

# Senate Bill 807

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

1  
2 Relating to disqualification of judges; amending ORS 14.260.

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

4 **SECTION 1.** ORS 14.260 is amended to read:

5 14.260. (1) Any party to or any attorney appearing in any cause, matter or proceeding in a cir-  
6 cuit court may establish the belief described in ORS 14.250 by motion supported by affidavit that the  
7 party or attorney believes that the party or attorney cannot have a fair and impartial trial or  
8 hearing before the judge, and that it is made in good faith and not for the purpose of delay. **Except**  
9 **as provided in subsection (7) of this section**, no specific grounds for the belief need be alleged.  
10 The motion shall be allowed unless the judge moved against, or the presiding judge for the judicial  
11 district, challenges the good faith of the affiant and sets forth the basis of the challenge. In the  
12 event of a challenge, a hearing shall be held before a disinterested judge. The burden of proof is  
13 on the challenging judge to establish that the motion was made in bad faith or for the purposes of  
14 delay.

15 (2) The affidavit shall be filed with the motion at any time prior to final determination of the  
16 cause, matter or proceedings in uncontested cases, and in contested cases before or within five days  
17 after the cause, matter or proceeding is at issue upon a question of fact or within 10 days after the  
18 assignment, appointment and qualification or election and assumption of office of another judge to  
19 preside over the cause, matter or proceeding.

20 (3) A motion to disqualify a judge may not be made after the judge has ruled upon any petition,  
21 demurrer or motion other than a motion to extend time in the cause, matter or proceeding. A motion  
22 to disqualify a judge or a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve  
23 in a county other than the county in which the judge or judge pro tem resides may not be filed more  
24 than five days after the party or attorney appearing in the cause receives notice of the assignment.

25 (4) In judicial districts having a population of 200,000 or more, the affidavit and motion for  
26 change of judge shall be made at the time and in the manner prescribed in ORS 14.270.

27 (5) In judicial districts having a population of 100,000 or more, but less than 200,000, the affi-  
28 davit and motion for change of judge shall be made at the time and in the manner prescribed in ORS  
29 14.270 unless the circuit court makes local rules under ORS 3.220 adopting the procedure described  
30 in this section.

31 (6) A party or attorney may not make more than two applications in any cause, matter or pro-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 ceeding under this section.

2 **(7) If an attorney, law firm, district attorney's office or public defender's office files**  
3 **motions under subsection (1) of this section or ORS 14.270 against an elected judge with such**  
4 **frequency as to effectively deny the judge assignment to a criminal or juvenile delinquency**  
5 **docket in any county within the judge's judicial district, the presiding judge or the judge**  
6 **moved against may require the same attorney, firm or office to support the next motion to**  
7 **disqualify the judge with an affidavit that fully asserts facts upon which the judge's impar-**  
8 **tiality may reasonably be questioned. When an attorney, law firm, district attorney's office**  
9 **or public defender's office files a motion and affidavit under this subsection, the judge moved**  
10 **against may submit an affidavit providing additional facts and considerations the judge**  
11 **deems pertinent to the issue. A disinterested judge shall make an objective inquiry, consid-**  
12 **ering the motion and affidavits without oral hearing, as to whether a reasonable person**  
13 **knowing all the facts and surrounding circumstances would believe by a preponderance of**  
14 **evidence that the judge lacks impartiality. The burden of proof is on the moving party. If the**  
15 **inquiry establishes that a reasonable person would believe the judge lacks impartiality, the**  
16 **motion shall be granted. If the inquiry does not establish that the judge lacks impartiality,**  
17 **the disinterested judge shall take appropriate action, which may include an order preventing**  
18 **the attorney, firm or office from filing motions under subsection (1) of this section or ORS**  
19 **14.270 against the judge for a period of up to six months. The Chief Justice may issue rules**  
20 **to implement this subsection.**

21

---