

JAN 22 2021

A BILL FOR AN ACT

RELATING TO THE JUDICIARY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the fair,
2 independent, and impartial administration of justice is a
3 long-standing value of American jurisprudence. In Hawaii,
4 judges are required to be recused from hearing matters for which
5 they have a disqualifying relationship, pecuniary interest,
6 previous judgment, or other perceived bias or prejudice. The
7 legislature notes that this recusal may be achieved voluntarily
8 or through the filing of an affidavit by a party to a suit,
9 action, or proceeding alleging that the judge before whom the
10 action or proceeding is to be tried has a disqualifying personal
11 bias or prejudice.

12 The legislature finds that at the appellate level,
13 authorizing the filing of a motion for a hearing on a possible
14 conflict of interest when a party to a suit, action, or
15 proceeding believes that a judge or justice hearing the
16 appellate case has a disqualifying conflict of interest would
17 facilitate a valuable colloquy regarding impartiality, allow a



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1 judge or justice the opportunity to rebut any allegation of a
2 disqualifying conflict of interest, and promote transparency
3 within the State's judiciary.

4 Accordingly, the purpose of this Act is to require an
5 appellate court to conduct a hearing when a party to any suit,
6 action, or proceeding of the appellate court files a motion for
7 hearing on a possible conflict of interest.

8 SECTION 2. Section 601-7, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§601-7 Disqualification of judge[+] or justice;**
11 **relationship, pecuniary interest, previous judgment, bias or**
12 **prejudice.** (a) No person shall sit as a judge in any case in
13 which:

14 (1) The judge's relative by affinity or consanguinity
15 within the third degree is counsel, or interested
16 either as a plaintiff or defendant, or in the issue of
17 which the judge has, either directly or through [~~such~~]
18 the relative, a more than de minimis pecuniary
19 interest; or

20 (2) The judge has been of counsel or on an appeal from any
21 decision or judgment rendered by the judge;



1 provided that no interests held by mutual or common funds, the
2 investment or divestment of which are not subject to the
3 direction of the judge, shall be considered pecuniary interests
4 for purposes of this section; ~~and~~ provided further that after
5 full disclosure on the record, parties may waive
6 disqualification due to any pecuniary interest.

7 (b) Whenever a party to any suit, action, or proceeding,
8 civil or criminal, makes and files an affidavit that the judge
9 before whom the action or proceeding is to be tried or heard has
10 a personal bias or prejudice either against the party or in
11 favor of any opposite party to the suit, the judge shall be
12 disqualified from proceeding therein. Every such affidavit
13 shall state the facts and the reasons for the belief that bias
14 or prejudice exists and shall be filed before the trial or
15 hearing of the action or proceeding, or good cause shall be
16 shown for the failure to file ~~it~~ the affidavit within ~~such~~
17 that time. No party shall be entitled in any case to file more
18 than one affidavit~~+~~, and no affidavit shall be filed unless
19 accompanied by a certificate of counsel of record that the
20 affidavit is made in good faith. Any judge may ~~disqualify~~
21 ~~oneself~~ recuse themselves by filing with the clerk of the court



1 ~~[of]~~ for which the judge ~~[is a judge]~~ presides a certificate
2 that the judge ~~[deems oneself]~~ is unable for any reason to
3 preside with absolute impartiality in the pending suit or
4 action.

5 (c) Notwithstanding subsection (b), a party to any action
6 or proceeding being heard in any appellate court in the State
7 may file a motion for a hearing on possible conflict of interest
8 when the party believes that any judge or justice before whom
9 the pending action or proceeding is to be tried or heard may
10 have a disqualifying conflict of interest resulting in a
11 personal bias or prejudice either against the party or in favor
12 of any opposite party to the suit. The motion shall state the
13 facts and reasons for the belief that bias or prejudice exists
14 and shall be filed before the hearing of the action or
15 proceeding, or good cause shall be shown for the failure to file
16 the motion within that time. No party shall be entitled in any
17 case to file more than one motion for a hearing on possible
18 conflict of interest against a particular judge or justice, and
19 no motion shall be filed unless accompanied by a certificate of
20 counsel of record that the motion is made in good faith. The
21 remaining judges or justices on the panel or court hearing the



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1 action or proceeding shall hear and rule on the motion for
2 hearing on possible conflict of interest. The judge or justice
3 who is the subject of the motion shall be disqualified from
4 hearing or ruling on the motion, but shall have the opportunity
5 to:

- 6 (1) File a response to the motion; or
7 (2) Rescue themself by filing with the clerk of the court
8 for which the judge or justice presides a certificate
9 that the judge or justice is unable for any reason to
10 preside with absolute impartiality in the pending
11 action or proceeding."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

15

INTRODUCED BY:  _____



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Report Title:

Appellate Courts; Conflicts of Interest; Judges; Justices

Description:

Requires an appellate court to conduct a hearing when a conflict of interest pertaining to a judge or justice is alleged by motion of a party to any suit, action, or proceeding of the appellate court.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

