

HOUSE SUBSTITUTE TO SENATE BILL 393

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated,
 2 relating to appellate practice, so as to change certain provisions relating to judgments and
 3 rulings deemed directly appealable, procedure for review of judgments, orders, or decisions
 4 not subject to direct appeal; to change certain provisions relating to cases requiring an
 5 application for appeal, procedure, and jurisdiction; to amend Code Section 9-11-56 relating
 6 to summary judgment so as to conform it to the changes made in Title 5; to provide for
 7 related matters; to provide an effective date; to provide for applicability; to repeal conflicting
 8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
 12 appellate practice, is amended by striking Code Section 5-6-34, relating to judgments and
 13 rulings deemed directly appealable, procedure for review of judgments, orders, or decisions
 14 not subject to direct appeal, scope of review, and hearings in criminal cases involving a
 15 capital offense for which death penalty is sought, and inserting in lieu thereof the following:
 16 "5-6-34.

17 (a) Appeals may be taken to the Supreme Court and the Court of Appeals from the
 18 following judgments and rulings of the superior courts, the constitutional city courts, and
 19 such other courts or tribunals from which appeals are authorized by the Constitution and
 20 laws of this state:

21 (1) All final judgments, that is to say, where the case is no longer pending in the court
 22 below, ~~except as provided in Code Section 5-6-35;~~

23 (2) All judgments involving applications for discharge in bail trover and contempt cases;

24 (3) All judgments or orders directing that an accounting be had;

25 (4) All judgments or orders granting or refusing applications for receivers or for
 26 interlocutory or final injunctions;

1 (5) All judgments or orders granting or refusing applications for attachment against
2 fraudulent debtors;

3 (5.1) Any ruling on a motion which would be dispositive if granted with respect to a
4 defense that the action is barred by Code Section 16-11-184;

5 (6) All judgments or orders granting or refusing to grant mandamus or any other
6 extraordinary remedy, except with respect to temporary restraining orders;

7 (7) All judgments or orders refusing applications for dissolution of corporations created
8 by the superior courts; ~~and~~

9 (8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a
10 will;

11 (9) All judgments or orders in criminal cases denying pleas of double jeopardy, pleas of
12 denial of constitutional right to speedy trial, or pleas in bar upon the theory that an
13 acquittal has already been effected under the provisions of Code Sections 17-7-170 and
14 17-7-171;

15 (9.1) All judgments or orders involving an award of child custody, support, or visitation;

16 (10) All orders granting motions to cancel a notice of lis pendens;

17 (11) All orders denying nonparties engaged in news gathering the privilege pursuant to
18 Code Section 24-9-30;

19 (12) All orders in criminal cases as provided in Code Sections 5-7-1 and 5-7-2;

20 (13) All declaratory judgments as provided in Code Section 9-4-2;

21 (14) All orders granting motions for summary judgment as provided in subsection (h) of
22 Code Section 9-11-56; and

23 (15) All other orders and judgments deemed subject to immediate review by applicable
24 law.

25 Except as otherwise provided in Code Section 5-6-35, the appellate review authorized in
26 this Code section may be initiated by filing a notice of appeal as provided in Code Section
27 5-6-37.

28 (b) Where the trial judge in rendering an order, decision, or judgment, not otherwise
29 subject to ~~direct~~ appeal, certifies within ten days of entry thereof that the order, decision,
30 or judgment is of such importance to the case that immediate review should be had, the
31 Supreme Court or the Court of Appeals may thereupon, in their respective discretions,
32 permit an appeal to be taken from the order, decision, or judgment if application is made
33 ~~thereto~~ within ten days after ~~such~~ the certificate is granted. The application shall be in the
34 nature of a petition and shall set forth the need for ~~such an~~ the appeal and the issue or
35 issues involved therein. The applicant may, at his or her election, include copies of ~~such~~
36 the parts of the record as he or she deems appropriate, but no certification of ~~such~~ the
37 copies by the clerk of the trial court shall be necessary. The application shall be filed with

1 the clerk of the Supreme Court or the Court of Appeals and a copy of the application,
 2 together with a list of those parts of the record included with the application, shall be
 3 served upon the opposing party or parties in the case in the manner prescribed by Code
 4 Section 5-6-32, except that ~~such~~ service shall be perfected at or before the filing of the
 5 application. The opposing party or parties shall have ten days from the date on which the
 6 application is filed in which to file a response. The response may be accompanied by
 7 copies of the record in the same manner as is allowed with the application. The Supreme
 8 Court or the Court of Appeals shall issue an order granting or denying ~~such an~~ the appeal
 9 within 45 days of the date on which the application was filed. Within ten days after an
 10 order is issued granting the appeal, the applicant, to secure a review of the issues, may
 11 file a notice of appeal as provided in Code Section 5-6-37. The notice of appeal shall act
 12 as a supersedeas as provided in Code Section 5-6-46 and the procedure thereafter shall
 13 be the same as in an appeal from a final judgment.

14 (c) In criminal cases involving a capital offense for which the death penalty is sought,
 15 a hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall
 16 be a review of pretrial proceedings by the Supreme Court prior to a trial before a jury.
 17 Review of pretrial proceedings, if ordered by the trial court, shall be exclusively as
 18 provided by Code Section 17-10-35.1 and no certificate of immediate review shall be
 19 necessary.

20 (d) Where an appeal is taken under any provision of subsection (a), (b), or (c) of this
 21 Code section, all judgments, rulings, or orders rendered in the case which are raised on
 22 appeal and which may affect the proceedings below shall be reviewed and determined by
 23 the appellate court, without regard to the appealability of the judgment, ruling, or order
 24 standing alone and without regard to whether the judgment, ruling, or order appealed
 25 from was final or was appealable by some other express provision of law contained in
 26 this Code section, or elsewhere. For purposes of review by the appellate court, one or
 27 more judgments, rulings, or orders by the trial court held to be erroneous on appeal shall
 28 not be deemed to have rendered all subsequent proceedings nugatory; but the appellate
 29 court shall in all cases review all judgments, rulings, or orders raised on appeal which
 30 may affect the proceedings below and which were rendered subsequent to the first
 31 judgment, ruling, or order held erroneous. Nothing in this subsection shall require the
 32 appellate court to pass upon questions which are rendered moot."

33 SECTION 2.

34 Said article is further amended by striking Code Section 5-6-35, relating to cases requiring
 35 application for appeal, contents, filing service of application, exhibits, response by opposing

1 party, issuance of appellate court order, procedure, supersedeas, and jurisdiction of appeal,
 2 and inserting in lieu thereof the following:

3 "5-6-35.

4 (a) Appeals authorized pursuant to subsection (a) of Code Section 5-6-34 in the following
 5 cases shall be taken as provided in this Code section in the following cases:

6 (1) Appeals from decisions of the superior courts reviewing decisions of the State Board
 7 of Workers' Compensation, the State Board of Education, auditors, state and local
 8 administrative agencies, and lower courts by certiorari or de novo proceedings; provided,
 9 however, that this provision shall not apply to decisions of the Public Service
 10 Commission and probate courts and to cases involving ad valorem taxes and
 11 condemnations;

12 (2) Appeals from judgments or orders in divorce, alimony, ~~child custody~~, and other
 13 domestic relations cases including, but not limited to, granting or refusing a divorce or
 14 temporary or permanent alimony, ~~awarding or refusing to change child custody~~, or
 15 holding or declining to hold persons in contempt of such alimony or ~~child custody~~
 16 judgment or orders; provided, however, that an appeal from any judgment or order
 17 involving an award of child custody, support, or visitation or any contempt of such
 18 judgment or order shall not be taken as provided in this Code section;

19 (3) Appeals from cases involving distress or dispossessory warrants in which the only
 20 issue to be resolved is the amount of rent due and such amount is \$2,500.00 or less;

21 (4) Appeals from cases involving garnishment or attachment, except as provided in
 22 paragraph (5) of subsection (a) of Code Section 5-6-34;

23 (5) Appeals from orders revoking probation;

24 (6) Appeals in all actions for damages in which the judgment is \$10,000.00 or less;

25 (7) Appeals, when separate from an original appeal, from the denial of an extraordinary
 26 motion for new trial;

27 (8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion
 28 to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief
 29 upon a complaint in equity to set aside a judgment;

30 (9) Appeals from orders granting or denying temporary restraining orders;

31 (10) Appeals from awards of attorney's fees or expenses of litigation under Code Section
 32 9-15-14; ~~and~~

33 (11) Appeals from decisions of the state courts reviewing decisions of the magistrate
 34 courts by de novo proceedings so long as the subject matter is not otherwise subject to
 35 a right of direct appeal; and

36 (12) Appeals of all actions filed by prisoners pursuant to Code Section 42-12-8.

1 (b) All appeals taken in cases specified in subsection (a) of this Code section shall be by
2 application in the nature of a petition enumerating the errors to be urged on appeal and
3 stating why the appellate court has jurisdiction. The application shall specify the order or
4 judgment being appealed and, ~~if the order or judgment is interlocutory, the application shall~~
5 ~~set forth, in addition to the enumeration of errors to be urged, the need for interlocutory~~
6 ~~appellate review.~~

7 (c) The applicant shall include as exhibits to the petition a copy of the order or judgment
8 being appealed and should include a copy of the petition or motion which led directly to
9 the order or judgment being appealed and a copy of any responses to the petition or motion.
10 An applicant may include copies of ~~such~~ other parts of the record or transcript as he or she
11 deems appropriate. No certification of ~~such~~ the copies by the clerk of the trial court shall
12 be necessary in conjunction with the application.

13 (d) The application shall be filed with the clerk of the Supreme Court or the Court of
14 Appeals within 30 days of the entry of the order, decision, or judgment complained of and
15 a copy of the application, together with a list of those parts of the record included with the
16 application, shall be served upon the opposing party or parties as provided by law, except
17 that the service shall be perfected at or before the filing of the application. When a motion
18 for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the
19 verdict has been filed, the application shall be filed within 30 days after the entry of the
20 order granting, overruling, or otherwise finally disposing of the motion.

21 (e) The opposing party or parties shall have ten days from the date on which the
22 application is filed in which to file a response. The response may be accompanied by
23 copies of the record in the same manner as is allowed with the application. The response
24 may point out that the decision of the trial court was not error, or that the enumeration of
25 error cannot be considered on appeal for lack of a transcript of evidence or for other
26 reasons.

27 (f) The Supreme Court or the Court of Appeals shall issue an order granting or denying
28 such an appeal within 30 days of the date on which the application was filed.

29 (g) Within ten days after an order is issued granting the appeal, the applicant, to secure a
30 review of the issues, shall file a notice of appeal as provided by law. The procedure
31 thereafter shall be the same as in other appeals.

32 (h) The filing of an application for appeal shall act as a supersedeas to the extent that a
33 notice of appeal acts as supersedeas.

34 (i) This Code section shall not affect Code Section 9-14-52, relating to practice as to
35 appeals in certain habeas corpus cases.

36 (j) ~~When an appeal in a case enumerated in subsection (a) of Code Section 5-6-34, but not~~
37 ~~in subsection (a) of this Code section, is initiated by filing an otherwise timely application~~

1 ~~for permission to appeal pursuant to subsection (b) of this Code section without also filing~~
 2 ~~a timely notice of appeal, the appellate court shall have jurisdiction to decide the case and~~
 3 ~~shall grant the application. Thereafter the appeal shall proceed as provided in subsection~~
 4 ~~(g) of this Code section the order, decision, or judgment complained of in an application~~
 5 ~~filed pursuant to this Code section is deemed by the appellate court to be subject to direct~~
 6 ~~appeal and the applicant has not otherwise filed a timely notice of appeal in the court~~
 7 ~~below, the appellate court shall grant the application without regard to the underlying~~
 8 ~~merits of the case. The relief provided in this subsection shall also apply to an application~~
 9 ~~improperly filed pursuant to subsection (b) of Code Section 5-6-34, without regard to the~~
 10 ~~existence or validity of the certificate of immediate review, provided that the application~~
 11 ~~otherwise conforms to the procedural requirements of this Code section.~~"

12 **SECTION 3.**

13 To amend Code Section 9-11-56 of the Official Code of Georgia Annotated, relating to
 14 summary judgment, by striking subsection (h) and inserting in lieu thereof the following:

15 "*(h) Appeal.* An order granting summary judgment on any issue or as to any party shall be
 16 subject to review by appeal. An order denying summary judgment shall be subject to
 17 review by ~~direct~~ appeal in accordance with subsection (b) of Code Section 5-6-34."

18 **SECTION 4.**

19 This Act shall become effective upon its approval by the Governor or upon its
 20 becoming law without such approval.

21 **SECTION 5.**

22 This Act shall apply to any case pending on or brought after the effective date of this
 23 Act.

24 **SECTION 6.**

25 All laws and parts of laws in conflict with this Act are repealed.