

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**H. B. No. 537**

**Representative Oelslager**

**Cosponsors: Representatives McGregor, J., Hughes, Evans, Stebelton,  
Skindell, Huffman, Okey, Letson, Yuko, DeGeeter**

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**A B I L L**

To amend section 2701.10 of the Revised Code to 1  
permit a civil action referred to a retired judge 2  
for consideration and adjudication to be tried and 3  
determined by a jury presided over by the retired 4  
judge. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2701.10 of the Revised Code be 6  
amended to read as follows: 7

**Sec. 2701.10.** (A) As used in this section, "retired judge" 8  
means any judge who retired from active service after election or 9  
appointment to that judgeship without being defeated in an 10  
election to retain the judgeship. 11

(B) This section applies to any civil action pending before 12  
any court of common pleas, any division of the court of common 13  
pleas, or any municipal court or county court, excluding a small 14  
claims division of a municipal court or county court. If the 15  
parties to a civil action seek a retired judge to preside over a 16  
jury trial under this section, a jury trial may be had only if a 17  
party to the action has properly made a demand for a jury trial in 18

accordance with Rule 38 of the Rules of Civil Procedure. 19

~~(C) Any voluntarily retired judge, or any judge who is~~ 20  
~~retired under Section 6 of Article IV, Ohio Constitution,~~ 21  
register with the clerk of any court of common pleas, municipal 22  
court, or county court for the purpose of receiving referrals ~~for~~ 23  
~~adjudication of civil actions or proceedings, and submissions for~~ 24  
~~determination of specific issues or questions of fact or law in~~ 25  
~~any civil action or proceeding, pending in the court for~~ 26  
adjudication by the retired judge or for trial by jury to be 27  
presided over by the retired judge. There is no limitation upon 28  
the number, type, or location of courts with which a retired judge 29  
may register under this division. Upon registration with the clerk 30  
of any court under this division, the retired judge is eligible to 31  
receive referrals ~~and submissions~~ from that court, in accordance 32  
with this section. Each court of common pleas, municipal court, 33  
and county court shall maintain an index of all retired judges who 34  
have registered with the clerk of that court pursuant to this 35  
division and shall make the index available to any person, upon 36  
request. 37

~~(B)(D)~~(1) The parties to any civil action ~~or proceeding~~ 38  
~~pending in any court of common pleas, municipal court, or county~~ 39  
~~court~~ unanimously may choose to have the action ~~or proceeding~~ in 40  
its entirety or specific issues or questions in the action 41  
referred ~~for adjudication, or to have any specific issue or~~ 42  
~~question of fact or law in the action or proceeding submitted for~~ 43  
~~determination,~~ to a retired judge of their choosing who has 44  
registered with the clerk of ~~that~~ the court in which the action is 45  
pending in accordance with division ~~(A)~~(C) of this section. If 46

~~If~~ the parties unanimously ~~do~~ choose to have a referral ~~or~~ 47  
~~submission~~ made to a retired judge pursuant to this section, all 48  
of the parties to the action ~~or proceeding~~ shall enter into a 49  
written agreement with the retired judge that does all of the 50

following:	51
(a) Designates the retired judge to whom the referral <del>or</del> <del>submission</del> is to be made;	52 53
(b) <del>If a submission is to be made, describes</del> <u>Describes</u> in detail the specific <del>issue</del> <u>issues</u> or <del>question</del> <u>questions</u> to be <del>submitted</del> <u>determined in the action</u> ;	54 55 56
(c) Indicates either of the following:	57
(i) That the action <del>or proceeding</del> in its entirety is to be referred to, and is to be tried, determined, and adjudicated by that retired judge <u>or by a jury presided over by the retired</u> <u>judge</u> ;	58 59 60 61
(ii) <del>Indicates that the</del> <u>That any specific</u> issue or question <u>in the action</u> is to be <del>submitted, and is to be</del> tried and determined by that retired judge <del>or by a jury presided over by</del> <u>the retired judge</u> ;	62 63 64 65
(d) Indicates that the parties will assume the responsibility for providing facilities, equipment, <del>and</del> <u>personnel, and other</u> <u>support</u> reasonably <del>needed by</del> <u>necessary for</u> the retired judge <del>during his consideration of</del> <u>or the jury to advance and consider</u> the action or <del>proceeding</del> <u>to determine a specific issue or question</u> <u>in the action</u> , and will pay all costs arising out of the provision of the facilities, equipment, <del>and</del> <u>personnel, and other support</u> ;	66 67 68 69 70 71 72
(e) Identifies an amount of compensation to be paid by the parties to the retired judge for <del>his</del> <u>the retired judge's</u> services and the manner of payment of the compensation.	73 74 75
(2) In any case described in division <del>(B)</del> <u>(D)</u> (1) of this section, the agreement shall be filed with the clerk of the court or the judge before whom the action <del>or proceeding</del> is pending. Upon the filing of the agreement, the judge before whom the action <del>or</del> <del>proceeding</del> is pending, by journal entry, shall order the referral	76 77 78 79 80

~~or submission~~ in accordance with the agreement. No referral ~~or~~ 81  
~~submission~~ shall be made to a retired judge under this section, 82  
unless the parties to the action ~~or proceeding~~ unanimously choose 83  
to have the referral ~~or submission~~ made, enter into an agreement 84  
of the type described in division ~~(B)~~(D)(1) of this section with 85  
the retired judge, and file the agreement in accordance with ~~this~~ 86  
division (D)(2) of this section. 87

~~(C)~~(E) Upon the entry of an order of referral ~~or submission~~ 88  
in accordance with division ~~(B)~~(D)(2) of this section, the retired 89  
judge to whom the referral ~~or submission~~ is made, relative to the 90  
action ~~or proceeding~~ referred ~~or the issue or question submitted,~~ 91  
shall have all of the powers, duties, and authority of an active 92  
judge of the court in which the action ~~or proceeding~~ is pending. 93  
~~The court in which the action or proceeding is pending is not~~ In 94  
connection with a referral made under this section, no court is 95  
required to provide the parties and the retired judge with ~~court~~ 96  
~~or other~~ facilities, equipment, ~~or~~ personnel ~~during his~~ 97  
~~consideration of the action, proceeding, issue, or question, or~~ 98  
other support. The retired judge shall not receive any 99  
compensation, other than that agreed to by the parties and the 100  
retired judge, for ~~his~~ the retired judge's services ~~during his~~ 101  
~~consideration of~~ to advance and consider the action, ~~proceeding,~~ 102  
or to determine a specific issue, or question in the action. 103

~~(D)~~ A (F)(1) If no jury trial is had under this section, a 104  
retired judge to whom a referral is made ~~under this section~~ shall 105  
try all or some of the issues in the action ~~or proceeding~~, shall 106  
prepare relevant findings of fact and conclusions of law, and 107  
shall enter a judgment in the action ~~or proceeding~~ in the same 108  
manner as if ~~he~~ the retired judge were an active judge of the 109  
court. ~~A retired judge to whom a submission is made under this~~ 110  
~~section shall try the specific issue or question submitted, shall~~ 111  
~~prepare relevant findings of fact or conclusions of law, shall~~ 112

~~make a determination on the issue or question submitted, and shall~~ 113  
~~file the findings, conclusions, and determination with the clerk~~ 114  
~~of the court in which the action or proceeding is pending. If a~~ 115  
party has properly demanded a trial by jury in accordance with 116  
Rule 38 of the Rules of Civil Procedure, a retired judge to whom a 117  
referral is made shall preside over the jury trial and 118  
determination of all or some of the issues in the action. A trial 119  
by a jury under this section shall be conducted, and a 120  
determination by a jury under this section shall be made, in 121  
accordance with the applicable provisions of Chapter 2315. of the 122  
Revised Code and the Rules of Civil Procedure and in the same 123  
manner as trials and determinations by a jury in civil actions. 124  
The selection and summoning of jurors for a jury trial and 125  
determination under this section shall be in accordance with the 126  
applicable provisions of Chapter 2313. of the Revised Code. The 127  
fees of the jurors sworn shall be taxed as costs pursuant to 128  
section 2335.28 of the Revised Code. The jury commissioner or 129  
clerk in charge of jurors shall make all of the necessary 130  
arrangements to provide the jurors to the retired judge in the 131  
same manner as jurors are provided pursuant to Chapter 2313. of 132  
the Revised Code to the active judge of the court in which the 133  
action is pending. 134

(2) Any judgment entered, and any finding of fact, conclusion 135  
of law, or determination of an issue or question made, by a 136  
retired judge or by a jury in accordance with this section shall 137  
have the same force and effect as if it had been entered or made 138  
by an active judge of the court or by a jury presided over by an 139  
active judge of the court, and any appeal from the judgment, 140  
finding, conclusion, or determination shall be made as if the 141  
judgment had been entered, or the finding, conclusion, or 142  
determination had been made, by an active judge of the court or by 143  
a jury presided over by an active judge of the court. 144

~~(E)~~(G) The compensation of the jurors serving in a jury trial of an action or a specific issue or question in the action under this section shall be fixed in the same manner as in section 2313.34 of the Revised Code. 145  
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(H) Any judge who registers with any court in accordance with division ~~(A)~~(C) of this section may have ~~his~~ the judge's name removed from the index of registered retired judges maintained by that court at any time after the registration. On and after the date of removal of the name of a retired judge from the index of a court, the retired judge is not eligible under this section to receive referrals ~~or submissions~~ from that court. 149  
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~~(F)~~(I) This section does not affect, and shall not be construed as affecting, the provisions of section 141.16 of the Revised Code. ~~This section does not apply to any action or proceeding pending in a small claims division of a municipal court or county court.~~ 156  
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**Section 2.** That existing section 2701.10 of the Revised Code is hereby repealed. 161  
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**Section 3.** The General Assembly hereby respectfully requests the Supreme Court to modify Rule VI of the Rules for the Government of the Judiciary, including the corresponding forms 3 and 4 appended to that Rule, pursuant to its authority under the Ohio Constitution to make that Rule consistent with the amendments of this act to section 2701.10 of the Revised Code. The General Assembly further respectfully requests the Supreme Court to modify Rules 38 and 39 of the Rules of Civil Procedure pursuant to its authority under the Ohio Constitution to specify that those Rules apply to civil actions or proceedings under section 2701.10 of the Revised Code, as amended by this act. 163  
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