

Senate Bill 450

By: Senators Kennedy of the 18th, Strickland of the 17th, Tillery of the 19th, Gooch of the 51st and Jones II of the 22nd

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 5, 15, 32, 40, 44, and 53 of the Official Code of Georgia Annotated, relating
2 to appeal and error, courts, highways, bridges, and ferries, motor vehicles and traffic,
3 property, and wills, trusts, and administration of estates, respectively, so as to clarify that
4 neither superior court nor a state court shall have appellate jurisdiction pursuant to Chapter 3
5 of Title 5 over any nonappealable order of a probate court subject to such chapter; to provide
6 for de novo proceeding with the right to a jury trial of certain probate court final judgments;
7 to require parties' consent for voluntary dismissals of petitions for review under certain
8 circumstances; to provide for retention of jurisdiction by magistrate courts under certain
9 circumstances; to rescind the requirement that such appeals be governed by Chapter 3 of
10 Title 5; to rename petitions for review; to provide for conforming changes; to provide for the
11 payment of certain sums into the registry of the trial court in appeals to the Court of Appeals
12 or Supreme Court; to provide for appeals from orders granting temporary letters of
13 administration; to provide for related matters; to provide for an effective date; to repeal
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

16

17 Chapter 3 of Title 5 of the Official Code of Georgia Annotated, relating to superior and state
18 court appellate practice, is amended by revising subsection (b) of Code Section 5-3-4,
19 relating to jurisdiction, as follows:

20 "(b) The superior courts shall not have appellate jurisdiction pursuant to this chapter over
21 any state court. The state courts shall not have appellate jurisdiction pursuant to this
22 chapter over any superior court. In addition, neither a superior court nor a state court shall
23 have appellate jurisdiction pursuant to this chapter over the following courts or matters:

24 (1) Juvenile courts;

25 (2) The Municipal Court of Columbus;

26 (3) The Civil Court of Macon-Bibb County;

27 (4) The Civil Court of Richmond County;

28 (5) The Georgia State-wide Business Court;

29 (6) A civil case in an Article 6 probate court;

30 (7) An order appointing a temporary administrator or any other order not appealable
31 from a probate court subject to this chapter; and

32 (8) Any other court from which an appeal directly to the Court of Appeals or the
33 Supreme Court is authorized."

SECTION 2.

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35 Said chapter is further amended by adding a new subsection to Code Section 5-3-5, relating
36 to obligations of court, de novo proceedings, and jury trials, to read as follows:

37 "(d) Except for convictions under Article 2 of Chapter 13 of Title 40, the review of any
38 appealable final judgment of a probate court subject to this chapter shall be a de novo
39 proceeding with the right to a jury trial if demanded."

40 **SECTION 3.**

41 Said chapter is further amended by adding a new subsection to Code Section 5-3-12, relating
42 to requirements for dismissal by reviewing court, to read as follows:

43 "(e) The consent of all parties shall be required for voluntary dismissal of a petition for
44 review if:

45 (1) The appeal is a de novo proceeding and a counterclaim is pending; or

46 (2) A motion for relief under Code Section 9-15-14 is pending."

47 **SECTION 4.**

48 Article 3 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to
49 civil proceedings in magistrate courts, is amended by revising paragraph (2) of subsection (b)
50 of Code Section 15-10-41, relating to no jury trials and appeals, as follows:

51 "(2) No appeal shall lie from a default judgment or from a dismissal for want of
52 prosecution after a nonappearance of a plaintiff for trial. Any voluntary dismissal by the
53 plaintiff or by order of the court for want of prosecution shall be without prejudice except
54 that the filing of a second such dismissal shall operate as an adjudication upon the merits.
55 Review, including review of a denial of a postjudgment motion to vacate a judgment,
56 shall be by petition for review to the state court of that county or to the superior court of
57 that county. Upon a reversal of a default judgment or reversal of a refusal to open a
58 default judgment, the magistrate court shall retain jurisdiction to hear the merits of the
59 case de novo."

60 **SECTION 5.**

61 Article 1 of Chapter 3 of Title 32 of the Official Code of Georgia Annotated, relating to
62 general provisions regarding acquisition of property for transportation purposes, is amended
63 in Code Section 32-3-11, relating to power of judge to set aside, vacate, and annul

64 declaration of taking, issuance and service on condemnor of rule nisi, and hearing, by
65 revising subsection (c) as follows:

66 "(c) If the condemnee desires to raise such questions as are outlined in subsection (b) of
67 this Code section, the same shall be done by proper pleadings, in the form of a petition for
68 review addressed to the judge of the superior court having jurisdiction thereof, filed in the
69 same proceedings not later than 30 days subsequent to the date of service upon the
70 condemnee of the declaration of taking. The presiding judge shall thereupon cause a rule
71 nisi to be issued and served upon the condemnor, requiring him or her to show cause at a
72 time and place designated by the judge why the title acquired by the declaration of taking
73 should not be vacated and set aside in the same way and manner as is now provided for
74 setting aside deeds acquired by fraud. Such hearing shall be had not earlier than 15 days
75 from the time of service of the rule nisi upon the condemnor, nor later than 60 days from
76 the date of filing of the declaration of taking, and with the right of appeal by either party,
77 as in other cases. ~~A petition for review filed pursuant to this subsection shall be governed~~
78 ~~by the provisions of Chapter 3 of Title 5, except to the extent any such provision is in~~
79 ~~conflict with any provision of this article."~~

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SECTION 6.

81 Said article is further amended by revising Code Section 32-3-14, relating to filing a notice
82 of appeal, as follows:

83 "32-3-14.

84 If the owner, or any of the owners, or any person having a claim against or interest in the
85 property is dissatisfied with the amount of compensation as estimated in the declaration of
86 taking and deposited in court, as provided for in Code Section 32-3-7, such person or
87 persons, or any of them, shall have the right, at any time subsequent to the filing of the
88 declaration and the deposit of the fund into court, but not later than 30 days following the
89 date of the service as provided for in Code Sections 32-3-8 and 32-3-9, to file with the

90 court a ~~petition for review~~ notice of appeal, the same to be in writing and made a part of
91 the record in the proceedings."

92 **SECTION 7.**

93 Said article is further amended in Code Section 32-3-16, relating to appeal to jury, evidence
94 to be heard on appeal, and subsequent review of issues not brought before jury, by revising
95 subsections (a) and (c) as follows:

96 "(a) After the ~~petition for review~~ notice of appeal has been filed as provided in Code
97 Section 32-3-14, it shall be the duty of the court at the next term thereof, which shall
98 convene not earlier than 30 days subsequent to the date of service, as provided for in Code
99 Sections 32-3-8 and 32-3-9, to cause an issue to be made and tried by a jury as to the value
100 of the property or interest taken and the consequential damages to property or interests not
101 taken, with the same right to move for a new trial and file a ~~petition for review~~ notice of
102 appeal as in other cases at law, provided that an interlocutory award has not become final
103 pursuant to Code Section 32-3-15."

104 "(c) If, for any reason, the issues made by the filing of the ~~petition for review~~ notice of
105 appeal provided for in this Code section are not tried by a jury as to the value of the
106 property or interest taken and the consequential damages to the property or interests not
107 taken, at the next term of the court after the filing of such appeal, such fact shall not be
108 cause for dismissal of the appeal and the issues made by such appeal shall be subject to trial
109 at any future term of the court."

110 **SECTION 8.**

111 Said article is further amended by revising Code Section 32-3-17.1, relating to decisions
112 upon questions of law, power of judge to give necessary orders and directions, and jury trial
113 in open court only, as follows:

114 "32-3-17.1.

115 All questions of law arising upon the pleadings or in any other way arising from the cause,
116 subsequent to the filing of the declaration of taking and the deposit of the fund, and
117 subsequent to the filing of a ~~petition for review~~ notice of appeal, if any, shall be passed on
118 by the presiding judge who may, from time to time, make such orders and give such
119 directions as are necessary to speed the cause, and as may be consistent with justice and
120 due process of law; but no jury trial shall be had except in open court."

121 **SECTION 9.**

122 Article 2 of Chapter 13 of Title 40 of the Official Code of Georgia Annotated, relating to
123 arrests, trials, and appeals regarding the prosecution of traffic offenses, is amended by
124 revising Code Section 40-13-28, relating to appeal to superior court and bond, as follows:

125 "40-13-28.

126 Any defendant convicted under this article shall have the right of appeal to the superior
127 court. The provisions of subsections (b), ~~and (c), and (d)~~ of Code Section 5-3-5 and
128 subsection (e) of Code Section 5-3-9 shall not apply to appeals under this Code section.
129 Otherwise, the appeal shall be entered as appeals are entered from the probate court to the
130 superior court, provided that the defendant shall be entitled to bail and shall be released
131 from custody upon giving the bond as is provided for appearances in criminal cases in the
132 courts of this state. Such bond shall have the same conditions as appearance bonds in
133 criminal cases. The appeal to the superior court shall not be a de novo investigation before
134 a jury but shall be on the record of the hearing as certified by the judge of that court who
135 presided at the hearing below."

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SECTION 10.

137 Article 3 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to
138 dispossessory proceedings, is amended by revising subsection (b) of Code Section 44-7-56,
139 relating to appeal, procedure, and possession and payment of rent pending appeal, as follows:

140 "(b) An appeal made pursuant to subsection (a) of this Code section shall proceed as
141 follows:

142 (1) A copy of the petition for review filed in the reviewing superior or state court or the
143 notice of appeal shall be filed with the clerk of the trial court within seven days after the
144 date the judgment was entered in the trial court;

145 (2) The clerk shall immediately notify the trial judge of the petition for review or notice
146 of appeal, and the trial judge may, within 15 days after the same is filed in the trial court,
147 supplement the record with findings of fact and conclusions of law which will be
148 considered as a part of the order of the judge in that case;

149 (3) Except as provided in paragraph (5) of this subsection, if ~~if~~ the judgment of the trial
150 court is against the tenant and the tenant appeals this judgment, the tenant shall notify the
151 trial court of his or her appeal and pay into the registry of the reviewing superior or state
152 court all sums found by the trial court to be due for rent in order to remain in possession
153 of the premises; ~~and~~

154 (4) Except as provided in paragraph (5) of this subsection, the ~~The~~ tenant shall pay all
155 future rent as it becomes due into the registry of the reviewing superior or state court
156 pursuant to paragraph (1) of subsection (a) of Code Section 44-7-54 until the issue has
157 been finally determined on appeal; and

158 (5) For appeals to the Court of Appeals or Supreme Court, the tenant shall pay all sums
159 found by the trial court to be due for rent or future rent into the registry of the trial court
160 that rendered the judgment appealed."

161 **SECTION 11.**

162 Article 4 of Chapter 6 of Title 53 of the Official Code of Georgia Annotated, relating to
163 temporary administration, is amended by revising subsection (c) of Code Section 53-6-30,
164 relating to power of court, appointment of administrator, and appeal, as follows:

165 "(c) There shall be no appeal from an order granting temporary letters of administration,
166 either to the superior court under ~~subsection (a) of Code Section 5-3-2 Chapter 3 of Title 5~~
167 or to the Supreme Court or the Court of Appeals under subsection (a) of Code Section
168 15-9-123."

169 **SECTION 12.**

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

172 **SECTION 13.**

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