



Court of Appeals

Memorandum

To: Chief Judge J.D. Smith
From: 
William L. Martin, III
Subject: 2004 Legislation
Date: April 19, 2004

Attached please find a short synopsis of several bills which were in the legislature and had the opportunity to effect courts. As you can see from Holly's review, only two bills passed.

Thank you.

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Attachments

2004 Legislation of Interest to the Court of Appeals of Georgia

Bills Passing Both Houses

***HB1450 Declaration of Judicial Emergency; Appeal.** Sponsors: Rep. Bordeaux, Campbell, Stokes and Fleming. Adds new code sections O.C.G.A. §§ 38-3-(50-56) providing for declaration of a judicial emergency by order, extension of certain deadlines, and appeal of that order to the Court of Appeals with a further right of appeal to the Supreme Court. Provides that an appeal shall be filed no later than 45 days after the expiration of the judicial order, filing in the superior court, waiver of costs, and immediate hearing following the procedure of emergency motions.

***SB411 Supersedeas Bonds.** Sponsor: Sen. Tanksley. Amends O.C.G.A. §5-6-46 to provide in a civil case appeal that the trial court, upon motion of the appellee, may require another form of security as an alternative to a supersedeas bond; changes limit on the amount of bond or security to no greater than the amount of the judgment and no greater than \$25 million regardless of the value of the judgment. Casts provisions in gender neutral language. Revises O.C.G.A. §9-12-134 to refer to the appropriate sections of the amended O.C.G.A. §5-6-46.

Bills which Failed to Pass

***HB322 Appellate Procedure Changes.** Sponsors: Rep. Moraitakis, Campbell, Oliver, Ralston, & Stokes Suggested changes from State Bar Appellate Practice Section. Amends O.C.G.A. §§5-6-34, 35, 39 and 9-11-56 consolidating and clarifying code provisions on direct appeal versus applications and providing for extensions of time to file applications.

***HB869 Court Fines & Fees Increase.** Sponsors: Rep. Coleman, Jenkins, and Stephenson. Failed at Conference Committee stage. Amends O.C.G.A. Title 15 increasing certain court fees for the purpose of funding the indigent defense system. Original bill designated AOC as collection agent, but Senate substitute redefines membership of Superior Court Clerks Cooperative Authority and designates it collection agent for certain fees, surcharges and penalties collected by trial courts. As a result of this bill's failure to pass, the Governor intends to call a special session for the purpose of balancing the budget and funding the recently created indigent defense system.

***HB1215 Application Process Not Apply to Zoning or Land Use Issues.** Sponsor: Rep. Richardson Amends O.C.G.A. §5-6-35 creating an exception for cases involving zoning or land use issues from the provisions of this code section requiring certain cases to be appealed by application.

HB1387 Attorney Fees; Appeal by Application. Sponsors: Rep. Heard, Sheldon, Post, Crawford, Marin & Floyd Adds new code section O.C.G.A. §9-15-16 to provide attorney's fees and litigation expenses in any civil action in any court to the prevailing parties upon motion and to provide for an appeal by application.

HB1399 Medical Malpractice Expert Witness Qualifications and Testimony; Direct Appeal. Sponsors: Rep. Porter, Bordeaux, Parrish, Skipper, & Campbell, etc. Adds new code sections

O.C.G.A. §§ 9-11-37.1 and 24-9-67.1 and amends O.C.G.A. §24-9-67. Provides that in a medical malpractice case, a plaintiff may take a direct appeal from an order dismissing a defendant or the action when the order was the result of plaintiff's failure to designate a expert witness qualified under this act. Tolls statutes of limitation, repose, and renewal of actions during appeal.

***HB1455 Continuance when General Assembly Member Is Party or Attorney.** Sponsors: Rep. Buck, Smyre, Hugley & Buckner Adds O.C.G.A. §9-10-150.1 and amends O.C.G.A. §§ 9-10-150 and 17-8-26. Provides that continuance shall apply to days that the general assembly member is attending a legislative committee meeting as well as attendance of the general session and provides that the continuance will be granted upon written notice to the court.

HB1490 Change Concurrent Jurisdiction of Superior and Juvenile Courts and Provisions regarding Transfer of Serious Violent Felony Cases; Eliminates Appeal of Transfer Decision. Sponsors: Morgan, Stokes, Oliver, Sinkfield, Bruce Amends O.C.G.A. Title 15 Chapter 11 and O.C.G.A. §17-10-14. Although the original bill eliminated appeal of the decision to transfer a juvenile from the superior to the juvenile court, the House Substitute eliminated this provision from the bill as well as making other substantial changes.

SB45 Demand for Trial/ Appeals. Sponsors: Sen. Clay, Tanksley & Hamrick. Amends O.C.G.A. §17-7-170 to provide that if a case in which a demand for trial was filed is reversed on appeal, a new demand must be filed during the term of court the remittitur was received by the trial court clerk or the next succeeding term.

SB435 Certification of Class Actions; Appellate Procedures. Sponsors: Tolleson, Price, Johnson & Unterman Amends O.C.G.A. §9-11-23 (f) to provide procedures for certification of a class; appeal of an order either certifying or refusing to certify a class in the manner of a final order; and a deadline for filing the appeal of 42 days from the order. This procedure does not affect the right of a party after final judgment to appeal although if it is the second appeal, it shall be on the record and considered on the basis of any change in the facts or law since the earlier decision. The action in the trial court is stayed until adjudication of the appeal.

* Bills which passed at least one House of the 2004 Legislature.