

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4675

(As amended by the Senate December 13, 2002)

A bill to amend 1992 PA 234, entitled
"The judges retirement act of 1992,"
(MCL 38.2101 to 38.2670) by adding section 512.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 512. (1) A PERSON MAY ELECT TO RECEIVE A SUPPLEMENTED
2 RETIREMENT ALLOWANCE IF THE PERSON MEETS ALL OF THE FOLLOWING
3 REQUIREMENTS:

4 (A) THE PERSON IS A RETIRANT OR BENEFICIARY OF A DECEASED
5 RETIRANT WHOSE EFFECTIVE DATE OF RETIREMENT WAS ON OR AFTER
6 JANUARY 1, 1980 BUT BEFORE JANUARY 1, 1993.

7 (B) THE PERSON IS NOT A RETIRANT OR BENEFICIARY OF A
8 DECEASED RETIRANT WHO WAS A MEMBER OF THE FORMER JUDGES RETIRE-
9 MENT SYSTEM BEFORE SEPTEMBER 8, 1961.

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1 (C) THE PERSON EXECUTES AND SUBMITS TO THE RETIREMENT SYSTEM
2 AN ELECTION FORM WITH A WAIVER AGREEMENT IN FORM AND SUBSTANCE AS
3 REQUIRED UNDER SUBSECTION (7).

4 (2) EFFECTIVE JUNE 1, 2003, A PERSON WHO MEETS THE REQUIRE-
5 MENTS OF SUBSECTION (1) AND WHO TIMELY FILES A FULLY EXECUTED
6 WAIVER AGREEMENT WITH THE RETIREMENT SYSTEM ON A FORM FURNISHED
7 BY THE RETIREMENT SYSTEM, ON OR AFTER JANUARY 1, 2003, BUT NOT
8 LATER THAN APRIL 1, 2003, SHALL RECEIVE A RETIREMENT ALLOWANCE
9 SUPPLEMENTED AS FOLLOWS:

10	EFFECTIVE DATE OF RETIREMENT	PERCENT OF INCREASE
11		
12		
13		
14		
15		
16		
17	JANUARY 1, 1992 TO DECEMBER 31, 1992	3.5%
18	JANUARY 1, 1991 TO DECEMBER 31, 1991	4.0%
19	JANUARY 1, 1990 TO DECEMBER 31, 1990	4.5%
20	JANUARY 1, 1989 TO DECEMBER 31, 1989	5.0%
21	JANUARY 1, 1988 TO DECEMBER 31, 1988	5.5%
22	JANUARY 1, 1987 TO DECEMBER 31, 1987	6.0%
23	JANUARY 1, 1986 TO DECEMBER 31, 1986	6.5%
24	JANUARY 1, 1985 TO DECEMBER 31, 1985	7.0%
25	JANUARY 1, 1984 TO DECEMBER 31, 1984	7.5%
26	JANUARY 1, 1983 TO DECEMBER 31, 1983	8.0%

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1 JANUARY 1, 1982 TO DECEMBER 31, 1982 8.0%

2 JANUARY 1, 1981 TO DECEMBER 31, 1981 8.0%

3 JANUARY 1, 1980 TO DECEMBER 31, 1980 8.0%

4 (3) THE SUPPLEMENTAL RETIREMENT ALLOWANCE CALCULATED UNDER
5 SUBSECTION (2) SHALL BE THE BASIS ON WHICH ANY FUTURE ADJUSTMENTS
6 TO THE RETIREMENT ALLOWANCE ARE CALCULATED.

7 (4) THE SUPPLEMENT PROVIDED BY THIS SECTION SHALL BE CALCU-
8 LATED UNDER SUBSECTION (2) AND SHALL BE PAID TO RETIRANTS OR BEN-
9 EFICIARIES OF DECEASED RETIRANTS BEFORE OCTOBER 1, 2003.

10 (5) IF A RETIRANT DIES BEFORE OCTOBER 1, 2003 AND NO BENE-
11 FITS BECOME PAYABLE UNDER SECTION 506 OR 508, THE RETIRANT'S
12 RETIREMENT ALLOWANCE SHALL NOT BE SUPPLEMENTED.

13 (6) FOR PURPOSES OF THIS SECTION, A PERSON WHO ELECTS TO
14 RECEIVE A RETIREMENT ALLOWANCE SUPPLEMENTED UNDER THIS SECTION
15 SHALL BE DEEMED TO HAVE DONE ALL OF THE FOLLOWING:

16 (A) WAIVED ANY PAST, PRESENT, OR FUTURE CLAIM OR CLAIMS
17 ASSERTED BY THE PLAINTIFFS IN THE CASE OF ERNST V ROBERTS, CASE
18 NO. 01-CV-73738-DT (ED MI).

19 (B) WAIVED ANY PAST, PRESENT, OR FUTURE CLAIM OR CLAIMS THAT
20 ARISE FROM FACTS THAT FORM THE BASIS OF ERNST V ROBERTS, CASE
21 NO. 01-CV-73738-DT (ED MI), INCLUDING, BUT NOT LIMITED TO,
22 ASSERTED VIOLATIONS OF THE EQUAL PROTECTION CLAUSE OF SECTION 1
23 OF AMENDMENT XIV OF THE CONSTITUTION OF THE UNITED STATES, SEC-
24 TION 2 OF ARTICLE I OF THE STATE CONSTITUTION OF 1963, SECTION
25 604(6), THE WASTING TRUST DOCTRINE, AND FIDUCIARY DUTIES.

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1 (C) AGREED THAT HE OR SHE WILL NOT TAKE ANY ACTION TO
2 QUESTION THE LEGAL EFFECT OF, AMEND, OR RESCIND THE WAIVER
3 CREATED BY HIS OR HER ELECTION UNDER THIS SECTION.

4 (7) THE WAIVER AGREEMENT AGREED TO, EXECUTED, AND SUBMITTED
5 BY A PERSON ELECTING A RETIREMENT ALLOWANCE SUPPLEMENTED UNDER
6 THIS SECTION SHALL READ AS FOLLOWS:

7 "1. _____ (NAME OF PERSON) DESIRES TO SETTLE AND COM-
8 PROMISE, IN THEIR ENTIRETY, ANY PAST, PRESENT, OR FUTURE CLAIM OR
9 CLAIMS, EITHER ASSERTED BY THE PLAINTIFFS IN THE CASE OF ERNST V
10 ROBERTS, CASE NO. 01-CV-73738-DT (ED MI), OR THAT ARISE FROM THE
11 FACTS FORMING THE BASIS OF THAT CASE, INCLUDING, BUT NOT LIMITED
12 TO, ASSERTED VIOLATIONS OF THE EQUAL PROTECTION CLAUSE OF THE
13 FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, SECTION 2
14 OF ARTICLE I OF THE STATE CONSTITUTION OF 1963, SECTION 604(6) OF
15 THE JUDGES RETIREMENT ACT OF 1992, 1992 PA 234, MCL 38.2604, THE
16 WASTING TRUST DOCTRINE, AND FIDUCIARY DUTIES.

17 2. _____ (NAME OF PERSON) AGREES TO SETTLE AND COM-
18 PROMISE THESE CLAIMS FOR THE CONSIDERATION OF RECEIVING A RETIRE-
19 MENT ALLOWANCE SUPPLEMENTED UNDER SECTION 512 OF THE JUDGES
20 RETIREMENT ACT OF 1992, 1992 PA 234, MCL 38.2512.

21 3. _____ (NAME OF PERSON) WAIVES ANY RIGHT OR INTEREST
22 IN ANY PAST, PRESENT, OR FUTURE CLAIM OR CLAIMS, EITHER ASSERTED
23 BY THE PLAINTIFFS IN THE CASE OF ERNST V ROBERTS, CASE
24 NO. 01-CV-73738-DT (ED MI), OR THAT ARISE FROM THE FACTS FORMING
25 THE BASIS OF THAT CASE.

26 4. _____ (NAME OF PERSON) WILL SUBMIT A NOTARIZED COPY
27 OF THIS WAIVER AGREEMENT TO THE RETIREMENT SYSTEM NO LATER THAN 5

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1 P.M. EASTERN STANDARD TIME ON APRIL 1, 2003 AND AGREES TO NOT
2 TAKE ANY ACTION TO QUESTION THE LEGAL EFFECT OF, AMEND, OR
3 RESCIND THIS WAIVER AGREEMENT.

4 5. _____ (NAME OF PERSON) EXPRESSLY AGREES AND UNDER-
5 STANDS THAT NOTHING IN THIS AGREEMENT LIMITS THE RIGHTS OF THE
6 STATE OR ITS AGENCIES, EMPLOYEES, AND AGENTS TO ANY PRIVILEGE,
7 IMMUNITY, OR DEFENSE THAT WOULD OTHERWISE HAVE BEEN AVAILABLE IF
8 THE CLAIMS OR POTENTIAL CLAIMS HAD BEEN ACTUALLY LITIGATED IN ANY
9 FORUM.

10 6. _____ (NAME OF PERSON) AGREES THAT, IF THIS WAIVER
11 AGREEMENT IS CHALLENGED, INVALIDATED, OR OTHERWISE FOUND TO BE
12 UNENFORCEABLE, ANY RETIREMENT SUPPLEMENT UNDER SECTION 512 SHALL
13 CEASE FOR ANY PERSON FOR WHICH THE WAIVER IS CHALLENGED, INVALI-
14 DATED, OR OTHERWISE DETERMINED TO BE UNENFORCEABLE.

15 7. _____ (NAME OF PERSON) AGREES NOT TO FUND, OFFER
16 ADVICE REGARDING, OR OTHERWISE PARTICIPATE IN THE CASE KNOWN AS
17 ERNST V ROBERTS, CASE NO. 01-CV-73738-DT (ED MI) OR ANY SUCCESSOR
18 CASE RAISING SIMILAR CLAIMS, AND FURTHER AGREES TO OPPOSE CLASS
19 CERTIFICATION AND AGREES TO OPT OUT OF ANY SUCH CLASS IN ANY SUCH
20 CASES AND TO INFORM THE PRESIDING JUDGE OF THAT OPPOSITION AND
21 DESIRE TO OPT OUT.".

22 (8) NOTHING CONTAINED IN THIS SECTION SHALL CREATE OR BE
23 CONSTRUED TO CREATE ANY OF THE FOLLOWING:

24 (A) ANY OBLIGATION OR LIABILITY OF THE STATE OR THE RETIRE-
25 MENT SYSTEM TO ANY PERSON WHO DOES NOT TIMELY FILE OR ENTER A
26 FORM AND WAIVER AGREEMENT UNDER THIS SECTION.

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1 (B) ANY ADMISSION OF LIABILITY TO ANY PERSON IN ANY
2 LITIGATION OR FUTURE LITIGATION.

3 (C) ANY WAIVER OF ANY PRIVILEGE, IMMUNITY, OR DEFENSE THAT
4 IS OR WOULD HAVE BEEN AVAILABLE TO THIS STATE OR ITS AGENCIES,
5 EMPLOYEES, OR AGENTS IN ANY LITIGATION OR FUTURE LITIGATION WITH
6 ANY PERSON.