

House Bill 810 (AS PASSED HOUSE AND SENATE)

By: Representatives Jenkins of the 110<sup>th</sup> and Holland of the 157<sup>th</sup>

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:

8 **SECTION 1.**

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

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 (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 (b) Where the trial judge in rendering an order, decision, or judgment, not otherwise  
12 subject to direct appeal, certifies within ten days of entry thereof that the order, decision,  
13 or judgment is of such importance to the case that immediate review should be had, the  
14 Supreme Court or the Court of Appeals may thereupon, in their respective discretions,  
15 permit an appeal to be taken from the order, decision, or judgment if application is made  
16 thereto within ten days after such certificate is granted. The application shall be in the  
17 nature of a petition and shall set forth the need for such an appeal and the issue or issues  
18 involved therein. The applicant may, at his or her election, include copies of such parts of  
19 the record as he or she deems appropriate, but no certification of such copies by the clerk  
20 of the trial court shall be necessary. The application shall be filed with the clerk of the  
21 Supreme Court or the Court of Appeals and a copy of the application, together with a list  
22 of those parts of the record included with the application, shall be served upon the opposing  
23 party or parties in the case in the manner prescribed by Code Section 5-6-32, except that  
24 such service shall be perfected at or before the filing of the application. The opposing party  
25 or parties shall have ten days from the date on which the application is filed in which to file  
26 a response. The response may be accompanied by copies of the record in the same manner  
27 as is allowed with the application. The Supreme Court or the Court of Appeals shall issue  
28 an order granting or denying such an appeal within ~~30~~ 45 days of the date on which the  
29 application was filed. Within ten days after an order is issued granting the appeal, the  
30 applicant, to secure a review of the issues, may file a notice of appeal as provided in Code  
31 Section 5-6-37. The notice of appeal shall act as a supersedeas as provided in Code Section  
32 5-6-46 and the procedure thereafter shall be the same as in an appeal from a final judgment.

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

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

14 **SECTION 2.**

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

17 **SECTION 3.**

18 This Act shall apply to any case pending on or brought after the effective date of this Act;  
19 and, for purposes of taking an appeal pursuant to the provisions of paragraph (5.1) of  
20 subsection (a) of Code Section 5-6-34 as enacted by this Act, any ruling actually entered  
21 before the effective date of this Act in any case which is pending on the effective date of this  
22 Act shall be deemed to have been entered on the effective date of this Act.

23 **SECTION 4.**

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