

1 HB293
2 150716-1
3 By Representative DeMarco
4 RFD: Judiciary
5 First Read: 16-JAN-14

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8 SYNOPSIS: Under existing law, former and retired
9 judges may be appointed on a case by case basis to
10 serve as private judges in certain cases in the
11 circuit and district courts.

12 This bill would authorize a person who
13 previously served as an appellate court judge to
14 act as a private judge. This bill would remove the
15 requirement that a person may serve as a private
16 judge only if the court in which he or she formerly
17 served as judge would have had subject matter
18 jurisdiction over the case. This bill would allow a
19 person who is serving as a private judge to be
20 called to active duty status or accept appointment
21 as a special or senior judge while also serving as
22 a private judge.

23 This bill would require the Office of the
24 Attorney General to provide a defense in any case
25 brought against a private judge relating to his or
26 her service as a private judge.

1 This bill would provide further for the
2 duties and conduct of a private judge.

3 This bill would specifically authorize a
4 case heard by a private judge to be heard in the
5 county courthouse of the county where the case was
6 filed.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 Relating to private judges; to amend Sections 2, 4,
13 7, and 8 of Act 2012-266 of the 2012 Regular Session, now
14 appearing as Sections 12-11A-2, 12-11A-4, 12-11A-7, and
15 12-11A-8, respectively, Code of Alabama 1975; to authorize a
16 person who has previously served as an appellate court judge
17 to be a private judge; to provide further for the types of
18 cases that may be heard by a private judge; to provide further
19 for the duties and conduct of a private judge; to prohibit a
20 private judge from serving as a special or senior judge; to
21 provide that the Office of the Attorney General shall provide
22 defense in any case brought against a private judge related to
23 his or her service as a private judge; and to specifically
24 authorize a case heard by a private judge to be heard in the
25 courthouse of the county where the case was filed.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 2, 4, 7, and 8 of Act 2012-266
2 of the 2012 Regular Session, now appearing as Sections
3 12-11A-2, 12-11A-4, 12-11A-7, and 12-11A-8, respectively, Code
4 of Alabama 1975, are amended to read as follows:

5 "§12-11A-2.

6 "(a) Persons who may act as private judges shall:

7 "(1) Have been, but are not actively serving as, a
8 state Supreme Court justice, appellate court judge, or a judge
9 of a district or circuit court and have served in the capacity
10 of judge for at least six consecutive years.

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

12 "(3) Be an active member in good standing of the
13 Alabama State Bar Association.

14 "(4) Be a resident of Alabama.

15 "(b) A former or retired judge who is otherwise
16 qualified to serve as a private judge pursuant to this section
17 is not disqualified from acting as a private judge as a result
18 of being called to active duty status or accepting an
19 appointment as a special or senior judge.

20 "~~(b)~~ (c) A person may act as a judge of a case under
21 this chapter only if ~~all~~ both of the following occur:

22 "(1) All parties to the action file a written
23 petition with the circuit clerk of the court in which the
24 action is pending requesting a private judge and naming the
25 person whom the parties wish to have as private judge. The
26 petition shall be accompanied by a form signed by the private
27 judge selected consenting to the appointment.

1 "~~(2)~~ The case is one over which the court in which
2 the former judge served would have had subject matter and
3 monetary jurisdiction.

4 "~~(3)~~(2) The case is founded exclusively on domestic
5 relations, contract, tort, or a combination of contract and
6 tort.

7 "§12-11A-4.

8 "(a) A trial conducted by a private judge shall be
9 conducted without a jury.

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

13 "(1) Court procedure.

14 "(2) Deciding the outcome of the case.

15 "(3) Attendance of witnesses.

16 "(4) Punishment of contempt.

17 "(5) Enforcement of orders.

18 "(6) Administering oaths.

19 "(7) Giving all necessary certificates for the
20 authentication of the records and proceedings.

21 "(c) A person appointed as a private judge pursuant
22 to the terms of this chapter shall have immunity in the same
23 manner and to the same extent as a judge in the State of
24 Alabama. The Office of the Attorney General shall provide a
25 legal defense to any action brought against a private judge
26 arising out of his or her service in that capacity.

27 Notwithstanding this provision, the State of Alabama shall be

1 under no obligation to provide liability insurance coverage to
2 a private judge or any third party as a result of a legal
3 action instituted against a private judge.

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

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

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

11 "(e) The Alabama Rules of Civil Procedure shall
12 apply for all actions brought before a private judge. The
13 private judge shall maintain jurisdiction over all matters
14 brought before him or her until the order ~~is deemed final and~~
15 ~~appealable, as defined by the Alabama Rules of Civil Procedure~~
16 and all applicable post-trial motions are final and
17 appellable, including the approval of bonds on appeal, as
18 defined in the Rules of Civil and Appellate Procedure. An
19 appeal from an action or a judgment of a private judge may be
20 taken in the same manner as an appeal from the circuit court
21 of the county where the case is filed.

22 "(f) The parties to a proceeding involving a private
23 judge shall not be entitled to terminate the services of the
24 private judge until the proceedings are final. This provision
25 shall not prohibit a party from filing a motion requesting
26 recusal of the private judge based upon grounds permitted by
27 law.

1 "(g) In the event a third party seeks to intervene
2 in an action pending before a private judge, the third party
3 shall present his or her motion to the private judge for
4 ruling. The additional proceeding costs and private judge's
5 fees incurred as a result of the motion shall be paid by the
6 third party. If the motion is granted and the third party is
7 allowed to intervene, that party must consent to the use of
8 the private judge in order to continue the proceedings. Absent
9 the consent of the intervenor, the private judge shall
10 terminate the proceedings by written order directing the
11 presiding judge to reinstate the proceedings on the court's
12 docket. Any pendente lite orders entered by the private judge
13 shall remain in full force and effect pending further orders
14 of the court.

15 "(h) A private judge shall act in accordance with
16 the terms of the Alabama Canons of Judicial Ethics and shall
17 be subject to discipline for violations thereof in the same
18 manner as elected judges.

19 "(i) Notwithstanding any laws or statutes to the
20 contrary, a private judge shall not be deemed to have violated
21 any Canon of Judicial Ethics by virtue of serving in the
22 capacity of a private judge, nor shall the service in any way
23 affect eligibility for judicial retirement.

24 "§12-11A-7.

25 "(a) A case heard by a private judge may be heard:

26 "(1) At any time.

1 "(2) At any place in Alabama including in a county
2 courthouse of the circuit court in which the case is pending
3 provided there is space available.

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

10 "§12-11A-8.

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

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.