

The Senate Committee on the Judiciary offered the following substitute to SB 450:

A BILL TO BE ENTITLED
AN ACT

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

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14

SECTION 1.

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

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

22 (1) Juvenile courts;

23 (2) The Municipal Court of Columbus;

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

25 (4) The Civil Court of Richmond County;

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

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

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

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

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SECTION 2.

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

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

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SECTION 3.

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

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

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

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

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SECTION 4.

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

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

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SECTION 5.

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

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

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SECTION 6.

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

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

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

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

85 (3) Except as provided in paragraph (5) of this subsection, if ~~if~~ the judgment of the trial
 86 court is against the tenant and the tenant appeals this judgment, the tenant shall notify the
 87 trial court of his or her appeal and pay into the registry of the reviewing superior or state

88 court all sums found by the trial court to be due for rent in order to remain in possession
89 of the premises; and

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

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

97 **SECTION 7.**

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

101 "(c) There shall be no appeal from an order granting temporary letters of administration,
102 either to the superior court under ~~subsection (a) of Code Section 5-3-2~~ Chapter 3 of Title 5
103 or to the Supreme Court or the Court of Appeals under subsection (a) of Code Section
104 15-9-123."

105 **SECTION 8.**

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

108 **SECTION 9.**

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