

1 SB68
2 150716-4
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 14-JAN-14
6 PFD: 01/06/2014

1 SB68

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to private judges; to amend Sections 2, 4,
12 7, and 8 of Act 2012-266 of the 2012 Regular Session, now
13 appearing as Sections 12-11A-2, 12-11A-4, 12-11A-7, and
14 12-11A-8, respectively, Code of Alabama 1975; to authorize a
15 person who has previously served as an appellate court judge
16 to be a private judge; to provide further for the types of
17 cases that may be heard by a private judge; to provide further
18 for the duties and conduct of a private judge; to prohibit a
19 private judge from serving as a special or senior judge; and
20 to specifically authorize a case heard by a private judge to
21 be heard in the courthouse of the county where the case was
22 filed.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 2, 4, 7, and 8 of Act 2012-266
25 of the 2012 Regular Session, now appearing as Sections

1 12-11A-2, 12-11A-4, 12-11A-7, and 12-11A-8, respectively, Code
2 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 state Supreme Court justice, appellate court judge, or a judge
7 of a district or circuit court and have served in the capacity
8 of judge for at least six consecutive 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 former or retired judge who is otherwise
14 qualified to serve as a private judge pursuant to this section
15 is not disqualified from acting as a private judge as a result
16 of being called to active duty status or accepting an
17 appointment as a special or senior judge.

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

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

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

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

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

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

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

23 "(g) In the event a third party seeks to intervene
24 in an action pending before a private judge, the third party
25 shall present his or her motion to the private judge for
26 ruling. The additional proceeding costs and private judge's

1 fees incurred as a result of the motion shall be paid by the
2 third party. If the motion is granted and the third party is
3 allowed to intervene, that party must consent to the use of
4 the private judge in order to continue the proceedings. Absent
5 the consent of the intervenor, the private judge shall
6 terminate the proceedings by written order directing the
7 presiding judge to reinstate the proceedings on the court's
8 docket. Any pendente lite orders entered by the private judge
9 shall remain in full force and effect pending further orders
10 of the court.

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

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

20 "§12-11A-7.

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

22 "(1) At any time.

23 "(2) At any place in Alabama.

24 "(b) A private judge under this chapter shall
25 provide to the clerk of the court in which the case was filed
26 the dates, times, and places of any proceeding that could

1 result in a judgment. The notice shall be provided to the
2 clerk and entered in the clerk's records at least three days
3 before the proceeding is conducted.

4 "§12-11A-8.

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

14 Section 2. This act shall become effective on the
15 first day of the third month following its passage and
16 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..... 14-JAN-14

Read for the second time and placed on the calen-
dar 1 amendment..... 23-JAN-14

Read for the third time and passed as amended 20-MAR-14

Yeas 29
Nays 0

Patrick Harris
Secretary