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



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 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 after full disclosure on the
5 record, parties may waive disqualification due to any pecuniary
6 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~~] prior to the
15 trial or hearing of the action or proceeding, or good cause
16 shall be shown for the failure to file [~~it~~] the affidavit within
17 [~~such~~] that time. No party shall be entitled in any case to
18 file more than one affidavit; and no affidavit shall be filed
19 unless accompanied by a certificate of counsel of record that
20 the 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 suit,
6 action, or proceeding being heard in any appellate court in the
7 State may file a motion for a hearing on possible conflict of
8 interest when the party believes that any judge or justice
9 before whom the pending suit or action is to be tried or heard
10 may 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 the reasons for the belief that bias or prejudice
14 exists and shall be filed prior to the trial or hearing of the
15 action or proceeding, or good cause shall be shown for the
16 failure to file the motion within that time. No party shall be
17 entitled in any case to file more than one motion for a hearing
18 on possible conflict of interest against a particular judge or
19 justice; and no motion shall be filed unless accompanied by a
20 certificate of counsel of record that the motion is made in good
21 faith. The remaining judges or justices on the panel or court



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

- 6 (1) File a response to the motion; or
- 7 (2) Rescue themselves 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 suit
 11 or action."

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.

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INTRODUCED BY: Sense Bon
 H. K. Kishin
~~[Signature]~~
 [Signature]
 Sally A. Blumenthal
 [Signature]

H.B. NO. 2675

Report Title:

Judiciary; Supreme Court; Intermediate Court of Appeals;
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.

