

1 SB38
2 188992-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 01/02/2018

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8 SYNOPSIS: Existing law authorizes the appointment of
9 former or retired circuit and district court judges
10 to serve as private judges in certain district and
11 circuit court cases, and authorizes compensation to
12 those judges for their services.

13 This bill would authorize former or retired
14 probate judges meeting specified requirements to
15 serve as private judges in probate cases that are
16 removed to the circuit court.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to the appointment of private judges; to
23 amend Sections 12-11A-2 and 12-11A-4, Code of Alabama 1975, to
24 allow former and retired probate judges meeting specified
25 requirements to serve as private judges in certain cases.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 12-11A-2 and 12-11A-4 of the
2 Code of Alabama 1975, are amended to read as follows:

3 "§12-11A-2.

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

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

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

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

12 "(4) Be a resident of Alabama.

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

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

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

24 "(3) The case is ~~founded exclusively on domestic~~
25 ~~relations, contract, tort, or a combination of contract and~~
26 ~~tort~~ assigned a CV or DR case number by the Alabama
27 Administrative Office of Courts.

1 "§12-11A-4.

2 "(a) A trial conducted by a private judge shall be
3 conducted without a jury.

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

7 "(1) Court procedure.

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

9 "(3) Attendance of witnesses.

10 "(4) Punishment of contempt.

11 "(5) Enforcement of orders.

12 "(6) Administering oaths.

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

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

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

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

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

26 "(e) The Alabama Rules of Civil Procedure shall
27 apply for all actions brought before a private judge. The

1 private judge shall maintain jurisdiction over all matters
2 brought before him or her ~~until the order is deemed final and~~
3 ~~appealable, as defined by the Alabama Rules of Civil Procedure~~
4 to the same extent as matters before a trial court, including
5 all post-trial proceedings and subsequent proceedings between
6 the same parties arising from the same case. An appeal from an
7 action or a judgment of a private judge may be taken in the
8 same manner as an appeal from the circuit court of the county
9 where the case is filed."

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