

House Bill 927 (COMMITTEE SUBSTITUTE)

By: Representatives Coomer of the 14<sup>th</sup>, Willard of the 51<sup>st</sup>, Dickey of the 140<sup>th</sup>, Nimmer of the 178<sup>th</sup>, Rogers of the 10<sup>th</sup>, 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 the Official Code of Georgia Annotated, so as to conform  
7 appellate references; to amend Chapter 2 of Title 15 of the Official Code of Georgia  
8 Annotated, relating to the Supreme Court, so as to increase the number of Supreme Court  
9 Justices and provide for their appointment and election; to change provisions relating to  
10 reversals and affirmance; to change provisions relating to the terms of court; to provide for  
11 effective dates and a contingent effective date and applicability; to provide for related  
12 matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 PART I  
15 SECTION 1-1.

16 This Act shall be known and may be cited as the "Appellate Jurisdiction Reform Act of  
17 2016."

18 SECTION 1-2.

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

21 "15-2-19.

22 The Justices of the Supreme Court ~~are~~ shall be authorized to appoint law assistants for the  
23 use of the court and to remove them at pleasure. The law assistants shall have been  
24 admitted to the bar of this state as practicing attorneys; provided, however, that an

25 individual who graduated from law school but who is not a member of the bar of this state  
 26 may be appointed as a law assistant so long as he or she is admitted to the bar of this state  
 27 within one year of such appointment. It shall be the duty of the law assistants to attend all  
 28 sessions of the court, if so ordered, and generally to perform the duties incident to the role  
 29 of law assistant."

### 30 SECTION 1-3.

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

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

## 39 PART II

### 40 SECTION 2-1.

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

44 "15-3-1.

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

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

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

56 (1) ~~Each~~ Except as provided in paragraph (2) of this subsection, each division shall hear  
 57 and determine, independently of the others, the cases assigned to it, ~~except that the~~  
 58 ~~division next in line in rotation and a seventh Judge shall participate in the determination~~

59 of each case in which there is a dissent in the division to which the case was originally  
60 assigned. Two Judges shall constitute a quorum of a division.

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

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

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

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

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

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

91 ~~(f)(e) **Oral arguments.** The Court of Appeals may hear oral arguments at places other~~  
92 ~~than the seat of government. Reasonable notice shall be given of such hearings.~~

93 ~~(g)(f) **Assistance of other judges; procedure.** Whenever the court unanimously~~  
94 ~~determines that the business of the court requires the temporary assistance of an additional~~  
95 ~~judge or additional judges or one additional panel, the court may request the assistance of~~

96 senior appellate judges as provided in Chapter 3A of this title or senior superior court  
 97 judges as ~~provided in Code Section 47-23-101~~. The Judge whose case assignment is  
 98 transferred to the additional judge shall not vote on the case."

99 PART III

100 SECTION 3-1.

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

102 "15-3-3.1.

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

106 (1) Cases involving title to land;

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

110 (3) All cases involving wills;

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

114 (5) All divorce and alimony cases; and

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

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

118 SECTION 3-2.

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

122 "5-6-14.

123 When judgments are rendered ~~in the Supreme Court~~ on appeal in injunction or other  
 124 extraordinary cases, the judges of the superior courts may give immediate effect to such  
 125 judgments."

126 **SECTION 3-3.**

127 Part 7 of Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating  
 128 to receivership powers and procedures generally, is amended by revising Code Section  
 129 7-1-155, relating to injunction to restrain department, as follows:

130 "7-1-155.

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

146 **SECTION 3-4.**

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

150 "9-6-1.

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

155 **SECTION 3-5.**

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

158 "9-6-28.

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

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

164 **SECTION 3-6.**

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

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

184 **SECTION 3-7.**

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

187 "21-2-528.

188 An appeal from the final determination of the court may be taken within ten days from the  
 189 rendition thereof ~~to the Supreme Court~~ as in other civil cases. The filing of a notice of  
 190 appeal shall not act as a stay or supersedeas. The appellant may apply to the ~~Supreme~~  
 191 ~~Court~~ appellate court for a stay or supersedeas, and such court shall consider applications

192 for stays or supersedeas in such cases without regard to whether any notice of appeal has  
193 been filed or the record docketed in such cases."

194 **SECTION 3-8.**

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

198 "23-4-33.

199 When it becomes impossible to carry out any last will and testament in whole or in part,  
200 and in all matters of contract, the judges of the superior courts shall have power to render  
201 any decree that may be necessary and legal, provided that all parties in interest shall  
202 consent thereto in writing and there shall be no issue as to the facts or, if there is such an  
203 issue, that there shall be a like consent in writing that the judge presiding may hear and  
204 determine such facts, subject to a review ~~by the Supreme Court~~ on appeal, as in other cases.

205 In all cases where minors are interested, the consent of the guardian at law or the guardian  
206 ad litem shall be obtained before the decree is rendered."

207 **SECTION 3-9.**

208 Chapter 2 of Title 44 of the Official Code of Georgia Annotated, relating to recordation and  
209 registration of deeds and other instruments, is amended by revising Code Section 44-2-84,  
210 relating to review by Supreme Court, as follows:

211 "44-2-84.

212 All judgments and decrees of the superior court or the judge thereof which are rendered  
213 under this article shall be subject to review by the ~~Supreme Court~~ of Appeals."

214 **SECTION 3-10.**

215 Said chapter is further amended by revising subsections (e) and (f) of Code Section 44-2-103,  
216 relating to examiner's powers and appeal, as follows:

217 "(e) The right to grant a new trial upon any issue submitted to a jury and the right of appeal  
218 ~~to the Supreme Court~~ shall be as provided for in Code Sections 5-6-37 through 5-6-44,  
219 5-6-48, and 5-6-49.

220 (f) The judge may refer or recommit the record to the examiner in like manner as auditor's  
221 reports may be recommitted or he or she may on his or her own motion recommit it to the  
222 same or any other examiner for further information and report. ~~Where~~ When an exception  
223 or exceptions to the examiner's report have been sustained by the court or by verdict on the  
224 trial of an issue of fact or ~~where the Supreme Court~~ when the appellate court reverses the  
225 judgment of the trial court, it shall not be necessary for the trial court to recommit the case

226 to an examiner, but the judge shall proceed to enter a decree in accordance with the law and  
 227 the facts as thus established and appearing from the record; provided, however, that if the  
 228 judge, in his or her discretion, is of the opinion that it is in the interests of truth and justice  
 229 that a recommitment to an examiner should be made, ~~he~~ the judge may, upon the motion  
 230 of any party or on his or her own motion, order a recommitment of the whole case or any  
 231 part thereof or for the taking of additional testimony upon any matter which the court  
 232 deems necessary to the rendition of a true and correct decree."

233 **SECTION 3-11.**

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

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

259 **SECTION 3-12.**

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

263 "(3) The proceedings under this Code section shall be the same in all respects as in other  
 264 actions seeking equitable relief except that the petition shall be triable at the first term of  
 265 the court and, as in other cases, shall be reviewed ~~by~~ on appeal ~~to the Supreme Court of~~  
 266 ~~Georgia.~~"

267 **SECTION 3-13.**

268 The following Code sections of the Official Code of Georgia Annotated are amended by  
 269 replacing "Court of Appeals and the Supreme Court" with "Court of Appeals or the Supreme  
 270 Court" wherever such term occurs in:

271 (1) Code Section 5-7-1, relating to orders, decisions, or judgments appealable and the  
 272 defendant's right to cross appeal;

273 (2) Code Section 31-14-8.2, relating to appeals from orders of superior court or hearing  
 274 examiner, costs, and right to counsel;

275 (3) Code Section 37-3-150, relating to right to appeal orders of probate court, juvenile court,  
 276 or hearing examiner;

277 (4) Code Section 37-4-110, relating to appeal rights of clients, their representatives, or  
 278 attorneys; and

279 (5) Code Section 37-7-150, relating to right to appeal orders of probate court, juvenile court,  
 280 or hearing examiner.

281 **SECTION 3-14.**

282 The following Code sections of the Official Code of Georgia Annotated are amended by  
 283 replacing "Court of Appeals, and the Supreme Court" with "Court of Appeals, or the  
 284 Supreme Court" wherever such term occurs in:

285 (1) Code Section 37-3-150, relating to right to appeal orders of probate court, juvenile court,  
 286 or hearing examiner;

287 (2) Code Section 37-4-110, relating to appeal rights of clients, their representatives, or  
 288 attorneys;

289 (3) Code Section 37-7-150, relating to right to appeal orders of probate court, juvenile court,  
 290 or hearing examiner.

291

## PART IV

292

## SECTION 4-1.

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

296 "15-2-1.1.

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

298

## SECTION 4-2.

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

301 "15-2-10.

302 The additional justiceships created in 2016 shall be appointed by the Governor for a term  
 303 beginning January 1, 2017, and continuing through December 31, 2018, and until their  
 304 successors are elected and qualified. Their successors shall be elected in the manner  
 305 provided by law for the election of Supreme Court Justices at the nonpartisan judicial  
 306 election in 2018, for a term of six years beginning on January 1, 2019, and until their  
 307 successors are elected and qualified. Future successors shall be elected at the nonpartisan  
 308 judicial election each sixth year after such election for terms of six years and until their  
 309 successors are elected and qualified. They shall take office on the first day of January  
 310 following the date of the election. Reserved."

311

## SECTION 4-3.

312 Said chapter is further amended by revising subsection (a) of Code Section 15-2-16, relating  
 313 to reversal and affirmance, as follows:

314 "(a) In all cases decided by the Supreme Court, the concurrence of a majority of the  
 315 Justices shall be essential to a judgment of reversal. If the Justices are evenly divided, the  
 316 judgment of the court below shall stand affirmed. In all cases decided by the court, with  
 317 at least a quorum but less than ~~seven~~ nine Justices, the concurrence of at least ~~four~~ five  
 318 shall be essential to the rendition of a judgment; ~~and, if only four Justices act upon a case~~  
 319 ~~and they are evenly divided, the case shall be reargued before a full bench, if possible,~~  
 320 ~~before the term closes; and, if not possible, the judgment of the court below shall stand~~  
 321 ~~affirmed."~~

322

## PART V

323

## SECTION 5-1.

324 Said chapter is further amended by revising Code Section 15-2-4, relating to place of  
325 sessions and terms of court, as follows:

326 "15-2-4.

327 (a) The Supreme Court shall sit at the seat of government.

328 (b) Unless the Supreme Court by rule or order chooses to extend its terms of court, the  
329 terms shall be as follows:330 (1) ~~December~~ January term beginning the first Monday in ~~January~~ December;331 (2) April term beginning the ~~third~~ first Monday in April; and332 (3) ~~August~~ September term beginning the first Monday in ~~September~~ August.333 (c) Each term shall continue until the business for that term has been disposed of by the  
334 court, provided that, unless sooner closed by order of the court, the ~~September~~ August term  
335 shall end on ~~December 16~~ November 18, the ~~January~~ December term shall end on ~~April 14~~  
336 March 31, and the April term shall end on July 3~~1~~ 17. No judgment in a second-term case,  
337 other than a judgment on a motion for reconsideration in such case, shall be rendered  
338 during the last 15 days of any term. Disposition of first-term cases may be made during  
339 nonterm periods."

340

## PART VI

341

## SECTION 6-1.

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

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

346 (c) Part III of this Act shall become effective on January 1, 2017, and shall apply to cases  
347 in which a notice of appeal or application to appeal is filed on or after such date.348 (d) Part IV of this Act shall only become effective if funds are appropriated for the purpose  
349 of Part IV of this Act in an appropriations Act enacted at the 2016 regular session of the  
350 General Assembly. If funds are so appropriated, then Part IV of this Act shall become  
351 effective on July 1, 2016, for purposes of making the initial appointments of the Supreme  
352 Court Justices created by this Act, and for all other purposes Part IV of this Act shall become  
353 effective on January 1, 2017. If funds are not so appropriated, then Part IV of this Act shall  
354 not become effective and shall stand repealed on July 1, 2016.

355 (e) Part V of this Act shall become effective on December 5, 2016, and upon such date the  
356 December term of court shall begin as provided by this Act; provided, however, that the term  
357 of court which began on the first Monday in September, 2016, under the former provisions  
358 of Code Section 15-2-4 shall end on December 16, 2016.

359

**SECTION 6-2.**

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