



Senate

General Assembly

File No. 547

February Session, 2016

Senate Bill No. 214

Senate, April 7, 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 IMPLEMENTING THE RECOMMENDATIONS OF THE AUDITORS OF PUBLIC ACCOUNTS WITH RESPECT TO PROBATE COURTS.

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

1 Section 1. Section 4-61dd of the 2016 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2016*):

4 (a) Any person having knowledge of any matter involving
5 corruption, unethical practices, violation of state laws or regulations,
6 mismanagement, gross waste of funds, abuse of authority or danger to
7 the public safety occurring in any state department, [or] agency or any
8 quasi-public agency, as defined in section 1-120, or any Probate Court,
9 or any person having knowledge of any matter involving corruption,
10 violation of state or federal laws or regulations, gross waste of funds,
11 abuse of authority or danger to the public safety occurring in any large
12 state contract, may transmit all facts and information in such person's
13 possession concerning such matter to the Auditors of Public Accounts.

14 The Auditors of Public Accounts shall review such matter and report
15 their findings and any recommendations to the Attorney General.
16 Upon receiving such a report, the Attorney General shall make such
17 investigation as the Attorney General deems proper regarding such
18 report and any other information that may be reasonably derived from
19 such report. Prior to conducting an investigation of any information
20 that may be reasonably derived from such report, the Attorney
21 General shall consult with the Auditors of Public Accounts concerning
22 the relationship of such additional information to the report that has
23 been issued pursuant to this subsection. Any such subsequent
24 investigation deemed appropriate by the Attorney General shall only
25 be conducted with the concurrence and assistance of the Auditors of
26 Public Accounts. At the request of the Attorney General or on their
27 own initiative, the auditors shall assist in the investigation.

28 (b) (1) The Auditors of Public Accounts may reject any complaint
29 received pursuant to subsection (a) of this section if the Auditors of
30 Public Accounts determine one or more of the following:

31 (A) There are other available remedies that the complainant can
32 reasonably be expected to pursue;

33 (B) The complaint is better suited for investigation or enforcement
34 by another state agency;

35 (C) The complaint is trivial, frivolous, vexatious or not made in
36 good faith;

37 (D) Other complaints have greater priority in terms of serving the
38 public good;

39 (E) The complaint is not timely or is too long delayed to justify
40 further investigation; or

41 (F) The complaint could be handled more appropriately as part of
42 an ongoing or scheduled regular audit.

43 (2) If the Auditors of Public Accounts reject a complaint pursuant to

44 subdivision (1) of this subsection, the Auditors of Public Accounts
45 shall provide a report to the Attorney General setting out the basis for
46 the rejection.

47 (3) If at any time the Auditors of Public Accounts determine that a
48 complaint is more appropriately investigated by another state agency,
49 the Auditors of Public Accounts shall refer the complaint to such
50 agency. The investigating agency shall provide a status report
51 regarding the referred complaint to the Auditors of Public Accounts
52 upon request.

53 (c) Notwithstanding the provisions of section 12-15, the
54 Commissioner of Revenue Services may, upon written request by the
55 Auditors of Public Accounts, disclose return or return information, as
56 defined in section 12-15, to the Auditors of Public Accounts for
57 purposes of preparing a report under subsection (a) or (b) of this
58 section. Such return or return information shall not be published in
59 any report prepared in accordance with subsection (a) or (b) of this
60 section, and shall not otherwise be redisclosed, except that such
61 information may be redisclosed to the Attorney General for purposes
62 of an investigation authorized by subsection (a) of this section. Any
63 person who violates the provisions of this subsection shall be subject to
64 the provisions of subsection (g) of section 12-15.

65 (d) The Attorney General may summon witnesses, require the
66 production of any necessary books, papers or other documents and
67 administer oaths to witnesses, where necessary, for the purpose of an
68 investigation pursuant to this section or for the purpose of
69 investigating a suspected violation of subsection (a) of section 4-275
70 until such time as the Attorney General files a civil action pursuant to
71 section 4-276. Upon the conclusion of the investigation, the Attorney
72 General shall where necessary, report any findings to the Governor, or
73 in matters involving a Probate Court to the Probate Court
74 Administrator, or in matters involving criminal activity, to the Chief
75 State's Attorney. In addition to the exempt records provision of section
76 1-210, the Auditors of Public Accounts and the Attorney General shall

77 not, after receipt of any information from a person under the
78 provisions of this section or sections 4-276 to 4-280, inclusive, disclose
79 the identity of such person without such person's consent unless the
80 Auditors of Public Accounts or the Attorney General determines that
81 such disclosure is unavoidable, and may withhold records of such
82 investigation, during the pendency of the investigation.

83 (e) (1) No state officer or employee, as defined in section 4-141, no
84 quasi-public agency officer or employee, no officer or employee of a
85 large state contractor and no appointing authority shall take or
86 threaten to take any personnel action against any state or quasi-public
87 agency employee or any employee of a large state contractor in
88 retaliation for (A) such employee's or contractor's disclosure of
89 information to (i) an employee of the Auditors of Public Accounts or
90 the Attorney General under the provisions of subsection (a) of this
91 section; (ii) an employee of the state agency or quasi-public agency
92 where such state officer or employee is employed; (iii) an employee of
93 a state agency pursuant to a mandated reporter statute or pursuant to
94 subsection (b) of section 17a-28; (iv) an employee of the Probate Court
95 where such employee is employed; or ~~[(iv)]~~ (v) in the case of a large
96 state contractor, an employee of the contracting state agency
97 concerning information involving the large state contract; or (B) such
98 employee's testimony or assistance in any proceeding under this
99 section.

100 (2) (A) Not later than ninety days after learning of the specific
101 incident giving rise to a claim that a personnel action has been
102 threatened or has occurred in violation of subdivision (1) of this
103 subsection, a [state or] quasi-public agency or state employee, an
104 employee of a large state contractor or the employee's attorney may
105 file a complaint against the state agency, quasi-public agency, Probate
106 Court, large state contractor or appointing authority concerning such
107 personnel action with the Chief Human Rights Referee designated
108 under section 46a-57. Such complaint may be amended if an additional
109 incident giving rise to a claim under this subdivision occurs
110 subsequent to the filing of the original complaint. The Chief Human

111 Rights Referee shall assign the complaint to a human rights referee
112 appointed under section 46a-57, who shall conduct a hearing and issue
113 a decision concerning whether the officer or employee taking or
114 threatening to take the personnel action violated any provision of this
115 section. The human rights referee may order a state agency [or] quasi-
116 public agency or Probate Court to produce (i) an employee of such
117 agency, [or] quasi-public agency or Probate Court to testify as a
118 witness in any proceeding under this subdivision, or (ii) books, papers
119 or other documents relevant to the complaint, without issuing a
120 subpoena. If such agency, [or] quasi-public agency or Probate Court
121 fails to produce such witness, books, papers or documents, not later
122 than thirty days after such order, the human rights referee may
123 consider such failure as supporting evidence for the complainant. If,
124 after the hearing, the human rights referee finds a violation, the referee
125 may award the aggrieved employee reinstatement to the employee's
126 former position, back pay and reestablishment of any employee
127 benefits for which the employee would otherwise have been eligible if
128 such violation had not occurred, reasonable attorneys' fees, and any
129 other damages. For the purposes of this subsection, such human rights
130 referee shall act as an independent hearing officer. The decision of a
131 human rights referee under this subsection may be appealed by any
132 person who was a party at such hearing, in accordance with the
133 provisions of section 4-183.

134 (B) The Chief Human Rights Referee shall adopt regulations, in
135 accordance with the provisions of chapter 54, establishing the
136 procedure for filing complaints and noticing and conducting hearings
137 under subparagraph (A) of this subdivision.

138 (3) As an alternative to the provisions of subdivision (2) of this
139 subsection: (A) A state or quasi-public agency employee who alleges
140 that a personnel action has been threatened or taken may file an appeal
141 not later than ninety days after learning of the specific incident giving
142 rise to such claim with the Employees' Review Board under section 5-
143 202, or, in the case of a state or quasi-public agency employee covered
144 by a collective bargaining contract, in accordance with the procedure

145 provided by such contract; or (B) an employee of a Probate Court or of
146 a large state contractor alleging that such action has been threatened or
147 taken may, after exhausting all available administrative remedies,
148 bring a civil action in accordance with the provisions of subsection (c)
149 of section 31-51m.

150 (4) In any proceeding under subdivision (2) or (3) of this subsection
151 concerning a personnel action taken or threatened against any [state
152 or] quasi-public agency or state employee or any employee of a large
153 state contractor, which personnel action occurs not later than two years
154 after the employee first transmits facts and information concerning a
155 matter under subsection (a) of this section or discloses information
156 under subdivision (1) of this subsection to the Auditors of Public
157 Accounts, the Attorney General or an employee of a state agency, [or]
158 quasi-public agency or Probate Court, as applicable, there shall be a
159 rebuttable presumption that the personnel action is in retaliation for
160 the action taken by the employee under subsection (a) of this section or
161 subdivision (1) of this subsection.

162 (5) If a state officer or employee, as defined in section 4-141, a quasi-
163 public agency officer or employee, an officer or employee of a large
164 state contractor or an appointing authority takes or threatens to take
165 any action to impede, fail to renew or cancel a contract between a state
166 agency and a large state contractor, or between a large state contractor
167 and its subcontractor, in retaliation for the disclosure of information
168 pursuant to subsection (a) of this section or subdivision (1) of this
169 subsection to any agency listed in subdivision (1) of this subsection,
170 such affected agency, contractor or subcontractor may, not later than
171 ninety days after learning of such action, threat or failure to renew,
172 bring a civil action in the superior court for the judicial district of
173 Hartford to recover damages, attorney's fees and costs.

174 (f) Any employee of a state or quasi-public agency, Probate Court or
175 large state contractor, who is found by the Auditors of Public
176 Accounts, the Attorney General, a human rights referee or the
177 Employees' Review Board to have knowingly and maliciously made

178 false charges under subsection (a) of this section, shall be subject to
179 disciplinary action by such employee's appointing authority up to and
180 including dismissal. In the case of a state or quasi-public agency
181 employee, such action shall be subject to appeal to the Employees'
182 Review Board in accordance with section 5-202, or in the case of state
183 or quasi-public agency employees included in collective bargaining
184 contracts, the procedure provided by such contracts.

185 (g) On or before September first, annually, the Auditors of Public
186 Accounts shall submit, in accordance with the provisions of section 11-
187 4a, to the clerk of each house of the General Assembly a report
188 indicating the number of matters for which facts and information were
189 transmitted to the auditors pursuant to this section during the
190 preceding state fiscal year and the disposition of each such matter.

191 (h) Each contract between a state or quasi-public agency and a large
192 state contractor shall provide that, if an officer, employee or
193 appointing authority of a large state contractor takes or threatens to
194 take any personnel action against any employee of the contractor in
195 retaliation for such employee's disclosure of information to any
196 employee of the contracting state or quasi-public agency or the
197 Auditors of Public Accounts or the Attorney General under the
198 provisions of subsection (a) or subdivision (1) of subsection (e) of this
199 section, the contractor shall be liable for a civil penalty of not more
200 than five thousand dollars for each offense, up to a maximum of
201 twenty per cent of the value of the contract. Each violation shall be a
202 separate and distinct offense and in the case of a continuing violation
203 each calendar day's continuance of the violation shall be deemed to be
204 a separate and distinct offense. The executive head of the state or
205 quasi-public agency may request the Attorney General to bring a civil
206 action in the superior court for the judicial district of Hartford to seek
207 imposition and recovery of such civil penalty.

208 (i) Each state agency or quasi-public agency shall post a notice of the
209 provisions of this section relating to state employees and quasi-public
210 agency employees in a conspicuous place that is readily available for

211 viewing by employees of such agency or quasi-public agency. Each
212 Probate Court shall post a notice of the provisions of this section
213 relating to Probate Court employees in a conspicuous place that is
214 readily available for viewing by employees of such court. Each large
215 state contractor shall post a notice of the provisions of this section
216 relating to large state contractors in a conspicuous place which is
217 readily available for viewing by the employees of the contractor.

218 (j) No person who, in good faith, discloses information in
219 accordance with the provisions of this section shall be liable for any
220 civil damages resulting from such good faith disclosure.

221 (k) As used in this section:

222 (1) "Large state contract" means a contract between an entity and a
223 state or quasi-public agency, having a value of five million dollars or
224 more; and

225 (2) "Large state contractor" means an entity that has entered into a
226 large state contract with a state or quasi-public agency.

227 (l) (1) No officer or employee of a state shellfish grounds lessee shall
228 take or threaten to take any personnel action against any employee of a
229 state shellfish grounds lessee in retaliation for (A) such employee's
230 disclosure of information to an employee of the leasing agency
231 concerning information involving the state shellfish grounds lease, or
232 (B) such employee's testimony or assistance in any proceeding under
233 this section.

234 (2) (A) Not later than ninety days after learning of the specific
235 incident giving rise to a claim that a personnel action has been
236 threatened or has occurred in violation of subdivision (1) of this
237 subsection, an employee of a state shellfish grounds lessee or the
238 employee's attorney may file a complaint against the state shellfish
239 grounds lessee concerning such personnel action with the Chief
240 Human Rights Referee designated under section 46a-57. Such
241 complaint may be amended if an additional incident giving rise to a

242 claim under this subdivision occurs subsequent to the filing of the
243 original complaint. The Chief Human Rights Referee shall assign the
244 complaint to a human rights referee appointed under section 46a-57,
245 who shall conduct a hearing and issue a decision concerning whether
246 the officer or employee taking or threatening to take the personnel
247 action violated any provision of this subsection. The human rights
248 referee may order a state shellfish grounds lessee to produce (i) an
249 employee of such lessee to testify as a witness in any proceeding under
250 this subdivision, or (ii) books, papers or other documents relevant to
251 the complaint, without issuing a subpoena. If such state shellfish
252 grounds lessee fails to produce such witness, books, papers or
253 documents, not later than thirty days after such order, the human
254 rights referee may consider such failure as supporting evidence for the
255 complainant. If, after the hearing, the human rights referee finds a
256 violation, the referee may award the aggrieved employee
257 reinstatement to the employee's former position, back pay and
258 reestablishment of any employee benefits for which the employee
259 would otherwise have been eligible if such violation had not occurred,
260 reasonable attorneys' fees and any other damages. For the purposes of
261 this subsection, such human rights referee shall act as an independent
262 hearing officer. The decision of a human rights referee under this
263 subsection may be appealed by any person who was a party at such
264 hearing, in accordance with the provisions of section 4-183.

265 (B) The Chief Human Rights Referee shall adopt regulations, in
266 accordance with the provisions of chapter 54, establishing the
267 procedure for filing complaints and noticing and conducting hearings
268 under subparagraph (A) of this subdivision.

269 (3) As an alternative to the provisions of subdivision (2) of this
270 subsection, an employee of a state shellfish grounds lessee who alleges
271 that a personnel action has been threatened or taken may, after
272 exhausting all available administrative remedies, bring a civil action in
273 accordance with the provisions of subsection (c) of section 31-51m.

274 (4) In any proceeding under subdivision (2) or (3) of this subsection

275 concerning a personnel action taken or threatened against any
276 employee of a state shellfish grounds lessee, which personnel action
277 occurs not later than two years after the employee first transmits facts
278 and information to an employee of the leasing agency concerning the
279 state shellfish grounds lease, there shall be a rebuttable presumption
280 that the personnel action is in retaliation for the action taken by the
281 employee under subdivision (1) of this subsection.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	4-61dd

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, which requires the Auditors of Public Accounts to review whistleblower complaints made against probate courts and allows a probate court employee to file a retaliation complaint with the Commission on Human Rights and Opportunities (CHRO), has no fiscal impact.

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

OLR Bill Analysis**SB 214*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE AUDITORS OF PUBLIC ACCOUNTS WITH RESPECT TO PROBATE COURTS.*****SUMMARY:**

This bill subjects probate courts to the state's whistleblower law. Under current law, the whistleblower provisions apply to the Office of the Probate Court Administrator, but not individual probate courts. Among other things, the state's whistleblower law allows anyone who knows of corruption, unethical practices, violations of state law or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state department or agency to send information regarding it to the state auditors.

Generally, the bill does the following:

1. requires the auditors of public accounts to review whistleblower complaints made against probate courts and report any findings or recommendations to the attorney general;
2. requires the attorney general to conduct any investigation he deems proper and report any findings to the probate court administrator and any matters involving criminal activity to the chief state's attorney;
3. prohibits probate court officers and employees from retaliating against a probate court employee who files a whistleblower complaint (there is a rebuttable presumption that an adverse action is retaliatory if it is taken or threatened within two years of the whistleblower's report);
4. allows a probate court employee who believes he or she was

retaliated against to either (a) file a retaliation complaint with the chief human rights referee at the Commission on Human Rights and Opportunities or (b) bring a civil action; and

- 5. requires each probate court to post a notice of the whistleblower law in a conspicuous location.

Under the whistleblower law, the auditors of public accounts may reject a complaint for specified reasons (e.g., if it is untimely or trivial) or refer it to another agency. Also, employees found to have knowingly and maliciously made false charges are subject to disciplinary action, including dismissal. Under the bill, these provisions also apply to probate court employees.

EFFECTIVE DATE: October 1, 2016

BACKGROUND

Related Bill

sHB 5247, § 9 (File No. 60), reported favorably by the Government Administration and Elections Committee, contains identical provisions adding probate courts to the state’s whistleblower law.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 43 Nay 0 (03/21/2016)