

Act No. 190  
Public Acts of 2003  
Approved by the Governor  
October 31, 2003  
Filed with the Secretary of State  
October 31, 2003  
EFFECTIVE DATE: October 31, 2003

**STATE OF MICHIGAN  
92ND LEGISLATURE  
REGULAR SESSION OF 2003**

Introduced by Reps. Howell, Gaffney, Lipsey, Vagnozzi and Wenke

# ENROLLED HOUSE BILL No. 5037

AN ACT to amend 1992 PA 234, entitled "An act to establish a judges retirement system; to provide for the administration and maintenance of the retirement system; to create a retirement board; to prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; to establish certain funds; to prescribe the powers and duties of certain state departments and certain state and local officials and employees; to provide for certain disqualifications; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 512 (MCL 38.2512), as added by 2002 PA 675.

*The People of the State of Michigan enact:*

Sec. 512. (1) A person may elect to receive a supplemented retirement allowance if the person meets all of the following requirements:

(a) The person is a retirant or beneficiary of a deceased retirant whose effective date of retirement was on or after January 1, 1980 but before January 2, 1993.

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

(c) The person executes and submits to the retirement system an election form with a waiver agreement in form and substance as required under subsection (7).

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

Effective Date of Retirement	Percent of Increase
January 1, 1992 to January 1, 1993	3.5%
January 1, 1991 to December 31, 1991	4.0%
January 1, 1990 to December 31, 1990	4.5%
January 1, 1989 to December 31, 1989	5.0%
January 1, 1988 to December 31, 1988	5.5%
January 1, 1987 to December 31, 1987	6.0%
January 1, 1986 to December 31, 1986	6.5%
January 1, 1985 to December 31, 1985	7.0%
January 1, 1984 to December 31, 1984	7.5%
January 1, 1983 to December 31, 1983	8.0%
January 1, 1982 to December 31, 1982	8.0%
January 1, 1981 to December 31, 1981	8.0%
January 1, 1980 to December 31, 1980	8.0%

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

(4) For a person who meets the requirements of subsection (1) and who filed a fully executed waiver agreement by April 1, 2003, the supplement provided by this section shall be calculated under subsection (2) and shall be paid to retirants or beneficiaries of deceased retirants before October 1, 2003. For a person who meets the requirements of subsection (1) who did not file a fully executed waiver agreement with the retirement system by April 1, 2003, and who files a fully executed waiver agreement with the retirement system by January 30, 2004, the supplement provided by this section shall be calculated under subsection (2) and shall be paid to retirants or beneficiaries of deceased retirants before April 1, 2004.

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

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

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

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

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

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

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

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

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

4. \_\_\_\_\_ (Name of person) will submit a notarized copy of this waiver agreement to the retirement system no later than 5 p.m. eastern standard time on January 30, 2004 and agrees to not take any action to question the legal effect of, amend, or rescind this waiver agreement.

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

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

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

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

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

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

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

(9) A person who meets the requirements of subsection (1) but did not file a fully executed waiver agreement with the retirement system by April 1, 2003 shall have until January 30, 2004 to execute and file the waiver agreement.

A person who filed a fully executed waiver agreement with the retirement system by April 1, 2003 is not eligible to execute and file a waiver agreement under this subsection.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor