

SUBSTITUTE FOR

HOUSE BILL NO. 5037

(As amended, October 16, 2003)

A bill to amend 1992 PA 234, entitled
"The judges retirement act of 1992,"
by amending section 512 (MCL 38.2512), as added by 2002 PA 675.

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 <<± 2>>, 1993.

7 (b) The person is not a retirant or beneficiary of a deceased
8 retirant who was a member of the former judges retirement system
9 before September 8, 1961.

10 (c) The person executes and submits to the retirement system
11 an election form with a waiver agreement in form and substance as

1 required under subsection (7).

2 (2) ~~Effective~~ **Except as otherwise provided in this section,**
 3 **effective** June 1, 2003, a person who meets the requirements of
 4 subsection (1) and who timely files a fully executed waiver
 5 agreement with the retirement system on a form furnished by the
 6 retirement system, on or after January 1, 2003, but not later
 7 than April 1, 2003, shall receive a retirement allowance
 8 supplemented as follows:

9	Effective Date of Retirement	Percent of Increase
10	January 1, 1992 to <<December 31, 1992 January 1, 1993>>	3.5%
11	January 1, 1991 to December 31, 1991	4.0%
12	January 1, 1990 to December 31, 1990	4.5%
13	January 1, 1989 to December 31, 1989	5.0%
14	January 1, 1988 to December 31, 1988	5.5%
15	January 1, 1987 to December 31, 1987	6.0%
16	January 1, 1986 to December 31, 1986	6.5%
17	January 1, 1985 to December 31, 1985	7.0%
18	January 1, 1984 to December 31, 1984	7.5%
19	January 1, 1983 to December 31, 1983	8.0%
20	January 1, 1982 to December 31, 1982	8.0%
21	January 1, 1981 to December 31, 1981	8.0%
22	January 1, 1980 to December 31, 1980	8.0%

23 (3) The supplemental retirement allowance calculated under
 24 subsection (2) shall be the basis on which any future adjustments
 25 to the retirement allowance are calculated.

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1 (4) ~~The~~ For a person who meets the requirements of
2 subsection (1) and who filed a fully executed waiver agreement by
3 April 1, 2003, the supplement provided by this section shall be
4 calculated under subsection (2) and shall be paid to retirants or
5 beneficiaries of deceased retirants before October 1, 2003. For
6 a person who meets the requirements of subsection (1) who did not
7 file a fully executed waiver agreement with the retirement system
8 by April 1, 2003, and who files a fully executed waiver agreement
9 with the retirement system by <<January 30, 2004>>, the supplement
10 provided by this section shall be calculated under subsection (2)
11 and shall be paid to retirants or beneficiaries of deceased
12 retirants before April 1, 2004.

13 (5) If a retirant dies before October 1, 2003 and no benefits
14 become payable under section 506 or 508, the retirant's
15 retirement allowance shall not be supplemented.

16 (6) For purposes of this section, a person who elects to
17 receive a retirement allowance supplemented under this section
18 shall be deemed to have done all of the following:

19 (a) Waived any past, present, or future claim or claims
20 asserted by the plaintiffs in the case of Ernst v Roberts, Case
21 No. 01-CV-73738-DT (ED MI).

22 (b) Waived any past, present, or future claim or claims that
23 arise from facts that form the basis of Ernst v Roberts, Case
24 No. 01-CV-73738-DT (ED MI), including, but not limited to,
25 asserted violations of the equal protection clause of section 1
26 of Amendment XIV of the constitution of the United States,
27 section 2 of article I of the state constitution of 1963, section

1 604(6), the wasting trust doctrine, and fiduciary duties.

2 (c) Agreed that he or she will not take any action to
3 question the legal effect of, amend, or rescind the waiver
4 created by his or her election under this section.

5 (7) The waiver agreement agreed to, executed, and submitted
6 by a person electing a retirement allowance supplemented under
7 this section shall read as follows:

8 "1. _____ (Name of person) desires to settle and
9 compromise, in their entirety, any past, present, or future claim
10 or claims, either asserted by the plaintiffs in the case of Ernst
11 v Roberts, Case No. 01-CV-73738-DT (ED MI), or that arise from
12 the facts forming the basis of that case, including, but not
13 limited to, asserted violations of the equal protection clause of
14 the fourteenth amendment of the United States constitution,
15 section 2 of article I of the state constitution of 1963, section
16 604(6) of the judges retirement act of 1992, 1992 PA 234,
17 MCL 38.2604, the wasting trust doctrine, and fiduciary duties.

18 2. _____ (Name of person) agrees to settle and
19 compromise these claims for the consideration of receiving a
20 retirement allowance supplemented under section 512 of the judges
21 retirement act of 1992, 1992 PA 234, MCL 38.2512.

22 3. _____ (Name of person) waives any right or interest
23 in any past, present, or future claim or claims, either asserted
24 by the plaintiffs in the case of Ernst v Roberts, Case
25 No. 01-CV-73738-DT (ED MI), or that arise from the facts forming
26 the basis of that case.

27 4. _____ (Name of person) will submit a notarized copy

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1 of this waiver agreement to the retirement system no later than 5
2 p.m. eastern standard time on ~~April 1~~ << ~~2003~~ January 30,
2004>> and
3 agrees to not take any action to question the legal effect of,
4 amend, or rescind this waiver agreement.

5 5. _____ (Name of person) expressly agrees and
6 understands that nothing in this agreement limits the rights of
7 the state or its agencies, employees, and agents to any
8 privilege, immunity, or defense that would otherwise have been
9 available if the claims or potential claims had been actually
10 litigated in any forum.

11 6. _____ (Name of person) agrees that, if this waiver
12 agreement is challenged, invalidated, or otherwise found to be
13 unenforceable, any retirement supplement under section 512 shall
14 cease for any person for which the waiver is challenged,
15 invalidated, or otherwise determined to be unenforceable.

16 7. _____ (Name of Person) agrees not to fund, offer
17 advice regarding, or otherwise participate in the case known as
18 Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI) or any successor
19 case raising similar claims, and further agrees to oppose class
20 certification and agrees to opt out of any such class in any such
21 cases and to inform the presiding judge of that opposition and
22 desire to opt out.".

23 (8) Nothing contained in this section shall create or be
24 construed to create any of the following:

25 (a) Any obligation or liability of the state or the
26 retirement system to any person who does not timely file or enter
27 a 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 is
4 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.

7 (9) A person who meets the requirements of subsection (1) but
8 did not file a fully executed waiver agreement with the
9 retirement system by April 1, 2003 shall have until <<January 30,
10 2004>> to execute and file the waiver agreement. A person who
11 filed a fully executed waiver agreement with the retirement
12 system by April 1, 2003 is not eligible to execute and file a
13 waiver agreement under this subsection.