

SENATE BILL No. 635

October 25, 1989, Introduced by Senators KELLY, J. HART, FESSLER, GEAKE, O'BRIEN, VAUGHN, NICHOLS, DE GROW and FAUST and referred to the Committee on Judiciary.

A bill to amend sections 225 and 226 of Act No. 236 of the Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

section 226 as amended by Act No. 225 of the Public Acts of 1987, being sections 600.225 and 600.226 of the Michigan Compiled Laws; and to add sections 557, 557a, and 557b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 225 and 226 of Act No. 236 of the
2 Public Acts of 1961, section 226 as amended by Act No. 225 of the
3 Public Acts of 1987, being sections 600.225 and 600.226 of the
4 Michigan Compiled Laws, are amended and sections 557, 557a, and
5 557b are added to read as follows:

6 Sec. 225. (1) The supreme court shall have the right to
7 ~~direct and compel~~ ASSIGN a judge of any court ~~hereinafter~~
8 ~~named~~ to serve as a judge in any OTHER court in ~~which by law he~~

1 ~~is authorized to act as judge. This section applies to the~~
2 ~~following courts and to the judges thereof:~~ THIS STATE. EACH
3 JUDGE ASSIGNED BY THE SUPREME COURT UNDER THIS SUBSECTION SHALL
4 PERFORM THE DUTIES OF THE JUDICIAL OFFICE IN THE SAME MANNER AS
5 IF HE OR SHE WERE ELECTED TO THAT OFFICE. THE ASSIGNMENT OF A
6 JUDGE UNDER THIS SUBSECTION SHALL BE FOR A LIMITED PERIOD OR SPE-
7 CIFIC ASSIGNMENT.

8 ~~(a) The circuit courts.~~

9 ~~(b) The probate courts.~~

10 ~~(c) The recorder's court of the city of Detroit.~~

11 ~~(d) Municipal courts and the common pleas court of the city~~
12 ~~of Detroit. Any municipal court judge or any associate municipal~~
13 ~~court judge elected or appointed under state law or local charter~~
14 ~~provisions is authorized to serve on the common pleas court of~~
15 ~~the city of Detroit.~~

16 ~~(e) District courts. Any district judge is authorized to~~
17 ~~serve on the common pleas court of the city of Detroit.~~

18 ~~(2) The supreme court shall have the power to direct and~~
19 ~~compel the judge of any municipal court who is an active member~~
20 ~~of the state bar of Michigan or any district court judge to serve~~
21 ~~as a judge of the recorder's court of the city of Detroit. Each~~
22 ~~judge so designated shall hold court and perform the duties of~~
23 ~~the office just as he would had he been elected to such~~
24 ~~recorder's court for the time he is designated to serve. A~~
25 ~~municipal court judge shall be limited to trial and other pro-~~
26 ~~ceedings wherein elected recorder's court judges act in a~~
27 ~~magisterial capacity exercising jurisdiction comparable to that~~

1 ~~formerly cognizable by a justice of the peace. A district court~~
2 ~~judge so designated shall exercise the same jurisdiction as exer-~~
3 ~~cisable by a judge of the recorder's court of Detroit.~~

4 ~~(3) Whenever possible, with respect to subdivision (d) of~~
5 ~~subsection (1) and subsection (2), other municipal court judges~~
6 ~~or district court judges within the same county within which the~~
7 ~~court is located shall be designated to serve as judges of such~~
8 ~~court.~~

9 (2) IF POSSIBLE, JUDGES WITHIN THE SAME COUNTY WITHIN WHICH
10 THE COURT IS LOCATED SHALL BE ASSIGNED TO SERVE AS JUDGES OF THAT
11 COURT.

12 (3) ~~-(4)-~~ The authority granted by this section may be exer-
13 cised by the supreme court at its discretion through its direct
14 order, or through the court administrator.

15 (4) ~~-(5)-~~ A ~~district~~ judge transferred to ~~the recorder's~~
16 A court ~~of Detroit or to the common pleas court of Detroit~~ as
17 provided in this section shall receive as salary for each day he
18 OR SHE serves in ~~such~~ THE court $\frac{1}{250}$ of the amount by which
19 the salary of the judgeship to which he OR SHE is transferred
20 exceeds his OR HER total salary, ~~such~~ THE salary to be payable
21 at the same time and from the same source as provided for the
22 judicial office to which the judge is transferred. In addition,
23 ~~thereto,~~ a ~~district~~ judge ~~so~~ transferred AS PROVIDED IN
24 THIS SECTION shall be entitled to receive actual and necessary
25 expenses for travel, meals, and lodging, if approved by the gov-
26 erning ~~body~~ BODIES of the political ~~unit~~ UNITS where the
27 court is located and to which ~~he is assigned, payable at the~~

1 ~~same time and from the same source as provided for the judicial~~
2 ~~office to which~~ the judge is transferred. The same source
3 paying ~~such~~ THE salary and expenses shall return to the
4 ~~district~~ control units ~~of the district~~ in which the
5 ~~district~~ judge was appointed or elected, for each day ~~so~~
6 served, 1/250 of the annual supplemental salary paid by those
7 units to the ~~district~~ judge ~~so~~ transferred AS PROVIDED IN
8 THIS SECTION.

9 Sec. 226. (1) The supreme court may authorize any retired
10 judge from any court to perform judicial duties in any court in
11 the state. The authorization may be for a period or periods as
12 the supreme court shall designate with the consent of the retired
13 judge.

14 (2) Any retired judge assigned to any period of active judi-
15 cial service pursuant to section 23 of article VI of the state
16 constitution of 1963 and pursuant to the laws of the state relat-
17 ing to judicial service shall be compensated as follows:

18 (a) The judge shall receive a salary payable at the same
19 times and from the same sources as provided for the judicial
20 office in which the judge is authorized to perform judicial
21 duties.

22 (b) The performance of the authorized judicial duties shall
23 be without prejudice to all other rights of the judge under the
24 retirement systems.

25 (c) The salary for each day in which the judge serves as
26 authorized shall be the greater of the following:

1 (i) ~~—(A)—~~ One hundred dollars per diem for each day or part
2 of a day spent in the discharge of his or her duties.

3 (ii) ~~—(B)—~~ The difference between 1/250th of the annual
4 salary paid for the judicial office during the time the retired
5 judge serves in the office and 1/250th of the state retirement
6 allowance paid to the retired judge during the time the retired
7 judge serves in the office.

8 (d) Necessary expenses incidental to the performance of
9 duties required by the assignment, including travel, meals, and
10 lodging, shall be paid by the state in accordance with the estab-
11 lished provisions and procedures for state officials and upon the
12 approval of the court administrator.

13 (3) THIS SECTION DOES NOT APPLY TO THE PERFORMANCE OF JUDI-
14 CIAL DUTIES BY A SENIOR JUDGE UNDER SECTIONS 557, 557A, AND 557B.

15 SEC. 557. (1) AS USED IN THIS SECTION AND SECTIONS 557A AND
16 557B, "SENIOR JUDGE" MEANS A FORMER JUSTICE OF THE SUPREME COURT,
17 OR A FORMER JUDGE OF THE COURT OF APPEALS, CIRCUIT COURT,
18 RECORDER'S COURT, PROBATE COURT, DISTRICT COURT, COMMON PLEAS
19 COURT, OR A MUNICIPAL COURT, WHO IS A MEMBER IN GOOD STANDING OF
20 THE STATE BAR OF MICHIGAN, WHO WAS ONCE ELECTED TO JUDICIAL
21 OFFICE IN THIS STATE, BUT WHO AT THE TIME OF ASSIGNMENT UNDER
22 THIS SECTION DOES NOT HOLD A JUDICIAL OFFICE BY APPOINTMENT OR
23 ELECTION.

24 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN ANY
25 NONJURY CIVIL ACTION PENDING IN ANY COURT OF THIS STATE, WITH THE
26 CONSENT OF ALL THE PARTIES TO THE ACTION, THE PARTIES MAY

1 STIPULATE TO THE ASSIGNMENT OF A SENIOR JUDGE TO HEAR AND DECIDE
2 THE ACTION PURSUANT TO THIS SECTION AND SECTIONS 557A AND 557B.

3 (3) THE STIPULATION SHALL NAME 2 SENIOR JUDGES, AGREED UPON
4 BY ALL THE PARTIES TO THE ACTION, SELECTED FROM A LIST OF SENIOR
5 JUDGES APPROVED BY THE SUPREME COURT.

6 (4) THE STIPULATION SHALL REALISTICALLY ESTIMATE THE NUMBER
7 OF JUDICIAL HOURS IT WILL TAKE TO HEAR THE ACTION AND TO PERFORM
8 ALL OF THE FUNCTIONS REQUIRED OF THE SENIOR JUDGE.

9 (5) THE STIPULATION SHALL SPECIFY THE HOURLY RATE OF COMPEN-
10 SATION THE PARTIES AGREE TO PAY THE SENIOR JUDGE FOR HIS OR HER
11 SERVICES.

12 (6) THE STIPULATION SHALL REALISTICALLY ESTIMATE THE COSTS
13 OF TRIAL, INCLUDING THE SERVICES OF A COURT REPORTER, THE RENTAL
14 OF AN APPROPRIATE SITE TO HOLD THE TRIAL IF A REGULAR COURTROOM
15 IS NOT AVAILABLE, NECESSARY EXPENSES OF THE SENIOR JUDGE AND SUP-
16 PORT STAFF INCLUDING TRAVEL, LODGING, AND MEALS, AND OTHER COSTS
17 OF TRIAL AS ARE APPROPRIATE.

18 (7) THE STIPULATION SHALL BE FILED WITH THE CHIEF OR PRESID-
19 ING JUDGE OF THE COURT IN WHICH THE ACTION IS PENDING TOGETHER
20 WITH A COPY OF A RECEIPT FROM THE CLERK OF THE COURT INDICATING
21 THAT THE FEES AND COSTS WERE DEPOSITED WITH THE CLERK OF THE
22 COURT FOR DEPOSIT IN THE STIPULATED ASSIGNMENT FUND ESTABLISHED
23 IN EACH JUDICIAL CIRCUIT PURSUANT TO SECTION 557A.

24 (8) UPON APPROVAL OF THE STIPULATION OF THE PARTIES BY THE
25 CHIEF OR PRESIDING JUDGE OF THE COURT IN WHICH THE ACTION IS
26 PENDING, THE STIPULATION SHALL BE FORWARDED TO THE SUPREME COURT
27 FOR APPROVAL AND ASSIGNMENT OF THE SENIOR JUDGE. IF THE SUPREME

1 COURT, THROUGH ITS DIRECT ORDER OR THROUGH THE STATE COURT
2 ADMINISTRATOR, APPROVES THE STIPULATION AND ASSIGNS A SENIOR
3 JUDGE NAMED IN THE STIPULATION, THE SENIOR JUDGE ASSIGNED SHALL
4 BE AUTHORIZED TO PERFORM ALL JUDICIAL DUTIES REQUIRED IN THE
5 ACTION. THE SENIOR JUDGE SHALL ASSUME JURISDICTION OF THE ACTION
6 UPON ENTRY OF THE ORDER OF APPROVAL AND ASSIGNMENT.

7 (9) THE SENIOR JUDGE ASSIGNED TO HEAR THE ACTION SHALL EXER-
8 CISE THE SAME POWERS AND DUTIES AS A JUDGE SITTING WITHOUT A JURY
9 IN THE COURT IN WHICH THE ACTION IS PENDING.

10 (10) A TRIAL CONDUCTED PURSUANT TO THIS SECTION SHALL BE A
11 PUBLIC TRIAL.

12 (11) A TRIAL CONDUCTED PURSUANT TO THIS SECTION SHALL BE
13 HELD WITHIN THE VENUE OF THE COURT IN WHICH THE ACTION IS
14 PENDING. UNLESS A TRIAL CONDUCTED PURSUANT TO THIS SECTION IS
15 HELD IN A FACILITY PROVIDED BY THE COURT IN WHICH THE ACTION IS
16 PENDING, NOTICE OF THE SITE OF THE TRIAL SHALL BE PUBLISHED BY
17 THE CLERK OF THE COURT IN WHICH THE ACTION IS PENDING IN A
18 LEGALLY DESIGNATED NEWSPAPER CIRCULATING WITHIN THE JURISDICTION
19 OF THE COURT IN WHICH THE ACTION IS PENDING NOT LESS THAN 7 DAYS
20 BEFORE THE COMMENCEMENT DATE OF TRIAL AND SHALL BE ENTERED UPON
21 THE COURT FILE OF THE COURT IN WHICH THE ACTION IS PENDING NOT
22 LESS THAN 7 DAYS BEFORE THE DATE OF TRIAL.

23 (12) A TRANSCRIPT OF THE PROCEEDINGS AND EVIDENCE AND OTHER
24 PAPERS FILED WITH THE SENIOR JUDGE SHALL BE FILED IN THE COURT IN
25 WHICH THE ACTION IS PENDING.

26 (13) ANY ACTION, ORDER, DECISION, OR JUDGMENT ENTERED BY THE
27 SENIOR JUDGE SHALL BE REVIEWABLE AS THOUGH MADE BY A JUDGE OF THE

1 COURT IN WHICH THE ACTION IS PENDING. EXCEPT FOR GOOD CAUSE
2 SHOWN TO THE CHIEF OR PRESIDING JUDGE OF THE COURT IN WHICH THE
3 ACTION IS PENDING, A FINAL JUDGMENT SHALL BE ENTERED BY THE
4 SENIOR JUDGE WITHIN 21 DAYS AFTER ALL PARTIES HAVE SUBMITTED
5 THEIR CLOSING PROOFS AND ARGUMENTS.

6 (14) THE PREVAILING PARTY MAY TAX COSTS PURSUANT TO RULES
7 GOVERNING THE TAXING OF COSTS AND ATTORNEY FEES IN THE COURT IN
8 WHICH THE ACTION IS PENDING, UNLESS OTHERWISE STIPULATED BY THE
9 PARTIES.

10 (15) IF NEITHER OF THE SENIOR JUDGES SELECTED BY THE PARTIES
11 IS ASSIGNED BY THE SUPREME COURT, OR IF THE ASSIGNED SENIOR JUDGE
12 IS UNABLE TO HEAR THE ACTION FOR ANY REASON, THE PARTIES TO THE
13 STIPULATION MAY SELECT 2 OTHER SENIOR JUDGES FROM THE LIST
14 APPROVED BY THE SUPREME COURT AND RESUBMIT THE STIPULATION FOR
15 APPROVAL AND ASSIGNMENT OF A SENIOR JUDGE TO HEAR THE ACTION
16 WITHOUT THE PAYMENT OF AN ADDITIONAL STIPULATION ASSIGNMENT FUND
17 FEE UNDER SECTION 557A(2)(A).

18 (16) IF NEITHER OF THE SENIOR JUDGES SELECTED BY THE PARTIES
19 IS ASSIGNED BY THE SUPREME COURT, OR IF THE ASSIGNED SENIOR JUDGE
20 IS UNABLE TO HEAR THE ACTION FOR ANY REASON, ANY OF THE PARTIES
21 TO THE STIPULATION MAY ELECT TO WITHDRAW THE STIPULATION FOR THE
22 ASSIGNMENT OF A SENIOR JUDGE AND ALL DEPOSITS PAID WILL BE
23 REFUNDED EXCEPT THE STIPULATION ASSIGNMENT FUND FEE UNDER SECTION
24 557A(2)(A).

25 (17) A STIPULATION FOR THE ASSIGNMENT OF A SENIOR JUDGE TO
26 HEAR THE ACTION MAY NOT BE WITHDRAWN EXCEPT AS PROVIDED IN

1 SUBSECTION (15) OR (16) OR WITH THE CONSENT OF THE SENIOR JUDGE
2 ASSIGNED TO HEAR THE ACTION.

3 (18) UPON WITHDRAWAL OF A STIPULATION FOR THE ASSIGNMENT OF
4 A SENIOR JUDGE TO HEAR THE ACTION, THE ACTION SHALL REGAIN THE
5 SAME STATUS IT HAD PRIOR TO THE FILING OF THE STIPULATION OR AS
6 MAY BE ORDERED BY THE CHIEF OR PRESIDING JUDGE OF THE COURT IN
7 WHICH THE ACTION IS PENDING.

8 SEC. 557A. (1) THERE IS ESTABLISHED IN THE CIRCUIT COURT IN
9 EACH JUDICIAL CIRCUIT A STIPULATED ASSIGNMENT FUND FOR RECEIPT OF
10 MONEY AS PROVIDED FOR UNDER THIS SECTION AND SECTIONS 557 AND
11 557B.

12 (2) THE FOLLOWING MONEY SHALL BE DEPOSITED IN THE STIPULATED
13 ASSIGNMENT FUND:

14 (A) A STIPULATION ASSIGNMENT FUND FEE OF \$100.00 PAYABLE BY
15 EACH PARTY TO THE ACTION. THIS FEE IS NOT REFUNDABLE.

16 (B) A SUM OF MONEY EQUAL TO THE ESTIMATED COMPENSATION THAT
17 WILL BE DUE THE SENIOR JUDGE FOR HIS OR HER SERVICES, COSTS, AND
18 ACTUAL AND NECESSARY EXPENSES AS PROVIDED FOR IN SECTION 557(4),
19 (5), AND (6).

20 (C) A SUM OF MONEY EQUAL TO THE ESTIMATED COSTS OF TRIAL AS
21 PROVIDED FOR IN SECTION 557(6).

22 (D) A SUM OF MONEY EQUAL TO THE ESTIMATED COST OF PREPARING
23 AND FILING A TRANSCRIPT OF PROCEEDINGS AND FILING EVIDENCE AND
24 OTHER PAPERS AS REQUIRED BY SECTION 557(12).

25 (E) SUCH OTHER FUNDS AS PROVIDED BY LAW OR BY COURT RULE.

26 (3) UPON THE FILING OF A DETAILED STATEMENT OF SERVICES
27 RENDERED AND COSTS INCURRED, A SENIOR JUDGE ASSIGNED PURSUANT TO

1 SECTION 557 SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES
2 AND COMPENSATED FOR SERVICES ACCORDING TO THE HOURLY RATE PRO-
3 VIDED FOR IN THE STIPULATION.

4 (4) THE CHIEF OR PRESIDING JUDGE OF THE COURT IN WHICH THE
5 ACTION IS PENDING SHALL APPROVE THE STATEMENT OF SERVICES
6 RENDERED AND COSTS INCURRED PRIOR TO PAYMENT.

7 (5) THE SENIOR JUDGE MAY FILE FOR INTERIM PAYMENTS AND NEED
8 NOT AWAIT THE CONCLUSION OF THE TRIAL TO BE PARTIALLY COMPENSATED
9 OR REIMBURSED FOR EXPENSES.

10 (6) IF THE CHIEF OR PRESIDING JUDGE OF THE COURT IN WHICH
11 THE ACTION IS PENDING CONSIDERS AT ANY TIME THAT THE PARTIES HAVE
12 NOT DEPOSITED A SUFFICIENT SUM TO COVER THE COMPENSATION THAT
13 WILL BE DUE THE SENIOR JUDGE OR FOR THE COSTS OF THE TRIAL, THE
14 CHIEF OR PRESIDING JUDGE MAY ORDER THE PARTIES TO DEPOSIT AN
15 ADDITIONAL AMOUNT TO PROVIDE FOR COMPENSATION AND COSTS. THE
16 CHIEF OR PRESIDING JUDGE MAY ADJOURN THE TRIAL UNTIL THE ADDI-
17 TIONAL AMOUNT IS DEPOSITED. IF THE DESIGNATED ADDITIONAL AMOUNT
18 IS NOT PAID WITHIN 10 DAYS AFTER ENTRY OF AN ORDER FOR THE ADDI-
19 TIONAL AMOUNT, THE CHIEF OR PRESIDING JUDGE MAY TAKE SUCH APPRO-
20 PRIATE ACTIONS AS CONSIDERED NECESSARY, INCLUDING DISMISSAL OF
21 THE ACTION, FOR FAILURE TO COMPLY WITH THE ORDER FOR THE ADDI-
22 TIONAL AMOUNT.

23 (7) MONEY DEPOSITED IN THE STIPULATED ASSIGNMENT FUND IN
24 EXCESS OF THE ACTUAL COMPENSATION AND COSTS OF THE TRIAL AND IN
25 EXCESS OF THE FEE RECEIVED PURSUANT TO SUBSECTION (2) (A) SHALL BE
26 REFUNDED TO THE PARTIES WITHIN A REASONABLE TIME AFTER ALL
27 APPEALS OR TIMES FOR APPEAL HAVE EXPIRED.

1 SEC. 557B. (1) UPON MOTION BY AN INDIGENT PARTY, THE CHIEF
2 OR PRESIDING JUDGE IN THE COURT IN WHICH THE ACTION IS PENDING
3 MAY PROVIDE FOR A TOTAL OR PARTIAL WAIVER OF THE FEES AND COSTS
4 OTHERWISE REQUIRED BY SECTIONS 557 AND 557A IF THE COURT FINDS
5 ALL OF THE FOLLOWING:

6 (A) THE PARTY BRINGING THE MOTION IS INDIGENT.

7 (B) ALL THE PARTIES TO THE ACTION HAVE CONSENTED TO THE
8 APPOINTMENT OF A SENIOR JUDGE.

9 (C) IT IS IN THE BEST INTEREST OF JUSTICE FOR THE ACTION TO
10 BE HEARD BY A SENIOR JUDGE.

11 (D) THE STIPULATED ASSIGNMENT FUND CONTAINS NOT LESS THAN
12 \$25,000.00 IN FEES RECEIVED PURSUANT TO SECTION 557A(2)(A), AND
13 THE AMOUNT IN EXCESS OF \$25,000.00 WHICH IS NOT EARMARKED FOR
14 ESTIMATED COMPENSATION AND COSTS IN ANOTHER ACTION IS SUFFICIENT
15 TO PAY THE ESTIMATED COMPENSATION OF THE SENIOR JUDGE AND ESTI-
16 MATED COSTS OF TRIAL.

17 (E) THE INDIGENT PARTY AGREES IN WRITING TO REIMBURSE THE
18 STIPULATED ASSIGNMENT FUND WHEN THE INDIGENT PARTY IS ABLE TO
19 REIMBURSE THE FUND.

20 (2) THE CHIEF OR PRESIDING JUDGE IN THE COURT IN WHICH THE
21 ACTION IS PENDING SHALL REQUIRE THE INDIGENT PARTY TO DEPOSIT IN
22 THE STIPULATED ASSIGNMENT FUND SUCH FEES AND COSTS OTHERWISE
23 REQUIRED BY SECTIONS 557 AND 557A AS THE COURT DETERMINES THE
24 INDIGENT PARTY IS CAPABLE OF PAYING WITHOUT UNDUE HARDSHIP.