

The Senate Committee on Economic Development and Tourism offered the following substitute to HB 513:

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to appellate practice, so as to revise provisions regarding those judgments and rulings deemed directly appealable; to amend Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to pleadings and motions, so as to revise provisions regarding the procedure for claims asserted against a person or entity arising from an act by that person or entity which could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances; to revise definitions; to amend Chapter 5 of Title 51 of the Official Code of Georgia Annotated, relating to libel and slander, so as to revise a cross-reference; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to appellate practice, is amended by revising subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed directly appealable, procedure for review of judgments, orders, or decisions not subject to direct appeal, scope of review, hearings in criminal cases involving a capital offense for which death penalty is sought, and appeals involving nonmonetary judgments in child custody cases, as follows:

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

- (1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;
- (2) All judgments involving applications for discharge in bail trover and contempt cases;
- (3) All judgments or orders directing that an accounting be had;

- (4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;
- (5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;
- (6) Any ruling on a motion which would be dispositive if granted with respect to a defense that the action is barred by Code Section 16-11-173;
- (7) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;
- (8) All judgments or orders refusing applications for dissolution of corporations created by the superior courts;
- (9) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will;
- (10) All judgments or orders entered pursuant to subsection (c) of Code Section 17-10-6.2;
- (11) All judgments or orders in child custody cases awarding, refusing to change, or modifying child custody or holding or declining to hold persons in contempt of such child custody judgment or orders; ~~and~~
- (12) All judgments or orders entered pursuant to Code Section 35-3-37; and
- (13) All judgments or orders entered pursuant to Code Section 9-11-11.1."

SECTION 2.

Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to pleadings and motions, is amended by revising Code Section 9-11-11.1, relating to exercise of rights of freedom of speech and to petition government for redress of grievances, legislative findings, verification of claims, definitions, procedure on motions, exception, and fees and expenses, as follows:

"9-11-11.1.

(a) The General Assembly of Georgia finds and declares that it is in the public interest to encourage participation by the citizens of Georgia in matters of public significance and public interest through the exercise of their constitutional rights of petition and freedom of speech ~~and the right to petition government for redress of grievances~~. The General Assembly of Georgia further finds and declares that the valid exercise of the constitutional rights of petition and freedom of speech ~~and the right to petition government for a redress of grievances~~ should not be chilled through abuse of the judicial process. To accomplish the declarations provided for under this subsection, this Code section shall be construed broadly.

62 (b)(1) A claim for relief ~~For any claim asserted~~ against a person or entity arising from
63 ~~an act by that~~ any act of such person or entity which could reasonably be construed as an
64 act in furtherance of the person's or entity's right of petition or free speech or the right to
65 ~~petition government for a redress of grievances~~ under the Constitution of the United
66 States or the Constitution of the State of Georgia in connection with an issue of public
67 interest or concern shall be subject to a motion to strike unless the court determines that
68 the nonmoving party has established that there is a probability that the nonmoving party
69 will prevail on the claim, both the party asserting the claim and the party's attorney of
70 record, if any, shall be required to file, contemporaneously with the pleading containing
71 the claim, a written verification under oath as set forth in Code Section 9-10-113. Such
72 written verification shall certify that the party and his or her attorney of record, if any,
73 have read the claim, that to the best of their knowledge, information, and belief formed
74 after reasonable inquiry it is well grounded in fact and is warranted by existing law or a
75 good faith argument for the extension, modification, or reversal of existing law; that the
76 act forming the basis for the claim is not a privileged communication under paragraph (4)
77 of Code Section 51-5-7; and that the claim is not interposed for any improper purpose
78 such as to suppress a person's or entity's right of free speech or right to petition
79 government, or to harass, or to cause unnecessary delay or needless increase in the cost
80 of litigation. If the claim is not verified as required by this subsection, it shall be stricken
81 unless it is verified within ten days after the omission is called to the attention of the party
82 asserting the claim. If a claim is verified in violation of this Code section, the court, upon
83 motion or upon its own initiative, shall impose upon the persons who signed the
84 verification, a represented party, or both an appropriate sanction which may include
85 dismissal of the claim and an order to pay to the other party or parties the amount of the
86 reasonable expenses incurred because of the filing of the pleading, including a reasonable
87 attorney's fee.

88 (2) In making the determination as provided for in paragraph (1) of this subsection, the
89 court shall consider the pleadings and supporting and opposing affidavits stating the facts
90 upon which the liability or defense is based; provided, however, that if there exists a
91 claim that the nonmoving party is a public figure plaintiff, then the nonmoving party shall
92 be entitled to discovery on the sole issue of actual malice whenever actual malice is
93 relevant to the court's determination under paragraph (1) of this subsection.

94 (3) If the court determines that the nonmoving party under paragraph (1) of this
95 subsection has established a probability that he or she would prevail on the claim, neither
96 that determination nor the fact of such determination shall be admissible in evidence at
97 any later stage of the case or in any subsequent action and no burden or proof or degree

of proof otherwise applicable shall be affected by such determination in any later stage of the case or in any subsequent proceeding.

(b.1) In any action subject to subsection (b) of this Code section, a prevailing moving party on a motion to strike shall be granted the recovery of attorney's fees and expenses of litigation related to the action in an amount to be determined by the court based on the facts and circumstances of the case. If the court finds that a motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award attorney's fees and expenses of litigation to the nonmoving party prevailing on the motion for the attorney's fees and expenses of litigation associated with the motion in an amount to be determined by the court based on the facts and circumstances of the case.

(c) As used in this Code section, the term 'act in furtherance of the person's or entity's right of petition or free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern' includes any shall include:

(1) Any written or oral statement; or writing; or petition made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; or any;

(2) Any written or oral statement; or writing; or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

(3) Any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or

(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.

(d) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of this Code section until a final decision on the motion. The motion shall be heard not more than 30 days after service unless the emergency matters before the court require a later hearing. The court, on noticed motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding this subsection.

(e) An order granting or denying a motion to dismiss or a motion to strike shall be subject to direct appeal in accordance with subsection (a) of Code Section 5-6-34.

(f) Nothing in this Code section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, statute, law, or rule.

(g) This Code section shall not apply to any action brought by the Attorney General or a prosecuting attorney, or a city attorney acting as a prosecutor, to enforce laws aimed at public protection.

135 (f)(h) Attorney's fees and expenses of litigation under this Code section ~~may~~ shall be
136 requested by motion at any time during the course of the action but not later than 45 days
137 after the final disposition, including but not limited to dismissal by the plaintiff, of the
138 action."

139 **SECTION 3.**

140 Chapter 5 of Title 51 of the Official Code of Georgia Annotated, relating to libel and slander,
141 is amended in Code Section 51-5-7, relating to privileged communications, by revising
142 paragraph (4) as follows:

143 "(4) Statements made in good faith as part of an act in furtherance of the person's or
144 entity's right of petition or free speech ~~or the right to petition government for a redress~~
145 ~~of grievances~~ under the Constitution of the United States or the Constitution of the State
146 of Georgia in connection with an issue of public interest or concern, as defined in
147 subsection (c) of Code Section 9-11-11.1;"

148 **SECTION 4.**

149 This Act shall become effective on July 1, 2016.

150 **SECTION 5.**

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