

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

1 SB138

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4 ENROLLED, An Act,

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 Section 2. (a) Persons who may act as private judges
13 shall:

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

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

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

20 (4) Be a resident of Alabama.

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

23 (1) All parties to the action file a written
24 petition with the circuit clerk of the court in which the
25 action is pending requesting a private judge and naming the

1 person whom the parties wish to have as private judge. The
2 petition shall be accompanied by a form signed by the private
3 judge selected consenting to the appointment.

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

7 (3) The case is founded exclusively on domestic
8 relations, contract, tort, or a combination of contract and
9 tort.

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

20 (b) If the parties to an action wish to have the
21 action heard before a private judge, all parties shall submit
22 to the circuit clerk of the court in which the action is
23 pending a written petition for the appointment of a private
24 judge and consent to appointment from the private judge

1 selected as described in subdivision (1) of subsection (b) of
2 Section 2 of this act.

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

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

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

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

18 (1) Court procedure.

19 (2) Deciding the outcome of the case.

20 (3) Attendance of witnesses.

21 (4) Punishment of contempt.

22 (5) Enforcement of orders.

23 (6) Administering oaths.

24 (7) Giving all necessary certificates for the
25 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.

1 Otherwise, costs in an action brought before a private judge
2 shall be taxed and distributed in the same manner as costs in
3 the circuit court of the county in which the case is filed.

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

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

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

15 (1) At any time.

16 (2) At any place in Alabama.

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

23 Section 8. Notwithstanding the Rules of Civil
24 Procedure, a private judge may receive compensation for
25 hearing a case in an amount and subject to the terms and

1 conditions agreed to by the private judge and the parties to
2 the case. A contract for the services of a private judge must
3 provide for the payment of the judge's compensation by the
4 parties, the compensation of all personnel, and the costs of
5 all facilities and materials that are used in relation to the
6 case and not otherwise covered.

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB138

Senate 23-FEB-12

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 24-APR-12

By: Senator Ward