

1 SB138
2 135490-1
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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8 SYNOPSIS: Under existing law, the Supreme Court may
9 appoint and commission special circuit, district,
10 or probate judges for temporary service who are
11 compensated at the rate of \$100 per day and
12 provided expenses related to travel.

13 This bill would allow a former or retired
14 judge with certain qualifications to preside over
15 cases in a circuit or district court.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

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

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 Section 2. (a) Persons who may act as private judges
4 shall:

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

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

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

11 (4) Be a resident of Alabama.

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

14 (1) All parties to the action file a written
15 petition with the circuit clerk of the court in which the
16 action is pending requesting a private judge and naming the
17 person whom the parties wish to have as private judge. The
18 petition shall be accompanied by a form signed by the private
19 judge selected consenting to the appointment.

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

23 (3) The case is founded exclusively on domestic
24 relations, contract, tort, or a combination of contract and
25 tort.

1 (4) The case is one in which a utility is not a
2 party.

3 Section 3. (a) A former judge qualified under this
4 act who wishes to serve as a private judge must register with
5 the Director of the Alabama Center for Alternative Dispute
6 Resolution. The director shall verify that the former judge is
7 qualified to serve as a private judge and shall compile and
8 periodically update a list of registered private judges. The
9 list of registered private judges shall be made available by
10 the center to the public and to all actively serving judges in
11 the state.

12 (b) If the parties to an action wish to have the
13 action heard before a private judge, all parties shall submit
14 to the circuit clerk of the court in which the action is
15 pending a written petition for the appointment of a private
16 judge and consent to appointment from the private judge
17 selected as described in subdivision (1) of subsection (b) of
18 Section 2 of this act.

19 (c) The clerk shall forward the petition to the
20 presiding judge of the circuit in which the proceedings are
21 pending who shall verify that the former judge is registered
22 under this section and shall enter an order granting the
23 petition and appointing the private judge selected by the
24 parties.

25 (d) The petition for an appointment of a private
26 judge in a proceeding may be filed contemporaneously with the

1 filing of the action or any time after the action has been
2 filed, but before the beginning of a trial.

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

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

8 (1) Court procedure.

9 (2) Deciding the outcome of the case.

10 (3) Attendance of witnesses.

11 (4) Punishment of contempt.

12 (5) Enforcement of orders.

13 (6) Administering oaths.

14 (7) Giving all necessary certificates for the
15 authentication of the records and proceedings.

16 (c) A person appointed as a private judge pursuant
17 to the terms of this act shall have immunity in the same
18 manner and to the same extent as a judge in the State of
19 Alabama.

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

22 (1) Filed with the clerk of the circuit court in the
23 county of proper venue under the Alabama Rules of Civil
24 Procedure.

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

1 (e) The Alabama Rules of Civil Procedure shall apply
2 for all actions brought before a private judge. The private
3 judge shall maintain jurisdiction over all matters brought
4 before him or her until the order is deemed final and
5 appealable, as defined by the Alabama Rules of Civil
6 Procedure. An appeal from an action or a judgment of a private
7 judge may be taken in the same manner as an appeal from the
8 circuit court of the county where the case is filed.

9 Section 5. A filing fee of one hundred dollars
10 (\$100) shall be required with every petition to appoint a
11 private judge. Otherwise, costs in an action brought before a
12 private judge shall be taxed and distributed in the same
13 manner as costs in the circuit court of the county in which
14 the case is filed.

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

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

24 Section 7. (a) A case heard by a private judge may
25 be heard:

26 (1) At any time.

1 (2) At any place in Alabama.

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

8 Section 8. Notwithstanding the Rules of Civil
9 Procedure, a private judge may receive compensation for
10 hearing a case in an amount and subject to the terms and
11 conditions agreed to by the private judge and the parties to
12 the case. A contract for the services of a private judge must
13 provide for the payment of the judge's compensation by the
14 parties, the compensation of all personnel, and the costs of
15 all facilities and materials that are used in relation to the
16 case and not otherwise covered.

17 Section 9. The provisions of this act are severable.
18 If any part of this act is declared invalid or
19 unconstitutional, that declaration shall not affect the part
20 which remains.

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