

SB195 INTRODUCED



1 SB195
2 3PWA2VE-1
3 By Senators Smitherman, Coleman
4 RFD: Judiciary
5 First Read: 21-Jan-26



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4 SYNOPSIS:

5 Under existing law, the administration of an
6 estate or a will contest may be removed to the circuit
7 court in the county where the proceeding is pending
8 unless the probate court or judge has concurrent
9 equitable jurisdiction with the circuit court.

10 This bill would allow removal of estate
11 administration and will contests to the circuit court
12 without assigning any special equity, provided the
13 probate court and circuit court do not have concurrent
14 jurisdiction.

15 This bill would also make nonsubstantive,
16 technical revisions to update the existing code
17 language to current style.

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20 A BILL

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TO BE ENTITLED

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AN ACT

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24 Relating to decedents' estates; to amend Section
25 43-8-216, Code of Alabama 1975; to allow will contests and
26 estate administration to be removed to probate court without
27 assigning special equity; and to make nonsubstantive,
28 technical revisions to update the existing code language to



29 current style.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

31 Section 1. Section 43-8-216, Code of Alabama 1975, is
32 amended to read as follows:

33 "§43-8-216

34 (a) Except for a proceeding pending in a probate court
35 in a county where the probate court or judge exercises equity
36 jurisdiction concurrent with that of the circuit court by
37 virtue of a provision of the Constitution of Alabama of 2022,
38 specific to such county, a local act, or a statute specific to
39 such county, a proceeding in a probate court pertaining to a
40 will contest or an administration of a decedent's estate may
41 be removed by an interested person to the circuit court for
42 the county where the proceeding in probate court is pending
43 without assigning any special equity; provided, however: (i)
44 no removal of a will contest under this section can occur
45 unless Section 43-8-215 is complied with; and (ii) a removal
46 of the administration of a decedent's estate under this
47 section may not be made prior to the issuance of letters
48 testamentary, letters of administration, or letters of
49 administration with the will annexed or after the probate
50 court has taken steps toward a final settlement.

51 (b) To remove a proceeding from the probate court to
52 the circuit court, the removing party shall file in the
53 circuit court to which the proceeding is being removed, a
54 notice of removal that contains all of the following:

55 (1) A description of the nature of the proceedings
56 being removed.



SB195 INTRODUCED

62 (3) Whether jury trial is demanded.

63 (4) The removing party's interest in the proceeding
64 being removed.

65 (5) The name of all interested persons to the
66 proceeding being removed to which the removing party is
67 delivering the notice of removal.

68 (c) Once the removing party has filed the notice of
69 removal with the clerk of the circuit court, the proceeding
70 shall be removed to the circuit court. Following the removal
71 to the circuit court, the removing party shall file a copy of
72 the notice of removal with the clerk of the probate court and
73 shall send a copy of the notice of removal to all interested
74 persons listed therein. Upon receiving a copy of the notice of
75 removal, the probate court shall take no further action unless
76 and until the removed proceeding is remanded, except to
77 deliver a copy of the record in the probate court to the clerk
78 of the circuit court. The circuit court shall have
79 jurisdiction of a removed proceeding upon filing of the notice
80 of removal with the circuit clerk. Neither the omission nor
81 incorrect statement of any information required to be included
82 in the notice of removal, nor the failure of the probate court
83 to deliver a copy of the record of proceedings in that court,
84 shall deprive the circuit court of jurisdiction to hear and



85 decide the removed proceeding.

86 (d) If a necessary party to the proceedings has not
87 received notice of the proceeding as required by law before
88 the notice of removal is filed, notice of the proceeding must
89 be issued by the circuit court to the necessary party as
90 provided in the Alabama Rules of Civil Procedure or as
91 otherwise prescribed by law.

92 (e) The circuit court may remand the removed proceeding
93 under this section to the probate court if the circuit court
94 finds any of the following:

95 (1) The removal was sought for the purpose of improper
96 delay.

97 (2) The removal did not comply with applicable law.

98 (3) Judgment on all contested matters pending before
99 the circuit court has become final and the time for an appeal
100 has expired without an appeal being filed or, if an appeal was
101 filed, after the final adjudication of the appeal.

102 (4) All interested parties or their representatives
103 have requested the removed proceeding be remanded to probate
104 court.

105 (f) If the circuit court finds that ~~a lawyer an~~
106 attorney or party vexatiously or for improper purposes removed
107 a proceeding, then the court may tax the ~~lawyer attorney~~ or
108 party with the costs of the proceeding. In doing so, the
109 circuit court may assess the full amount or any portion of the
110 costs against any offending ~~lawyer attorney~~ or party, or both,
111 and among them, as the court determines just. When granting an
112 award of costs and lawyer fees, the court shall specifically



113 state the reasons for the award and shall consider the factors
114 in Section 12-19-273, among others, in determining whether to
115 assess ~~lawyer~~ attorney fees and costs and the amount to be
116 assessed.

117 (g) Costs of an action that may be assessed under
118 subsection (f) include reasonable compensation for and
119 expenses incurred by ~~a lawyer~~ an attorney, guardian ad litem,
120 or party, including the cost of experts to testify in or
121 advise regarding the proceeding. Costs ~~taxed~~ assessed under
122 this subsection shall be limited to those incurred by the
123 parties opposing an improperly removed proceeding or incurred
124 as a result of the improperly removed proceeding.

125 (h) Upon entry of an order ~~taxing~~ assessing costs under
126 subsection (f), the clerk of the circuit court shall issue an
127 itemized bill of all costs and expenses taxed against each
128 person, which itemized statements of costs and expenses shall
129 have the full force and effect of a judgment. The provisions
130 of this subsection are cumulative.

131 (i) Following remand by the circuit court, the clerk of
132 the circuit court shall deliver a copy of the order of remand
133 and the record of all proceedings in the circuit court to the
134 clerk of the probate court to be filed with the records of the
135 proceeding in the probate court, and the probate court shall
136 proceed with the proceeding in accordance with the circuit
137 court's order.

138 (j) In any proceeding removed from a probate court, the
139 circuit court may issue all necessary orders and process to
140 bring before it all proper parties whether served by process

SB195 INTRODUCED



141 issued by the probate court or otherwise.

142 (k) Neither remand nor anything else shall prevent the
143 subsequent removal of a proceeding to the circuit court under
144 this section."

145 Section 2. This act shall become effective on October
146 1, 2026.