

The Senate Judiciary Committee offered the following substitute to HB 810:

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
2 certiorari and appeals to appellate courts generally, so as to change certain provisions relating
3 to judgments and rulings deemed directly appealable, procedure for review of judgments,
4 orders, or decisions not subject to direct appeal, scope of review, and hearings in criminal
5 cases involving a capital offense for which death penalty is sought; to provide an effective
6 date; to provide for applicability; to repeal conflicting laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

SECTION 1.

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

15 "5-6-34.

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

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

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

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

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

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

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

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

7 (8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a
8 will.

9 (b) Where the trial judge in rendering an order, decision, or judgment, not otherwise
10 subject to direct appeal, certifies within ten days of entry thereof that the order, decision,
11 or judgment is of such importance to the case that immediate review should be had, the
12 Supreme Court or the Court of Appeals may thereupon, in their respective discretions,
13 permit an appeal to be taken from the order, decision, or judgment if application is made
14 thereto within ten days after such certificate is granted. The application shall be in the
15 nature of a petition and shall set forth the need for such an appeal and the issue or issues
16 involved therein. The applicant may, at his or her election, include copies of such parts of
17 the record as he or she deems appropriate, but no certification of such copies by the clerk
18 of the trial court shall be necessary. The application shall be filed with the clerk of the
19 Supreme Court or the Court of Appeals and a copy of the application, together with a list
20 of those parts of the record included with the application, shall be served upon the opposing
21 party or parties in the case in the manner prescribed by Code Section 5-6-32, except that
22 such service shall be perfected at or before the filing of the application. The opposing party
23 or parties shall have ten days from the date on which the application is filed in which to file
24 a response. The response may be accompanied by copies of the record in the same manner
25 as is allowed with the application. The Supreme Court or the Court of Appeals shall issue
26 an order granting or denying such an appeal within ~~30~~ 60 days of the date on which the
27 application was filed. Within ten days after an order is issued granting the appeal, the
28 applicant, to secure a review of the issues, may file a notice of appeal as provided in Code
29 Section 5-6-37. The notice of appeal shall act as a supersedeas as provided in Code Section
30 5-6-46 and the procedure thereafter shall be the same as in an appeal from a final judgment.

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

36 (d) Where an appeal is taken under any provision of subsection (a), (b), or (c) of this Code
37 section, all judgments, rulings, or orders rendered in the case which are raised on appeal

1 and which may affect the proceedings below shall be reviewed and determined by the
2 appellate court, without regard to the appealability of the judgment, ruling, or order
3 standing alone and without regard to whether the judgment, ruling, or order appealed from
4 was final or was appealable by some other express provision of law contained in this Code
5 section, or elsewhere. For purposes of review by the appellate court, one or more
6 judgments, rulings, or orders by the trial court held to be erroneous on appeal shall not be
7 deemed to have rendered all subsequent proceedings nugatory; but the appellate court shall
8 in all cases review all judgments, rulings, or orders raised on appeal which may affect the
9 proceedings below and which were rendered subsequent to the first judgment, ruling, or
10 order held erroneous. Nothing in this subsection shall require the appellate court to pass
11 upon questions which are rendered moot."

12 **SECTION 2.**

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

15 **SECTION 3.**

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

17 **SECTION 4.**

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