



Senate

General Assembly

File No. 610

January Session, 2021

Senate Bill No. 940

Senate, April 26, 2021

The Committee on Judiciary reported through SEN. WINFIELD of the 10th 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, 2021*) (a) Each state agency that
2 is a party to a Probate Court proceeding shall recognize, apply and
3 enforce any order, denial or decree of a Probate Court that is applicable
4 to any determination made by the state agency in a contested case. Any
5 party aggrieved by an order, denial or decree of a Probate Court that is
6 applicable to such a determination may appeal therefrom to the
7 Superior Court in accordance with section 45a-186 of the general
8 statutes, as amended by 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 has the same meaning as provided 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 Section 45a-186 of the general statutes is repealed and the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, 2021*):

15 (a) As used in this section and section 45a-187, "electronic service" has

16 the same meaning as provided in section 45a-136f.

17 (b) Any person aggrieved by an order, denial or decree of a Probate
18 Court may appeal therefrom to the Superior Court. An appeal from 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] 45a-705a, inclusive, shall be filed not later than forty-five days
22 after the date on which the Probate Court sent the order, denial or
23 decree. Except as provided in sections 45a-187 and 45a-188, an appeal
24 from an order, denial or decree in any other matter shall be filed on or
25 before the thirtieth day after the date on which the Probate Court sent
26 the order, denial or decree. The appeal period shall be calculated from
27 the date on which the court sent the order, denial or decree by mail or
28 the date on which the court transmitted the order, denial or decree by
29 electronic service, whichever is later.

30 (c) An appeal shall be commenced by filing a complaint in the
31 Superior Court in the judicial district in which such Probate Court is
32 located, or, if the Probate Court is located in a probate district that is in
33 more than one judicial district, by filing a complaint in a superior court
34 that is located in a judicial district in which any portion of the probate
35 district is located, except that (1) an appeal under subsection (b) of
36 section 12-359, subsection (b) of section 12-367, [or] subsection (b) of
37 section 12-395 or section 1 of this act shall be filed in the judicial district
38 of Hartford, and (2) an appeal in a matter concerning removal of a
39 parent as guardian, termination of parental rights or adoption shall be
40 filed in any superior court for juvenile matters having jurisdiction over
41 matters arising in any town within such probate district. The complaint
42 shall state the reasons for the appeal. A copy of the order, denial or
43 decree appealed from shall be attached to the complaint.

44 (d) An appeal from a decision rendered in any case after a recording
45 of the proceedings is made under section 17a-498, 17a-543, 17a-543a or
46 17a-685, sections 45a-644 to 45a-667v, inclusive, or section 51-72 or 51-
47 73, shall be on the record and shall not be a trial de novo.

48 (e) Each person who files an appeal pursuant to this section shall

49 serve a copy of the complaint on each interested party. The failure of
50 any person to make such service shall not deprive the Superior Court of
51 jurisdiction over the appeal. Notwithstanding the provisions of section
52 52-50, service of the copy of the complaint shall be by state marshal,
53 constable or an indifferent person. Service shall be in hand or by leaving
54 a copy at the place of residence of the interested party being served or
55 at the address for the interested party on file with the Probate Court,
56 except that service on a respondent or conserved person in an appeal
57 from an action under part IV of chapter 802h shall be in hand by a state
58 marshal, constable or an indifferent person.

59 (f) In addition to the notice given under subsection (e) of this section,
60 each person who files an appeal pursuant to this section shall mail a
61 copy of the complaint to the Probate Court that rendered the order,
62 denial or decree appealed from. The Probate Court and the probate
63 judge that rendered the order, denial or decree appealed from shall not
64 be made parties to the appeal and shall not be named in the complaint
65 as parties.

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

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

76 (i) A hearing in an appeal from probate proceedings under section
77 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-
78 650, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-
79 703, [or] 45a-717 or section 1 of this act shall commence, unless a stay
80 has been issued pursuant to subsection (j) of this section, not later than
81 ninety days after the appeal has been filed.

82 (j) The filing of an appeal under this section shall not, of itself, stay
83 enforcement of the order, denial or decree from which the appeal is
84 taken. A motion for a stay may be made to the Probate Court or the
85 Superior Court. The filing of a motion with the Probate Court shall not
86 preclude action by the Superior Court.

87 (k) Nothing in this section shall prevent any person aggrieved by any
88 order, denial or decree of a Probate Court in any matter, unless
89 otherwise specially provided by law, from filing a petition for a writ of
90 habeas corpus, a petition for termination of involuntary representation
91 or a petition for any other available remedy.

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

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

103 (3) The following matters shall not be referred to a special assignment
104 probate judge pursuant to this subsection: Appeals (A) under sections
105 17a-75 to 17a-83, inclusive, section 17a-274, sections 17a-495 to 17a-528,
106 inclusive, sections 17a-543, 17a-543a, 17a-685 to 17a-688, inclusive, (B) of
107 children's matters as defined in subsection (a) of section 45a-8a, (C)
108 under section 1 of this act, (D) under sections 45a-644 to 45a-663,
109 inclusive, [45a-668] 45a-669 to 45a-683, inclusive, and 45a-690 to 45a-700,
110 inclusive, and (E) any matter in a Probate Court heard on the record in
111 accordance with sections 51-72 and 51-73.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2021</i>	New section
Sec. 2	<i>October 1, 2021</i>	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 22 \$	FY 23 \$
Social Services, Dept.; Attorney General; Children & Families, Dept.; Department of Developmental Services	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 and may result in a cost to the state to represent agency interests in Probate Court proceedings. To the extent that agencies are not currently complying with such orders, this bill may also 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, represented by the Office of the Attorney General, would appeal the decision. In accordance with federal law (42 USC 1396a(a)(5)), the Department of Social Services has been identified as the single state agency to determine Medicaid eligibility and therefore eligibility determination is outside the scope of the Probate Court and assumed unchanged by the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future.

OLR Bill Analysis**SB 940*****AN ACT CONCERNING STATE AGENCY COMPLIANCE WITH PROBATE COURT ORDERS.*****SUMMARY**

This bill specifically requires any state agency that is a party to a probate court proceeding to recognize, apply, and enforce any probate court order, denial, or decree that applies to the agency's determination in a contested case.

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 (see BACKGROUND).

Unlike most probate appeals, the bill requires a party appealing such a probate court decision to file the appeal in 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.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2021

BACKGROUND***Definitions***

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 37 Nay 0 (04/08/2021)