

D R A F T

SUMMARY

Provides procedure whereby elected judge may challenge attorney, law firm, district attorney's office or public defender's office that files motions to disqualify judge with such frequency as to effectively deny judge assignment to criminal or juvenile delinquency docket.

A BILL FOR AN ACT

Relating to disqualification of judges; amending ORS 14.260.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 14.260 is amended to read:

14.260. (1) Any party to or any attorney appearing in any cause, matter or proceeding in a circuit court may establish the belief described in ORS 14.250 by motion supported by affidavit that the party or attorney believes that the party or attorney cannot have a fair and impartial trial or hearing before the judge, and that it is made in good faith and not for the purpose of delay. **Except as provided in subsection (7) of this section**, no specific grounds for the belief need be alleged. The motion shall be allowed unless the judge moved against, or the presiding judge for the judicial district, challenges the good faith of the affiant and sets forth the basis of the challenge. In the event of a challenge, a hearing shall be held before a disinterested judge. The burden of proof is on the challenging judge to establish that the motion was made in bad faith or for the purposes of delay.

(2) The affidavit shall be filed with the motion at any time prior to final determination of the cause, matter or proceedings in uncontested cases, and in contested cases before or within five days after the cause, matter or proceeding is at issue upon a question of fact or within 10 days after the as-

1 signment, appointment and qualification or election and assumption of office
2 of another judge to preside over the cause, matter or proceeding.

3 (3) A motion to disqualify a judge may not be made after the judge has
4 ruled upon any petition, demurrer or motion other than a motion to extend
5 time in the cause, matter or proceeding. A motion to disqualify a judge or
6 a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve
7 in a county other than the county in which the judge or judge pro tem re-
8 sides may not be filed more than five days after the party or attorney ap-
9 pearing in the cause receives notice of the assignment.

10 (4) In judicial districts having a population of 200,000 or more, the affi-
11 davit and motion for change of judge shall be made at the time and in the
12 manner prescribed in ORS 14.270.

13 (5) In judicial districts having a population of 100,000 or more, but less
14 than 200,000, the affidavit and motion for change of judge shall be made at
15 the time and in the manner prescribed in ORS 14.270 unless the circuit court
16 makes local rules under ORS 3.220 adopting the procedure described in this
17 section.

18 (6) A party or attorney may not make more than two applications in any
19 cause, matter or proceeding under this section.

20 **(7) If an attorney, law firm, district attorney's office or public**
21 **defender's office files motions under subsection (1) of this section or**
22 **ORS 14.270 against an elected judge with such frequency as to effec-**
23 **tively deny the judge assignment to a criminal or juvenile delinquency**
24 **docket in any county within the judge's judicial district, the presiding**
25 **judge or the judge moved against may require the same attorney, firm**
26 **or office to support the next motion to disqualify the judge with an**
27 **affidavit that fully asserts facts upon which the judge's impartiality**
28 **may reasonably be questioned. When an attorney, law firm, district**
29 **attorney's office or public defender's office files a motion and affidavit**
30 **under this subsection, the judge moved against may submit an affida-**
31 **vit providing additional facts and considerations the judge deems per-**

1 **inent to the issue. A disinterested judge shall make an objective**
2 **inquiry, considering the motion and affidavits without oral hearing,**
3 **as to whether a reasonable person knowing all the facts and sur-**
4 **rounding circumstances would believe by a preponderance of evidence**
5 **that the judge lacks impartiality. The burden of proof is on the mov-**
6 **ing party. If the inquiry establishes that a reasonable person would**
7 **believe the judge lacks impartiality, the motion shall be granted. If the**
8 **inquiry does not establish that the judge lacks impartiality, the disin-**
9 **terested judge shall take appropriate action, which may include an**
10 **order preventing the attorney, firm or office from filing motions under**
11 **subsection (1) of this section or ORS 14.270 against the judge for a**
12 **period of up to six months. The Chief Justice may issue rules to im-**
13 **plement this subsection.**

14
