

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 39

2021 Regular Session

Magee

CIVIL/PROCEDURE: Provides relative to the recusal of judges

<p>Synopsis of Senate Amendments</p>

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| <p>1. Makes technical changes.</p> |
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Digest of Bill as Finally Passed by Senate

Present law (C.C.P. Art. 151) sets forth mandatory and permissive grounds for recusal.

Proposed law (C.C.P. Art. 151) retains the mandatory grounds for recusal provided by present law and adds an additional ground requiring a judge to be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner. Proposed law also makes minor technical corrections.

Proposed law (C.C.P. Art. 152) makes the permissive grounds for recusal provided by present law disclosures that are required to be made by the judge to all attorneys and unrepresented parties.

Proposed law removes the requirement under present law that the judge's relative with a substantial economic interest in the cause be living in the judge's household and provides that any party may file a motion to recuse the judge if the disclosed information gives rise to a ground for recusal.

Proposed law further provides that the judge is required to disclose if he is related within the second degree to a member of the law firm of the attorney appointed to the case.

Present law (C.C.P. Art. 152) provides for the recusal of a judge on his own motion or by the supreme court and requires a judge who self-recuses to provide the ground for recusal in writing within 15 days.

Proposed law (C.C.P. Art. 153) changes present law to require a judge who self-recuses to contemporaneously file into the record the order of recusal and the written reasons therefor and to also provide a copy to the judicial administrator of the supreme court.

Present law (C.C.P. Art. 154) requires a motion to recuse to be filed prior to trial or hearing, or if the facts are discovered after the trial or hearing, immediately after the facts are discovered but prior to judgment.

Proposed law (C.C.P. Art. 154) requires a motion to recuse to be filed no later than 30 days after the facts are discovered but in all cases prior to the scheduling of the matter for trial, unless the facts occur or could not have been discovered prior to this deadline, in which case the motion to recuse shall be filed immediately after the occurrence or discovery of the facts.

Proposed law (C.C.P. Art. 154) also provides that if a motion to recuse is not timely filed or fails to set forth a ground for recusal, the judge who is the subject of the motion may deny it without the appointment of another judge or a hearing, provided that the judge provides written reasons for the denial.

Present law (C.C.P. Art. 153) provides for the power and authority of the recused judge and the judge to whom the motion to recuse is assigned to act in the cause.

Proposed law (C.C.P. Art. 155) retains present law.

Present law (C.C.P. Arts. 155-157) permits judges from the same court as the judge who is the subject of the motion to hear both the motion to recuse and the cause if the judge is ultimately recused, and in single judge districts, allows the judge who is the subject of the motion to select a judge from an adjoining district or a lawyer in the judicial district who has the qualifications of a district judge.

Present law (C.C.P. Art. 158) permits a party to apply to the supreme court for the appointment of another judge to try the cause.

Proposed law (C.C.P. Art. 155) provides that in all cases, motions to recuse shall be heard by an ad hoc judge appointed by the supreme court.

Proposed law (C.C.P. Art. 156) further provides that when a district court judge of a court having two or more judges is recused, the cause shall be randomly assigned to another division or section of the court, but in single judge districts, the cause shall be assigned to an ad hoc judge appointed by the supreme court.

Present law (C.C.P. Art. 159) provides for the recusal of a supreme court justice and allows the court to either have the cause argued before and disposed of by the other justices or appoint a judge having the qualifications of a supreme court justice to act for the recused judge.

Proposed law (C.C.P. Art. 157) retains present law but clarifies that the judge who is appointed to act for the recused judge can either be a sitting or retired judge.

Present law (C.C.P. Art. 160) provides for the recusal of a court of appeal judge and allows the motion to recuse to be heard by the other judges on the panel or the remaining judges of the court sitting en banc. Present law further provides that when a court of appeal judge is recused, the court can either have the cause argued before and disposed of by the other judges on the panel or appoint a judge having the qualifications of a court of appeal judge to act for the recused judge.

Proposed law (C.C.P. Art. 158) changes present law to require the motion to recuse to be heard by an ad hoc judge appointed by the supreme court and to provide that when a court of appeal judge is recused, the court must randomly allot another of its judges to sit on the panel in place of the recused judge.

Present law (C.C.P. Art. 161) provides for the recusal of an ad hoc judge.

Proposed law (C.C.P. Art. 159) retains present law and makes minor technical corrections.

Present law (C.C.P. Art. 4861) provides for the recusal of parish and city court judges and justices of the peace.

Proposed law retains present law and makes minor technical corrections.

Present law (C.C.P. Art. 4862) provides with respect to motions to recuse parish and city court judges and justices of the peace.

Proposed law changes present law to require the motion to recuse to be in writing and makes minor technical corrections.

Present law (C.C.P. Art. 4863) provides that in parish or city courts having more than one judge, both the motion to recuse and the cause shall be tried by another judge of the same court. Present law further provides that in all other cases, the motion to recuse shall be tried by the district court, and if the judge is recused, the district court shall either try the cause or appoint another judge to try the cause.

Proposed law provides that in parish or city courts having more than one judge, the motion to recuse shall be tried by another judge of the same court, and in all other cases, the motion to recuse shall be tried by an ad hoc judge appointed by the supreme court.

Present law (C.C.P. Art. 4864) allows a parish or city court judge who recuses himself to appoint another judge of the same court, if the court has more than one division, or to appoint a judge from an adjoining parish or an attorney who has the qualifications of a parish or city court judge to try the cause. Present law also allows a justice of the peace who recuses himself to appoint another justice of the peace to try the cause.

Proposed law changes present law to provide that when a parish or city court judge recuses himself or is recused, another judge of the same court shall be appointed to try the cause if that court has more than one division, and in all other cases, the cause shall be tried by an ad hoc judge appointed by the supreme court. Proposed law further provides that when a justice of the peace recuses himself, the cause shall be tried by a justice of the peace appointed by the supreme court.

Present law (C.C.P. Art. 4865) provides for the appointment of an ad hoc judge when a parish or city court judge is temporarily unable to preside.

Proposed law retains present law.

Present law (C.C.P. Art. 4866) provides for the power and authority of an ad hoc judge.

Proposed law retains present law and makes minor technical corrections.

(Amends C.C.P. Arts. 151-159, the heading of Chapter 3 of Title I of Book VIII of the C.C.P., and C.C.P. Arts. 4861(heading), 4862, 4863, 4864, 4865(heading), and 4866)