

House Bill 927

By: Representatives Coomer of the 14th, Willard of the 51st, Dickey of the 140th, Nimmer of the 178th, Rogers of the 10th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to
2 enact reforms recommended by the Georgia Appellate Jurisdiction Review Commission
3 relating to appellate court efficiencies; to improve law assistant selection for the appellate
4 courts; to provide the Court of Appeals with greater procedural flexibility in its decisional
5 process; to transfer jurisdiction over certain appeals in civil cases from the Supreme Court
6 to the Court of Appeals; to amend Chapter 6 of Title 5, Part 7 of Article 1 of Chapter 1 of
7 Title 7, Chapter 6 of Title 9, Chapter 2 of Title 21, Article 3 of Chapter 4 of Title 23, Chapter
8 2 of Title 44, and Code Section 48-5-17, relating to certiorari and appeals to appellate courts
9 generally, receivership powers and procedures generally, extraordinary writs, elections and
10 primaries generally, decrees, recordation and registration of deeds and other instruments, and
11 proceedings to determine county entitled to return and payment, respectively, so as to
12 conform appellate references; to amend Chapter 2 of Title 15 of the Official Code of Georgia
13 Annotated, relating to the Supreme Court, so as to increase the number of Supreme Court
14 Justices and provide for their appointment and election; to provide for effective dates and a
15 contingent effective date and applicability; to provide for related matters; to repeal
16 conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 PART I
19 SECTION 1-1.

20 This Act shall be known and may be cited as the "Appellate Jurisdiction Reform Act of
21 2016."

22 SECTION 1-2.

23 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
24 Code Section 15-2-19, relating to law assistants, as follows:

25 "15-2-19.

26 The Justices of the Supreme Court ~~are~~ shall be authorized to appoint law assistants for the
 27 use of the court and to remove them at pleasure. The law assistants shall have been
 28 admitted to the bar of this state as practicing attorneys; provided, however, that an
 29 individual who graduated from law school but who is not a member of the bar of this state
 30 may be appointed as a law assistant so long as he or she is admitted to the bar of this state
 31 within one year of such appointment. It shall be the duty of the law assistants to attend all
 32 sessions of the court, if so ordered, and generally to perform the duties incident to the role
 33 of law assistant."

34 **SECTION 1-3.**

35 Said title is further amended by revising subsection (a) of Code Section 15-3-9, relating to
 36 law assistants, as follows:

37 "(a) The Judges of the Court of Appeals ~~are~~ shall be authorized to appoint law assistants
 38 for the use of the court and to remove them at pleasure. Each law assistant of the Court of
 39 Appeals shall have been admitted to ~~practice law in~~ the bar of this state as a practicing
 40 attorney; provided, however, that an individual who graduated from law school but who
 41 is not a member of the bar of this state may be appointed as a law assistant so long as he
 42 or she is admitted to the bar of this state within one year of such appointment."

43 **PART II**

44 **SECTION 2-1.**

45 Said title is further amended by revising Code Section 15-3-1, relating to the composition,
 46 divisions, how cases are heard, and decisions overruled, quorum, oral arguments, and
 47 assistance of other judges, as follows:

48 "15-3-1.

49 (a) **Composition.** The Court of Appeals shall consist of 15 Judges who shall elect one of
 50 their number as Chief Judge, in such manner and for such time as may be prescribed by
 51 rule or order of the court.

52 (b) **Divisions.** The court shall sit in divisions composed of three Judges in each division.
 53 ~~Two Judges shall constitute a quorum of a division.~~ The assignment of Judges to each
 54 division shall be made by the Chief Judge, and the personnel of the divisions shall from
 55 time to time be changed in accordance with rules prescribed by the court. The Chief Judge
 56 shall designate the Presiding Judges of the divisions and shall, under rules prescribed by
 57 the court, distribute the cases among the divisions in such manner as to equalize their work
 58 as far as practicable.

59 (c) **How cases heard.**

60 (1) ~~Each~~ Except as provided in paragraph (2) of this subsection, each division shall hear
 61 and determine, independently of the others, the cases assigned to it, ~~except that the~~
 62 ~~division next in line in rotation and a seventh Judge shall participate in the determination~~
 63 ~~of each case in which there is a dissent in the division to which the case was originally~~
 64 ~~assigned. Two Judges shall constitute a quorum of a division.~~

65 (2) ~~In all cases which involve one or more questions which, in the opinion of the~~
 66 ~~majority of the Judges of the division or of the two divisions plus a seventh Judge to~~
 67 ~~which a case is assigned, should be passed upon by all the members of the court, the~~
 68 ~~questions may be presented to all the members of the court; and if a majority of all the~~
 69 ~~members of the court decide that the question or questions involved should, in their~~
 70 ~~judgment and discretion, be decided by all the members of the court, the case shall be~~
 71 ~~passed upon by all the members of the court, provided that a majority of the Judges~~
 72 ~~passing upon the case concur in the judgment.~~

73 (3) ~~In neither class of cases referred to in this subsection shall there be oral argument~~
 74 ~~except before the division to which the cases are originally assigned.~~

75 (2) The Court of Appeals may provide by rule for certain cases to be heard and
 76 determined by more than a single division and the manner in which those Judges will be
 77 selected for such cases. When a case is heard and determined by more than a single
 78 division, nine Judges shall be necessary to constitute a quorum.

79 (d) ~~**How decision overruled.** It being among the purposes of this Code section to avoid~~
 80 ~~and reconcile conflicts among the decisions made by less than all of the Judges on the court~~
 81 ~~and to secure more authoritative decisions, it is provided that when two divisions plus a~~
 82 ~~seventh Judge sit as one court the court may, by the concurrence of a majority, overrule any~~
 83 ~~previous decision in the same manner as prescribed for the Supreme Court. As precedent,~~
 84 ~~a decision by such court with a majority concurring shall take precedence over a decision~~
 85 ~~by any division or two divisions plus a seventh Judge. A decision concurred in by all the~~
 86 ~~Judges shall not be overruled or materially modified except with the concurrence of all the~~
 87 ~~Judges.~~

88 (e) ~~**Quorum.** When all the members of the court are sitting together as one court, eight~~
 89 ~~Judges shall be necessary to constitute a quorum. In all cases decided by such court as a~~
 90 ~~whole by less than 15 Judges, the concurrence of at least eight shall be essential to the~~
 91 ~~rendition of a judgment.~~

92 (d) **Decisions as precedent.** The Court of Appeals shall provide by rule for the
 93 establishment of precedent and the manner in which prior decisions of the court may be
 94 overruled.

95 ~~(f)~~(e) **Oral arguments.** The Court of Appeals may hear oral arguments at places other
 96 than the seat of government. Reasonable notice shall be given of such hearings.
 97 ~~(g)~~(f) **Assistance of other judges; procedure.** Whenever the court unanimously
 98 determines that the business of the court requires the temporary assistance of an additional
 99 judge or additional judges or one additional panel, the court may request the assistance of
 100 senior appellate judges as provided in Chapter 3A of this title or senior superior court
 101 judges ~~as provided in Code Section 47-23-101~~. The Judge whose case assignment is
 102 transferred to the additional judge shall not vote on the case."

103 PART III

104 SECTION 3-1.

105 Said title is further amended by adding a new Code section to read as follows:

106 "15-3-3.1.

107 (a) Pursuant to Article VI, Section VI, Paragraph III of the Constitution of this state, the
 108 Court of Appeals rather than the Supreme Court shall have appellate jurisdiction in the
 109 following classes of cases:

110 (1) Cases involving title to land;

111 (2) All equity cases, except those cases concerning proceedings in which a sentence of
 112 death was imposed or could be imposed and those cases concerning the execution of a
 113 sentence of death;

114 (3) All cases involving wills;

115 (4) All cases involving extraordinary remedies, except those cases concerning
 116 proceedings in which a sentence of death was imposed or could be imposed and those
 117 cases concerning the execution of a sentence of death;

118 (5) All divorce and alimony cases; and

119 (6) All other cases not reserved to the Supreme Court or conferred on other courts.

120 (b) This Code section shall not otherwise affect the jurisdiction of the Supreme Court or
 121 the Court of Appeals."

122 SECTION 3-2.

123 Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to certiorari and
 124 appeals to appellate courts generally, is amended by revising Code Section 5-6-14, relating
 125 to execution of extraordinary orders of the Supreme Court, as follows:

126 "5-6-14.
 127 When judgments are rendered ~~in the Supreme Court~~ on appeal in injunction or other
 128 extraordinary cases, the judges of the superior courts may give immediate effect to such
 129 judgments."

130 **SECTION 3-3.**

131 Part 7 of Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating
 132 to receivership powers and procedures generally, is amended by revising Code Section
 133 7-1-155, relating to injunction to restrain department, as follows:

134 "7-1-155.

135 Any financial institution of whose business or property the department has taken
 136 possession as receiver may, at any time within ten days after the department has become
 137 receiver, apply to the principal court for an order requiring the department to show cause
 138 why it should not be enjoined from continuing as receiver. Service may be made in such
 139 action by serving the commissioner personally or by leaving a copy with the deputy in
 140 charge of his or her office in the department or by serving the deputy receiver appointed
 141 by the department to manage the affairs of such financial institution. The court shall, after
 142 a hearing upon the merits, either dismiss the application or order the department to
 143 surrender to the financial institution possession of its business and property; but no such
 144 injunction shall issue where the department has been appointed receiver by action of a
 145 court of competent jurisdiction or by action of the financial institution itself, in accordance
 146 with this chapter. Such application for injunction may in the discretion of the court be
 147 heard at any time after service as provided in this Code section, with the right ~~to~~ by either
 148 party ~~by~~ to appeal, as in other cases of applications for temporary injunction, ~~to carry said~~
 149 ~~case to the Supreme Court for review."~~

150 **SECTION 3-4.**

151 Chapter 6 of Title 9 of the Official Code of Georgia Annotated, relating to extraordinary
 152 writs, is amended by revising Code Section 9-6-1, relating to final judgment prerequisite to
 153 appeal, as follows:

154 "9-6-1.

155 No appeal as to any ruling or decision in a mandamus or quo warranto proceeding or in a
 156 case involving a writ of prohibition may be taken ~~to the Supreme Court~~ until there has been
 157 a final judgment in the trial court. The grant of a new trial shall be treated as a final
 158 judgment in these cases and subject to review as in other cases."

159 **SECTION 3-5.**

160 Said chapter is further amended by revising Code Section 9-6-28, relating to appeal, as
161 follows:

162 "9-6-28.

163 (a) Upon refusal of the court to grant the mandamus nisi, the applicant may appeal ~~to the~~
164 ~~Supreme Court~~, as in other cases. Either party dissatisfied with the judgment on the
165 hearing of the answer to the mandamus nisi may likewise appeal.

166 (b) Mandamus cases shall be heard ~~in the Supreme Court~~ on appeal under the same laws
167 and rules as apply to injunction cases."

168 **SECTION 3-6.**

169 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
170 primaries generally, is amended by revising subsection (c) of Code Section 21-2-171, relating
171 to review and appeal of denial of nomination petitions, as follows:

172 "(c) The decision of the officer denying a nomination petition may be reviewed by the
173 superior court of the county containing the office of such officer upon an application for
174 a writ of mandamus to compel the granting of such petition. The application for such writ
175 of mandamus shall be made within five days of the time when the petitioner is notified of
176 such decision. Upon the application being made, a judge of such court shall fix a time and
177 place for hearing the matter in dispute as soon as practicable; and notice thereof shall be
178 served with a copy of such application upon the officer with whom the nomination petition
179 was filed and upon the petitioner. At the time so fixed the court, or any judge thereof
180 assigned for the purpose, shall hear the case. If after such hearing the said court shall find
181 that the decision of the officer was erroneous, it shall issue its mandate to the officer to
182 correct his or her decision and to grant the nomination petition. From any decision of the
183 superior court an appeal may be taken within five days after the entry thereof ~~to the~~
184 ~~Supreme Court~~. It shall be the duty of the ~~Supreme Court~~ appellate court to fix the hearing
185 and to announce its decision within such period of time as will permit the name of the
186 candidate affected by the court's decision to be printed on the ballot if the court should so
187 determine."

188 **SECTION 3-7.**

189 Said chapter is further amended by revising Code Section 21-2-528, relating to appeals from
190 court's determination on contest petition, as follows:

191 "21-2-528.

192 An appeal from the final determination of the court may be taken within ten days from the
193 rendition thereof ~~to the Supreme Court~~ as in other civil cases. The filing of a notice of

194 appeal shall not act as a stay or supersedeas. The appellant may apply to the ~~Supreme~~
 195 ~~Court~~ appellate court for a stay or supersedeas, and such court shall consider applications
 196 for stays or supersedeas in such cases without regard to whether any notice of appeal has
 197 been filed or the record docketed in such cases."

198 **SECTION 3-8.**

199 Article 3 of Chapter 4 of Title 23 of the Official Code of Georgia Annotated, relating to
 200 decrees, is amended by revising Code Section 23-4-33, relating to decree in will or contract
 201 matters, as follows:

202 "23-4-33.

203 When it becomes impossible to carry out any last will and testament in whole or in part,
 204 and in all matters of contract, the judges of the superior courts shall have power to render
 205 any decree that may be necessary and legal, provided that all parties in interest shall
 206 consent thereto in writing and there shall be no issue as to the facts or, if there is such an
 207 issue, that there shall be a like consent in writing that the judge presiding may hear and
 208 determine such facts, subject to a review ~~by the Supreme Court~~ on appeal, as in other cases.
 209 In all cases where minors are interested, the consent of the guardian at law or the guardian
 210 ad litem shall be obtained before the decree is rendered."

211 **SECTION 3-9.**

212 Chapter 2 of Title 44 of the Official Code of Georgia Annotated, relating to recordation and
 213 registration of deeds and other instruments, is amended by revising subsections (e) and (f)
 214 of Code Section 44-2-103, relating to examiner's powers and appeal, as follows:

215 "(e) The right to grant a new trial upon any issue submitted to a jury and the right of appeal
 216 ~~to the Supreme Court~~ shall be as provided for in Code Sections 5-6-37 through 5-6-44,
 217 5-6-48, and 5-6-49.

218 (f) The judge may refer or recommit the record to the examiner in like manner as auditor's
 219 reports may be recommitted or he or she may on his or her own motion recommit it to the
 220 same or any other examiner for further information and report. ~~Where~~ When an exception
 221 or exceptions to the examiner's report have been sustained by the court or by verdict on the
 222 trial of an issue of fact or ~~where the Supreme Court~~ when the appellate court reverses the
 223 judgment of the trial court, it shall not be necessary for the trial court to recommit the case
 224 to an examiner, but the judge shall proceed to enter a decree in accordance with the law and
 225 the facts as thus established and appearing from the record; provided, however, that if the
 226 judge, in his or her discretion, is of the opinion that it is in the interests of truth and justice
 227 that a recommitment to an examiner should be made, ~~he~~ the judge may, upon the motion
 228 of any party or on his or her own motion, order a recommitment of the whole case or any

229 part thereof or for the taking of additional testimony upon any matter which the court
230 deems necessary to the rendition of a true and correct decree."

231 **SECTION 3-10.**

232 Said chapter is further amended by revising subsection (b) of Code Section 44-2-136, relating
233 to cancellation of mortgage, as follows:

234 "(b) If the holder of the mortgage, certificate of indebtedness, or any lien, equity,
235 encumbrance, lis pendens, or other similar matter relating to the registered land or any
236 interest therein refuses to give the requisite authority for the cancellation thereof if and
237 when the debt has been paid or no longer exists or when it is no longer legal and equitable
238 that the registered title should be encumbered by the same, any person adversely affected
239 may petition the court for an involuntary cancellation of the same. In such case, the judge
240 shall cause a rule nisi to be served upon such holder requiring him or her to show cause on
241 a day set, which day shall be not less than 30 days from the date the rule was served, why
242 the mortgage, certificate of indebtedness, lien, or other encumbrance on the registered title
243 should not be canceled. The petition and rule nisi shall be served personally on such holder
244 at least 15 days before the date set for the hearing if such service be practical; but, ~~where~~
245 when it is made to appear to the court that personal service cannot be practically effected,
246 the judge may pass an order providing how the service shall be made. In case the holder
247 is not a resident of this state or is unknown, service by publication shall be made upon the
248 order of the judge in the manner prescribed in Code Section 9-11-4. In case of minors and
249 persons of unsound mind, guardians ad litem shall be appointed. If any issue of fact as to
250 the right of the petition to have the cancellation made appears, such issue shall, upon
251 demand of either party, be tried by jury, with right of the judge to grant a new trial. If it
252 appears that the registered title should be freed from the encumbrance, the court shall
253 decree accordingly and order the cancellation noted upon the certificate of title. The judge
254 shall have power by attachment for contempt, if necessary, to compel the holder of the
255 mortgage certificate of indebtedness or other instrument to surrender it for cancellation.
256 ~~The Supreme Court shall have jurisdiction for the correction of errors in the trial court."~~

257 **SECTION 3-11.**

258 Code Section 48-5-17 of the Official Code of Georgia Annotated, relating to proceedings to
259 determine county entitled to return and payment, is amended by revising paragraph (3) of
260 subsection (a) as follows:

261 "(3) The proceedings under this Code section shall be the same in all respects as in other
262 actions seeking equitable relief except that the petition shall be triable at the first term of

263 the court and, as in other cases, shall be reviewed by on appeal to the ~~Supreme Court of~~
 264 ~~Georgia.~~"

265 **PART IV**

266 **SECTION 4-1.**

267 Chapter 2 of Title 15 of the Official Code of Georgia Annotated, relating to the Supreme
 268 Court, is amended by revising Code Section 15-2-1.1, relating to the number of justices, as
 269 follows:

270 "15-2-1.1.

271 The Supreme Court shall consist of ~~seven~~ nine Justices."

272 **SECTION 4-2.**

273 Said chapter is further amended by revising Code Section 15-2-10, which is reserved, as
 274 follows:

275 "15-2-10.

276 The additional justiceships created in 2016 shall be appointed by the Governor for a term
 277 beginning January 1, 2017, and continuing through December 31, 2018, and until their
 278 successors are elected and qualified. Their successors shall be elected in the manner
 279 provided by law for the election of Supreme Court Justices at the nonpartisan judicial
 280 election in 2018, for a term of six years beginning on January 1, 2019, and until their
 281 successors are elected and qualified. Future successors shall be elected at the nonpartisan
 282 judicial election each sixth year after such election for terms of six years and until their
 283 successors are elected and qualified. They shall take office on the first day of January
 284 following the date of the election. Reserved."

285 **PART V**

286 **SECTION 5-1.**

287 (a) Except as provided in subsections (b), (c), and (d) of this section, this Act shall become
 288 effective upon its approval by the Governor or upon its becoming law without such approval.

289 (b) Part II of this Act shall become effective on July 1, 2016.

290 (c) Part III of this Act shall become effective on January 1, 2017, and shall apply to cases
 291 in which a notice of appeal or application to appeal is filed on or after such date.

292 (d) Part IV of this Act shall only become effective if funds are appropriated for the purpose
 293 of Part IV of this Act in an appropriations Act enacted at the 2016 regular session of the
 294 General Assembly. If funds are so appropriated, then Part IV of this Act shall become

295 effective on July 1, 2016, for purposes of making the initial appointments of the Supreme
296 Court Justices created by this Act, and for all other purposes Part IV of this Act shall become
297 effective on January 1, 2017. If funds are not so appropriated, then Part IV of this Act shall
298 not become effective and shall stand repealed on July 1, 2016.

299

SECTION 5-2.

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