

## SB195 INTRODUCED



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



SYNOPSIS:

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

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

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

A BILL  
TO BE ENTITLED  
AN ACT

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



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current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§43-8-216

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

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

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



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57           (2) If the proceeding is a will contest under this  
58 division, the name of the person who has petitioned to admit  
59 the will to probate, who will be the plaintiff in the removed  
60 proceeding, and the person contesting the validity of the  
61 will, who will be the defendant in the removed proceeding.

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



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decide the removed proceeding.

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

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

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

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

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

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

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



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

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

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

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

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



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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.