency as defined in the Uniform Administrative Procedure Act (UAPA). The bill also uses the UAPA’s definition of contested case.

Under the UAPA, an agency is a state board, commission, department, or officer authorized by law to make regulations or to determine contested cases. The term does not include the House, Senate, or any legislative committee; courts; the Council on Probate Judicial Conduct; the governor, lieutenant governor, or attorney general; town or regional boards of education; or automobile dispute settlement panels.

A contested case is a proceeding in which a party’s legal rights, duties, or privileges are required by state statute or regulation to be determined by an agency after an opportunity for a hearing or in which a hearing is held. The term specifically includes rate-making, price fixing, and licensing. It does not include proceedings on a petition for a declaratory ruling, hearings on proposed agency regulations, or hearings conducted by the Department of Correction or the Board of Pardons and Paroles (CGS § 4-166).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 43 Nay 0 (03/28/2016)