

# HOUSE BILL No. 5037

August 13, 2003, Introduced by Reps. Howell, Gaffney, Lipsey, Vagnozzi and Wenke and referred to the Committee on Judiciary.

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 1, 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	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.

1 (4) The supplement provided by this section shall be  
2 calculated under subsection (2) and shall be paid to retirants or  
3 beneficiaries of deceased retirants before October 1, 2003.

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

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

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

13 (b) Waived any past, present, or future claim or claims that  
14 arise from facts that form the basis of Ernst v Roberts, Case  
15 No. 01-CV-73738-DT (ED MI), including, but not limited to,  
16 asserted violations of the equal protection clause of section 1  
17 of Amendment XIV of the constitution of the United States,  
18 section 2 of article I of the state constitution of 1963, section  
19 604(6), the wasting trust doctrine, and fiduciary duties.

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

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

26 "1. \_\_\_\_\_ (Name of person) desires to settle and  
27 compromise, in their entirety, any past, present, or future claim

1 or claims, either asserted by the plaintiffs in the case of Ernst  
2 v Roberts, Case No. 01-CV-73738-DT (ED MI), or that arise from  
3 the facts forming the basis of that case, including, but not  
4 limited to, asserted violations of the equal protection clause of  
5 the fourteenth amendment of the United States constitution,  
6 section 2 of article I of the state constitution of 1963, section  
7 604(6) of the judges retirement act of 1992, 1992 PA 234,  
8 MCL 38.2604, the wasting trust doctrine, and fiduciary duties.

9       2. \_\_\_\_\_ (Name of person) agrees to settle and  
10 compromise these claims for the consideration of receiving a  
11 retirement allowance supplemented under section 512 of the judges  
12 retirement act of 1992, 1992 PA 234, MCL 38.2512.

13       3. \_\_\_\_\_ (Name of person) waives any right or interest  
14 in any past, present, or future claim or claims, either asserted  
15 by the plaintiffs in the case of Ernst v Roberts, Case  
16 No. 01-CV-73738-DT (ED MI), or that arise from the facts forming  
17 the basis of that case.

18       4. \_\_\_\_\_ (Name of person) will submit a notarized copy  
19 of this waiver agreement to the retirement system no later than 5  
20 p.m. eastern standard time on April 1, 2003 and agrees to not  
21 take any action to question the legal effect of, amend, or  
22 rescind this waiver agreement.

23       5. \_\_\_\_\_ (Name of person) expressly agrees and  
24 understands that nothing in this agreement limits the rights of  
25 the state or its agencies, employees, and agents to any  
26 privilege, immunity, or defense that would otherwise have been  
27 available if the claims or potential claims had been actually

1 litigated in any forum.

2       6. \_\_\_\_\_ (Name of person) agrees that, if this waiver  
3 agreement is challenged, invalidated, or otherwise found to be  
4 unenforceable, any retirement supplement under section 512 shall  
5 cease for any person for which the waiver is challenged,  
6 invalidated, or otherwise determined to be unenforceable.

7       7. \_\_\_\_\_ (Name of Person) agrees not to fund, offer  
8 advice regarding, or otherwise participate in the case known as  
9 Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI) or any successor  
10 case raising similar claims, and further agrees to oppose class  
11 certification and agrees to opt out of any such class in any such  
12 cases and to inform the presiding judge of that opposition and  
13 desire to opt out.".

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

16       (a) Any obligation or liability of the state or the  
17 retirement system to any person who does not timely file or enter  
18 a form and waiver agreement under this section.

19       (b) Any admission of liability to any person in any  
20 litigation or future litigation.

21       (c) Any waiver of any privilege, immunity, or defense that is  
22 or would have been available to this state or its agencies,  
23 employees, or agents in any litigation or future litigation with  
24 any person.

25       **(9) A person who meets the requirements of subsection (1) but**  
26 **did not file a fully executed waiver agreement with the**  
27 **retirement system by April 1, 2003 because the person did not**

1 receive notice of the waiver agreement or a copy of the waiver  
2 agreement by April 1, 2003 shall have until December 31, 2003 to  
3 execute and file the waiver agreement.