

1 SB138  
2 135490-2  
3 By Senators Ward, Whatley, and Fielding  
4 RFD: Judiciary  
5 First Read: 07-FEB-12  
6 PFD: 02/02/2012

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To authorize the appointment of former or retired  
12 judges to serve as private judges in certain district and  
13 circuit court cases; and to provide that a private judge would  
14 receive compensation for his or her service.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. As used in this act, "private judge"  
17 means a person who is qualified to act as a judge of a case.

18 Section 2. (a) Persons who may act as private judges  
19 shall:

20 (1) Have been, but are not actively serving as, a  
21 judge of a district or circuit court and have served in the  
22 capacity of judge for at least six consecutive years.

23 (2) Be admitted to the practice of law in Alabama.

24 (3) Be an active member in good standing of the  
25 Alabama State Bar Association.

26 (4) Be a resident of Alabama.

1 (b) A person may act as a judge of a case under this  
2 act only if all of the following occur:

3 (1) All parties to the action file a written  
4 petition with the circuit clerk of the court in which the  
5 action is pending requesting a private judge and naming the  
6 person whom the parties wish to have as private judge. The  
7 petition shall be accompanied by a form signed by the private  
8 judge selected consenting to the appointment.

9 (2) The case is one over which the court in which  
10 the former judge served would have had subject matter and  
11 monetary jurisdiction.

12 (3) The case is founded exclusively on domestic  
13 relations, contract, tort, or a combination of contract and  
14 tort.

15 Section 3. (a) A former judge qualified under this  
16 act who wishes to serve as a private judge must register with  
17 the Director of the Alabama Center for Alternative Dispute  
18 Resolution. The director shall verify that the former judge is  
19 qualified to serve as a private judge and shall compile and  
20 periodically update a list of registered private judges. The  
21 list of registered private judges shall be made available by  
22 the center to the public and to all actively serving judges in  
23 the state. The center may charge private judges an annual  
24 registration fee.

25 (b) If the parties to an action wish to have the  
26 action heard before a private judge, all parties shall submit  
27 to the circuit clerk of the court in which the action is

1 pending a written petition for the appointment of a private  
2 judge and consent to appointment from the private judge  
3 selected as described in subdivision (1) of subsection (b) of  
4 Section 2 of this act.

5 (c) The clerk shall forward the petition to the  
6 presiding judge of the circuit in which the proceedings are  
7 pending who shall verify that the former judge is registered  
8 under this section and shall enter an order granting the  
9 petition and appointing the private judge selected by the  
10 parties.

11 (d) The petition for an appointment of a private  
12 judge in a proceeding may be filed contemporaneously with the  
13 filing of the action or any time after the action has been  
14 filed, but before the beginning of a trial.

15 Section 4. (a) A trial conducted by a private judge  
16 shall be conducted without a jury.

17 (b) A person who serves as a private judge has, for  
18 each case the private judge hears, the same powers as the  
19 judge of a circuit court in relation to the following:

20 (1) Court procedure.

21 (2) Deciding the outcome of the case.

22 (3) Attendance of witnesses.

23 (4) Punishment of contempt.

24 (5) Enforcement of orders.

25 (6) Administering oaths.

26 (7) Giving all necessary certificates for the  
27 authentication of the records and proceedings.

1 (c) A person appointed as a private judge pursuant  
2 to the terms of this act shall have immunity in the same  
3 manner and to the same extent as a judge in the State of  
4 Alabama.

5 (d) All proceedings in an action heard by a private  
6 judge are of record and must be:

7 (1) Filed with the clerk of the circuit court in the  
8 county of proper venue under the Alabama Rules of Civil  
9 Procedure.

10 (2) Made available to the public in the same manner  
11 as circuit court records.

12 (e) The Alabama Rules of Civil Procedure shall apply  
13 for all actions brought before a private judge. The private  
14 judge shall maintain jurisdiction over all matters brought  
15 before him or her until the order is deemed final and  
16 appealable, as defined by the Alabama Rules of Civil  
17 Procedure. An appeal from an action or a judgment of a private  
18 judge may be taken in the same manner as an appeal from the  
19 circuit court of the county where the case is filed.

20 Section 5. A filing fee of one hundred dollars  
21 (\$100) shall be required with every petition to appoint a  
22 private judge. This one hundred (\$100) fee shall be  
23 distributed in equal parts to the Administrative Office of  
24 Courts and to the office of the clerk of the county in which  
25 the case being heard by the private judge is pending.  
26 Otherwise, costs in an action brought before a private judge

1 shall be taxed and distributed in the same manner as costs in  
2 the circuit court of the county in which the case is filed.

3 Section 6. (a) The clerk of the circuit court of the  
4 county in which the case is filed shall provide the same case  
5 management services as with any other case filed in the  
6 circuit clerk's office. The private judge hearing a case under  
7 this act shall have access to all pleadings, docket entries,  
8 and other filings as would a judge hearing the case.

9 (b) The sheriff of the county in which the case is  
10 filed shall provide such services related to service of  
11 process as for any other case filed in said county.

12 Section 7. (a) A case heard by a private judge may  
13 be heard:

14 (1) At any time.

15 (2) At any place in Alabama.

16 (b) A private judge under this act shall provide to  
17 the clerk of the court in which the case was filed the dates,  
18 times, and places of any proceeding that could result in a  
19 judgment. The notice shall be provided to the clerk and  
20 entered in the clerk's records at least three days before the  
21 proceeding is conducted.

22 Section 8. Notwithstanding the Rules of Civil  
23 Procedure, a private judge may receive compensation for  
24 hearing a case in an amount and subject to the terms and  
25 conditions agreed to by the private judge and the parties to  
26 the case. A contract for the services of a private judge must  
27 provide for the payment of the judge's compensation by the

1 parties, the compensation of all personnel, and the costs of  
2 all facilities and materials that are used in relation to the  
3 case and not otherwise covered.

4 Section 9. The provisions of this act are severable.  
5 If any part of this act is declared invalid or  
6 unconstitutional, that declaration shall not affect the part  
7 which remains.

8 Section 10. This act shall become effective on the  
9 first day of the third month following its passage and  
10 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 07-FEB-12

Read for the second time and placed on the calen-  
dar 1 amendment..... 16-FEB-12

Read for the third time and passed as amended .... 23-FEB-12

Yeas 24  
Nays 4

Patrick Harris  
Secretary