

Senate Bill 452

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

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 6 of Title 5 and Article 5 of Chapter 7 of Title 17 of the
2 Official Code of Georgia Annotated, relating to appellate practice and arraignment and pleas
3 generally, respectively, so as to withdraw the right of appeal on judgments of conviction
4 entered upon a plea of guilty; to provide for the direct appeal of all judgments or orders
5 granting or refusing motions to recuse or disqualify a judge from presiding in a particular
6 case or proceeding; to provide limitations on when a trial court shall consider motions to
7 withdraw the plea of "guilty"; to provide for related matters; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
12 appellate practice, is amended by revising Code Section 5-6-33, relating to right of appeal
13 generally, as follows:

14 "5-6-33.

15 (a)(1) Either party in any civil case and the defendant in any criminal proceeding in the
16 superior, state, or city courts, or in the Georgia State-wide Business Court, may appeal
17 from any sentence, judgment, decision, or decree of the court, or of the judge thereof in
18 any matter heard at chambers, except a judgment of conviction entered upon a plea of
19 guilty.

20 (2) Either party in any civil case in the probate courts provided for by Article 6 of
21 Chapter 9 of Title 15 may appeal from any judgment, decision, or decree of the court, or
22 of the judge thereof in any matter heard at chambers.

23 (b) This Code section shall not affect Chapter 7 of this title."

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SECTION 2.

Said article is further 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 Georgia State-wide Business Court, 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 or when the judgment of conviction was entered upon a plea of guilty;

(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;

(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; and

(14) All judgments or orders granting or refusing motions to recuse or disqualify a judge from presiding in a particular case or proceeding."

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SECTION 3.

61 Said article is further amended by revising subsection (a) of Code Section 5-6-38, relating
 62 to time of filing notice of appeal, cross appeal, record and transcript for cross appeal, division
 63 of costs, and appeals in capital offense cases for which death penalty is sought, as follows:

64 "(a) A notice of appeal shall be filed within 30 days after entry of the appealable decision
 65 or judgment complained of, except upon a judgment of conviction entered upon a plea of
 66 guilty; but when a motion for new trial, a motion in arrest of judgment, or a motion for
 67 judgment notwithstanding the verdict has been filed, the notice shall be filed within 30 days
 68 after the entry of the order granting, overruling, or otherwise finally disposing of the
 69 motion. In civil cases, the appellee may institute cross appeal by filing notice thereof
 70 within 15 days from service of the notice of appeal by the appellant; and the appellee may
 71 present for adjudication on the cross appeal all errors or rulings adversely affecting him;
 72 and in no case shall the appellee be required to institute an independent appeal on his own
 73 right, although the appellee may at his option file an independent appeal. The notice of
 74 cross appeal shall set forth the title and docket number of the case, the name of the
 75 appellee, the name and address of his attorney, and a designation of any portions of the
 76 record or transcript designated for omission by the appellant and which the appellee desires
 77 included and shall state that the appellee takes a cross appeal. In all cases where the notice
 78 of appeal did not specify that a transcript of evidence and proceedings was to be
 79 transmitted as a part of the record on appeal, the notice of cross appeal shall state whether
 80 such transcript is to be filed for inclusion in the record on appeal. A copy of the notice of
 81 cross appeal shall be served on other parties of record in the manner prescribed by Code
 82 Section 5-6-32."

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SECTION 4.

84 Article 5 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to
 85 arraignment and pleas generally, is amended by revising subsection (b) of Code Section
 86 17-7-93, relating to reading of indictment or accusation, answer of accused to charge,
 87 recordation of "guilty" plea and pronouncement of judgment, withdrawn guilty pleas, and
 88 pleas by immigrants, as follows:

89 "(b) If the person pleads 'guilty,' the plea shall be immediately recorded on the minutes of
 90 the court by the clerk, together with the arraignment; and the court shall pronounce the
 91 judgment of the law upon the person in the same manner as if he or she had been convicted
 92 of the offense by the verdict of a jury. At any time before judgment is pronounced, the
 93 accused person may withdraw the plea of 'guilty' and plead 'not guilty.' Once the court has
 94 pronounced judgment on a guilty plea, the trial court shall only consider a motion to

95 withdraw the plea of 'guilty' within the same term of court or 30 days from the day the plea
96 was entered, whichever is later."

97 **SECTION 5.**

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