

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0669.01 Jerry Barry x4341

HOUSE BILL 17-1132

HOUSE SPONSORSHIP

Lundeen,

SENATE SPONSORSHIP

Gardner,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING JUDICIAL DISQUALIFICATION IN CIVIL ACTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Currently, under the Colorado rules of civil procedure, a party may file a motion and affidavit to disqualify a judge for specified reasons. The bill establishes the process in statute and specifies the reasons why a judge may be disqualified. The bill adds to the process requirements that:

- ! The motion must be filed within certain time frames; and
- ! If the judge who is the subject of the motion does not immediately grant the motion, the issue is referred to the chief judge of the court or, if the judge is a chief judge, a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

chief judge of an adjoining jurisdiction.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 13-1-138 as
3 follows:

4 **13-1-138. Judicial disqualification in civil cases.** (1) A PARTY
5 TO AN ACTION MAY FILE A MOTION TO DISQUALIFY A JUDGE IF THE JUDGE:

- 6 (a) IS INTERESTED IN THE ACTION OR PREJUDICED;
7 (b) HAS BEEN COUNSEL FOR ANY OF THE PARTIES;
8 (c) IS OR HAS BEEN A MATERIAL WITNESS IN THE CASE; OR
9 (d) IS SO RELATED OR CONNECTED WITH ANY PARTY OR A PARTY'S
10 ATTORNEY AS TO RENDER IT IMPROPER FOR THE JUDGE TO SIT ON THE
11 TRIAL, APPEAL, OR OTHER PROCEEDING.

12 (2) (a) THE MOTION MUST BE SUPPORTED BY AN AFFIDAVIT
13 STATING FACTS SUFFICIENT TO ESTABLISH ONE OF THE GROUNDS
14 IDENTIFIED IN SUBSECTION (1) OF THIS SECTION AND MUST BE FILED AFTER
15 THE COMMENCEMENT OF THE ACTION BUT NOT LATER THAN TWENTY-ONE
16 DAYS AFTER THE LAST OF THE FOLLOWING:

- 17 (I) ASSIGNMENT OF THE ACTION OR HEARING TO THE JUDGE;
18 (II) APPEARANCE OF THE PARTY OR THE PARTY'S ATTORNEY
19 GIVING RISE TO THE GROUNDS FOR DISQUALIFICATION; OR
20 (III) THE DATE ON WHICH THE MOVING PARTY KNEW OR SHOULD
21 HAVE KNOWN OF THE GROUNDS ON WHICH THE MOTION IS BASED.

22 (b) A PARTY SHALL NOT FILE MORE THAN ONE MOTION TO
23 DISQUALIFY A JUDGE IN AN ACTION UNLESS THE SECOND OR SUBSEQUENT
24 MOTION IS BASED ON GROUNDS THAT THE PARTY DID NOT KNOW AND
25 COULD NOT HAVE KNOWN AT THE TIME OF AN EARLIER MOTION.

1 (c) IF THE TIMELINESS OF THE MOTION IS DETERMINED UNDER
2 SUBSECTION (2)(a)(III) OR SUBSECTION (2)(b) OF THIS SECTION, THE
3 AFFIDAVIT SUPPORTING THE MOTION MUST STATE WHEN AND HOW THE
4 PARTY CAME TO KNOW OF THE REASON FOR THE DISQUALIFICATION.

5 (3) (a) THE JUDGE WHO IS THE SUBJECT OF THE MOTION SHALL,
6 WITHOUT FURTHER HEARING OR A RESPONSE FROM ANOTHER PARTY:

7 (I) ENTER AN ORDER GRANTING THE MOTION OR CERTIFY THE
8 MOTION AND AFFIDAVIT TO THE CHIEF JUDGE OF THE COURT; EXCEPT THAT,
9 IF THE JUDGE WHO IS THE SUBJECT OF THE MOTION IS THE CHIEF JUDGE OF
10 THE COURT, THE CHIEF JUDGE MUST CERTIFY THE MOTION AND AFFIDAVIT
11 TO A CHIEF JUDGE IN AN ADJOINING, LIKE JURISDICTION; AND

12 (II) TAKE NO FURTHER ACTION IN THE CASE UNTIL THE MOTION IS
13 DECIDED.

14 (b) IF THE JUDGE GRANTS THE MOTION, THE ORDER MUST DIRECT
15 THE CHIEF JUDGE OF THE COURT TO ASSIGN THE ACTION OR HEARING TO
16 ANOTHER JUDGE OF THE COURT.

17 (c) (I) IF THE CHIEF JUDGE FINDS THAT THE MOTION AND AFFIDAVIT
18 ARE TIMELY FILED, FILED IN GOOD FAITH, AND LEGALLY SUFFICIENT, THE
19 CHIEF JUDGE SHALL ASSIGN ANOTHER JUDGE TO THE ACTION OR HEARING
20 OR ORDER THAT THE CHIEF JUDGE OF THE COURT ASSIGN ANOTHER JUDGE.

21 (II) IN DETERMINING ISSUES OF LAW OR FACT, THE CHIEF JUDGE
22 MAY CONSIDER ANY PART OF THE RECORD OF THE ACTION AND MAY
23 REQUEST THE JUDGE WHO IS THE SUBJECT OF THE MOTION AND AFFIDAVIT
24 RESPOND TO QUESTIONS POSED BY THE CHIEF JUDGE.

25 (III) THE CHIEF JUDGE MAY DENY A MOTION NOT FILED IN A
26 TIMELY MANNER.

27 **SECTION 2. Effective date - applicability.** This act takes effect

1 July 1, 2017, and applies to motions filed on or after said date.

2 **SECTION 3. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.