

As Reported by the House Civil and Commercial Law Committee

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Am. 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 or submission is to be made;	52 53
(b) If a submission is to be made, describes <u>Describes</u> in detail the specific issue <u>issues</u> or question <u>questions</u> to be submitted <u>determined in the action</u> ;	54 55 56
(c) Indicates either of the following:	57
(i) That the action or proceeding 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) Indicates that the <u>That any specific</u> issue or question <u>in the action</u> is to be submitted, and is to be tried and determined by that retired judge or by a jury presided over by <u>the retired judge</u> ;	62 63 64 65
(d) Indicates that the parties will assume the responsibility for providing facilities, equipment, and <u>personnel, and other</u> <u>support</u> reasonably needed by <u>necessary for</u> the retired judge during his consideration of <u>or the jury to advance and consider</u> the action or proceeding <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, and <u>personnel, and other support</u> ;	66 67 68 69 70 71 72
(e) <u>Indicates that, if the action or any specific issue or</u> <u>question in the action is to be tried and determined by a jury</u> <u>presided over by the retired judge and the action is settled by</u> <u>the parties before the jurors are sworn, the parties will pay the</u> <u>fees of the jurors</u> ;	73 74 75 76 77
(f) <u>Identifies an amount of compensation to be paid by the</u> parties to the retired judge for his <u>the retired judge's</u> services and the manner of payment of the compensation.	78 79 80

(2) In any case described in division ~~(B)~~(D)(1) of this 81
section, the agreement shall be filed with the clerk of the court 82
or the judge before whom the action ~~or proceeding~~ is pending. Upon 83
the filing of the agreement, the judge before whom the action ~~or~~ 84
~~proceeding~~ is pending, by journal entry, shall order the referral 85
~~or submission~~ in accordance with the agreement. No referral ~~or~~ 86
~~submission~~ shall be made to a retired judge under this section, 87
unless the parties to the action ~~or proceeding~~ unanimously choose 88
to have the referral ~~or submission~~ made, enter into an agreement 89
of the type described in division ~~(B)~~(D)(1) of this section with 90
the retired judge, and file the agreement in accordance with ~~this~~ 91
division (D)(2) of this section. 92

~~(C)~~(E) Upon the entry of an order of referral ~~or submission~~ 93
in accordance with division ~~(B)~~(D)(2) of this section, the retired 94
judge to whom the referral ~~or submission~~ is made, relative to the 95
action ~~or proceeding~~ referred ~~or the issue or question submitted,~~ 96
shall have all of the powers, duties, and authority of an active 97
judge of the court in which the action ~~or proceeding~~ is pending. 98
~~The court in which the action or proceeding is pending is not~~ In 99
connection with a referral made under this section, no court is 100
required to provide the parties and the retired judge with ~~court~~ 101
~~or other~~ facilities, equipment, ~~or~~ personnel ~~during his~~ 102
~~consideration of the action, proceeding, issue, or question, or~~ 103
other support. The retired judge shall not receive any 104
compensation, other than that agreed to by the parties and the 105
retired judge, for ~~his~~ the retired judge's services ~~during his~~ 106
~~consideration of~~ to advance and consider the action, ~~proceeding,~~ 107
or to determine a specific issue, or question in the action. 108

~~(D)~~ A (F)(1) If no jury trial is had under this section, a 109
retired judge to whom a referral is made ~~under this section~~ shall 110
try all or some of the issues in the action ~~or proceeding~~, shall 111
prepare relevant findings of fact and conclusions of law, and 112

shall enter a judgment in the action ~~or proceeding~~ in the same 113
manner as if ~~he~~ the retired judge were an active judge of the 114
court. ~~A retired judge to whom a submission is made under this~~ 115
~~section shall try the specific issue or question submitted, shall~~ 116
~~prepare relevant findings of fact or conclusions of law, shall~~ 117
~~make a determination on the issue or question submitted, and shall~~ 118
~~file the findings, conclusions, and determination with the clerk~~ 119
~~of the court in which the action or proceeding is pending. If a~~ 120
party has properly demanded a trial by jury in accordance with 121
Rule 38 of the Rules of Civil Procedure, a retired judge to whom a 122
referral is made shall preside over the jury trial and 123
determination of all or some of the issues in the action. A trial 124
by a jury under this section shall be conducted, and a 125
determination by a jury under this section shall be made, in 126
accordance with the applicable provisions of Chapter 2315. of the 127
Revised Code and the Rules of Civil Procedure and in the same 128
manner as trials and determinations by a jury in civil actions. 129
The selection and summoning of jurors for a jury trial and 130
determination under this section shall be in accordance with the 131
applicable provisions of Chapter 2313. of the Revised Code. The 132
fees of the jurors sworn shall be taxed as costs pursuant to 133
section 2335.28 of the Revised Code. If the action is settled by 134
the parties before the jurors are sworn, the parties shall pay the 135
fees of the jurors. The jury commissioner or clerk in charge of 136
jurors shall make all of the necessary arrangements to provide the 137
jurors to the retired judge in the same manner as jurors are 138
provided pursuant to Chapter 2313. of the Revised Code to the 139
active judge of the court in which the action is pending. 140

(2) Any judgment entered, and any finding of fact, conclusion 141
of law, or determination of an issue or question made, by a 142
retired judge or by a jury in accordance with this section shall 143
have the same force and effect as if it had been entered or made 144
by an active judge of the court or by a jury presided over by an 145

active judge of the court, and any appeal from the judgment, 146
finding, conclusion, or determination shall be made as if the 147
judgment had been entered, or the finding, conclusion, or 148
determination had been made, by an active judge of the court or by 149
a jury presided over by an active judge of the court. 150

~~(E)~~(G) The compensation of the jurors serving in a jury trial 151
of an action or a specific issue or question in the action under 152
this section shall be fixed in the same manner as in section 153
2313.34 of the Revised Code. 154

(H) Any judge who registers with any court in accordance with 155
division ~~(A)~~(C) of this section may have ~~his~~ the judge's name 156
removed from the index of registered retired judges maintained by 157
that court at any time after the registration. On and after the 158
date of removal of the name of a retired judge from the index of a 159
court, the retired judge is not eligible under this section to 160
receive referrals ~~or submissions~~ from that court. 161

~~(F)~~(I) This section does not affect, and shall not be 162
construed as affecting, the provisions of section 141.16 of the 163
Revised Code. ~~This section does not apply to any action or~~ 164
~~proceeding pending in a small claims division of a municipal court~~ 165
~~or county court.~~ 166

Section 2. That existing section 2701.10 of the Revised Code 167
is hereby repealed. 168

Section 3. The General Assembly hereby respectfully requests 169
the Supreme Court to modify Rule VI of the Rules for the 170
Government of the Judiciary, including the corresponding forms 3 171
and 4 appended to that Rule, pursuant to its authority under the 172
Ohio Constitution to make that Rule consistent with the amendments 173
of this act to section 2701.10 of the Revised Code. The General 174
Assembly further respectfully requests the Supreme Court to modify 175
Rules 38 and 39 of the Rules of Civil Procedure pursuant to its 176

authority under the Ohio Constitution to specify that those Rules	177
apply to civil actions or proceedings under section 2701.10 of the	178
Revised Code, as amended by this act.	179