

Senate Bill 453

By: Senators Kennedy of the 18th, Cowser of the 46th, Hufstetler of the 52nd, Walker III of the 20th and Gooch of the 51st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding courts, so as to provide for statutory rules and procedures for
3 the recusal or disqualification of judges of the superior and state courts; to provide for
4 motions; to provide for findings and conclusions; to provide for the selection of another
5 judge upon finding of recusal or disqualification; to amend Code Section 5-6-34 of the
6 Official Code of Georgia Annotated, relating to judgments and rulings deemed directly
7 appealable, procedure for review of judgments, orders, or decisions not subject to direct
8 appeal, scope of review, hearings in criminal cases involving a capital offense for which
9 death penalty is sought, and appeals involving nonmonetary judgments in child custody
10 cases, so as to provide for the direct appeal of all judgments or orders granting or refusing
11 motions to recuse or disqualify a judge from presiding in a particular case or proceeding; to
12 provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**PART I**
15 style="text-align:center">**SECTION 1-1.**

16 Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to general
17 provisions regarding courts, is amended by adding a new Code section to read as follows:

18 "15-1-8.1.

19 (a)(1) All motions to recuse or disqualify a judge of the superior court or a judge of the
20 state court presiding in a particular case or proceeding, including, but not limited to,
21 reasons provided for under Code Section 15-1-8, shall be filed as provided for under this
22 Code section.

23 (2) Motions to recuse or disqualify a judge shall be in writing, and all evidence thereon
24 shall be presented by accompanying affidavits which shall fully assert the facts upon
25 which the motion is founded. Such motions shall be filed with the clerk of the superior

26 court and served upon the judge who is the subject of the motion and the chief judge of
27 the judicial circuit if such judge is different than the judge who is the subject of the
28 motion not later than ten calendar days after the affiant first learned of the alleged
29 grounds for recusal or disqualification and not later than ten days prior to the hearing or
30 trial which is the subject of recusal or disqualification, unless good cause is shown for
31 failure to meet such time requirements. In no event shall the motion to recuse or
32 disqualify a judge be allowed to delay a trial or proceeding.

33 (b) The moving party shall state the facts and reasons for his or her belief that bias or
34 prejudice exists on the part of the judge, being definite and specific as to time, place,
35 persons, and circumstances of extrajudicial conduct or statements, which demonstrate
36 either bias in favor of any party, prejudice toward the moving party in particular, or a
37 systematic pattern of prejudicial conduct toward persons similarly situated to the moving
38 party, which would influence the judge and impede or prevent impartiality in that action.
39 Allegations consisting of bare conclusions and opinions shall not be legally sufficient to
40 support a motion or warrant further proceedings under this Code section.

41 (c)(1) Subject to paragraph (2) of this subsection, upon the filing of a motion to recuse
42 or disqualify a judge, another judge who is not the subject of the motion and who is
43 maintaining a court calendar for the immediately following five business days shall be
44 assigned to hear the motion in the following manner:

45 (A) If within a single-judge circuit, the district administrative judge shall select the
46 judge;

47 (B) If within a two-judge circuit, the other judge, unless disqualified, shall hear the
48 motion; or

49 (C) If within a multijudge circuit composed of three or more judges, selection shall be
50 made by use of the circuit's existing random, impartial case assignment method. If the
51 circuit does not have random, impartial case assignment rules, then the clerk shall
52 notify the chief judge and assignment shall be made as follows:

53 (i) The chief judge of the circuit shall select a judge within the circuit to hear the
54 motion, unless the chief judge is the one against whom the motion is filed;

55 (ii) In the event the chief judge is the one against whom the motion is filed, the
56 assignment shall be made by the judge of the circuit who is most senior in terms of
57 service other than the chief judge and who is not also a judge against whom the
58 motion is filed;

59 (iii) When the motion pertains to all active judges in the circuit, the district
60 administrative judge shall select a judge outside the circuit to hear the motion;

61 (iv) If the district administrative judge would otherwise make the assignment
62 pursuant to this subsection but such district administrative judge is the judge against

63 whom the motion is filed, the judge within the district who is most senior in time of
64 service, or next senior in time of service if the administrative judge is the one senior
65 in time of service, shall serve in this selection process instead of the district
66 administrative judge; or

67 (v) If all judges within a judicial administrative district are disqualified, including the
68 administrative judge, the matter shall be referred by the disqualified administrative
69 judge to the administrative judge of an adjacent district for the appointment of a judge
70 who is not a member of the district to preside over the motion or case.

71 (2) The judge who is the subject of the motion shall neither select nor participate in the
72 selection of the judge who shall hear the motion. If a judge is recused or disqualified
73 from hearing the motion, such judge shall not select nor participate in the selection of the
74 judge assigned to hear further proceedings concerning the motion.

75 (d)(1) The judge who is assigned the motion shall notify the judge who is the subject of
76 the motion that such motion has been filed and that such judge who is the subject of the
77 motion shall temporarily cease to act upon the merits of the case or proceeding in any
78 manner until a ruling on the motion is issued by such assigned judge.

79 (2) The allegations of the motion shall stand denied automatically upon the filing of the
80 motion.

81 (e)(1) Within five business days of assignment of the motion, the judge who is assigned
82 the motion shall:

83 (A) Determine whether such motion is filed timely, and if such motion is not timely,
84 then the motion shall be denied pursuant to a written order; and

85 (B) If such motion is found to have been filed timely, rule on the merits of the motion
86 pursuant to written findings and conclusions.

87 (2) The judge who is assigned the motion may consider the motion solely upon the
88 affidavits or may convene an evidentiary hearing in his or her discretion.

89 (3) If the motion is sustained, the selection of another judge to hear the case shall follow
90 the same procedure as established in subsection (c) of this Code section.

91 (f) The judge who is assigned the motion may assess reasonable and necessary attorney's
92 fees and expenses of litigation if, upon the motion of any party or the judge himself or
93 herself, such judge finds that the motion was brought in bad faith or was substantially
94 frivolous, groundless, or vexatious.

95 (g)(1) Nothing in this Code section shall be construed as prohibiting a judge from
96 voluntarily disqualifying himself or herself upon his or her own motion or on the motion
97 of one of the parties. A voluntary recusal shall not be construed as either an admission
98 to or denial of any allegations which have been set out in any filed motion.

99 (2) If a judge voluntarily disqualifies himself or herself, another judge shall be selected
 100 using the same procedure as established in subsection (c) of this Code section."

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PART II

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SECTION 2-1.

103 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
 104 rulings deemed directly appealable, procedure for review of judgments, orders, or decisions
 105 not subject to direct appeal, scope of review, hearings in criminal cases involving a capital
 106 offense for which death penalty is sought, and appeals involving nonmonetary judgments in
 107 child custody cases, is amended by revising subsection (a) as follows:

108 "(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the
 109 following judgments and rulings of the superior courts, the Georgia State-wide Business
 110 Court, the constitutional city courts, and such other courts or tribunals from which appeals
 111 are authorized by the Constitution and laws of this state:

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

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

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

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

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

120 (6) Any ruling on a motion which would be dispositive if granted with respect to a
 121 defense that the action is barred by Code Section 16-11-173;

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

124 (8) All judgments or orders refusing applications for dissolution of corporations created
 125 by the superior courts;

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

128 (10) All judgments or orders entered pursuant to subsection (c) of Code Section
 129 17-10-6.2;

130 (11) All judgments or orders in child custody cases awarding, refusing to change, or
 131 modifying child custody or holding or declining to hold persons in contempt of such child
 132 custody judgment or orders;

133 (12) All judgments or orders entered pursuant to Code Section 35-3-37; ~~and~~

- 134 (13) All judgments or orders entered pursuant to Code Section 9-11-11.1; and
135 (14) All judgments or orders granting or refusing motions to recuse or disqualify a judge
136 from presiding in a particular case or proceeding."

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PART III

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SECTION 3-1.

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