

1 SB302
2 116539-3
3 By Senators Keahey, Glover, and Brooks
4 RFD: Judiciary
5 First Read: 19-JAN-10

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 Relating to the administration of estates, trusts,
12 and guardianships or conservatorships in probate court; to add
13 Sections 12-11-41.1 and 26-2-2.1 to the Code of Alabama 1975,
14 to provide that in any county where the judge of probate is
15 required to be learned in the law, the administration of an
16 estate or a guardianship or conservatorships may be
17 transferred to circuit court at any time before the proceeding
18 on final settlement commences and to provide for the transfer
19 of the administration of the estate or a guardianship or
20 conservatorships back to probate court under certain
21 circumstances; and to add Section 12-11-41.2 to the Code of
22 Alabama 1975, to authorize, in any county where the judge of
23 probate is required to be learned in the law, the removal of a
24 trust from probate court to circuit court and for the transfer
25 back to probate court in a similar manner as provided for
26 estates and guardianships or conservatorships.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 12-11-41.1, 12-11-41.2, and
2 26-2-2.1 are added to the Code of Alabama 1975, to read as
3 follows:

4 §12-11-41.1.

5 (a) In any county where the judge of probate is
6 required to be learned in the law, the administration of any
7 estate may be removed from the probate court to the circuit
8 court pursuant to Section 12-11-41 at any time before a
9 proceeding for final settlement thereof is commenced in
10 probate court, by any heir, devisee, legatee, distributee,
11 executor, administrator, or administrator with the will of the
12 estate, without assigning any special equity. The circuit
13 court shall transfer the administration of an estate
14 transferred pursuant to this section back to the probate court
15 if the circuit court finds that the removal in the first
16 instance was sought for the purpose of improper delay or did
17 not comply with applicable law. The circuit court may transfer
18 the administration of an estate transferred pursuant to this
19 section back to the probate court if the circuit court finds
20 that any of the following apply:

21 (1) The circuit court has issued a final order or
22 judgment on all contested matters pending before the circuit
23 court in the administration of the estate and the time for an
24 appeal of the order or judgment has expired without an appeal
25 being filed or, if an appeal was filed, after the final
26 adjudication of the appeal.

1 (2) All interested parties request the estate
2 administration be transferred back to probate court.

3 (b) Nothing in subsection (a) shall prevent the
4 administration of an estate from being removed again to the
5 circuit court pursuant to subsection (a) after the
6 administration has been transferred back to the probate court
7 as provided above.

8 §12-11-41.2.

9 (a) In any county where the judge of probate is
10 required to be learned in the law, a proceeding involving a
11 trust may be removed from the probate court to the circuit
12 court at any time before a proceeding for final settlement
13 thereof is commenced in probate court, by any settlor,
14 beneficiary, or trustee of the trust, or other person
15 interested therein, without assigning any special equity; an
16 order of removal shall be made by the circuit court, upon the
17 filing of a sworn petition by the settlor, beneficiary,
18 trustee, or an interested person, reciting that the petitioner
19 is the settlor, beneficiary, trustee, or an interested person
20 of the trust and that, in the opinion of the petitioner, the
21 proceeding can be better administered in the circuit court
22 than in the probate court. The circuit court shall transfer
23 the proceeding involving a trust transferred pursuant to this
24 section back to the probate court if the circuit court finds
25 that the removal in the first instance was sought for the
26 purpose of improper delay or did not comply with applicable
27 law. The circuit court may transfer a proceeding involving a

1 trust transferred pursuant to this section back to the probate
2 court if the circuit court finds that any of the following
3 apply:

4 (1) The circuit court has issued a final order or
5 judgment on all contested matters pending before the circuit
6 court concerning the trust and the time for an appeal of the
7 order or judgment has expired without an appeal being filed
8 or, if an appeal was filed, after the final adjudication of
9 the appeal.

10 (2) All interested parties request the proceeding be
11 transferred back to probate court.

12 (b) Nothing in subsection (a) shall prevent a
13 proceeding concerning a trust estate from being removed again
14 to the circuit court pursuant to subsection (a) after the
15 administration has been transferred back to the probate court
16 as provided above.

17 §26-2-2.1.

18 (a) In any county where the judge of probate is
19 required to be learned in the law, the administration or
20 conduct of any guardianship or conservatorship of a minor or
21 incapacitated person may be removed from the probate court to
22 the circuit court, at any time before a proceeding for final
23 settlement thereof is commenced in probate court by the
24 guardian or conservator of the guardianship or conservatorship
25 or guardian ad litem or next friend of a ward or anyone
26 entitled to support out of the estate of the ward without
27 assigning any special equity. The circuit court shall transfer

1 the administration of a guardianship or conservatorship
2 transferred pursuant to this section back to the probate court
3 if the circuit court finds that the removal in the first
4 instance was sought for the purpose of improper delay or did
5 not comply with applicable law. The circuit court may transfer
6 the administration of a guardianship or conservatorship
7 transferred pursuant to this section back to the probate court
8 if the circuit court finds that any of the following apply:

9 (1) The circuit court has issued a final order or
10 judgment on all contested matters pending before the circuit
11 court in the administration of the estate and the time for an
12 appeal of the order or judgment has expired without an appeal
13 being filed or, if an appeal was filed, after the final
14 adjudication of the appeal.

15 (2) All interested parties request the estate
16 administration be transferred back to probate court.

17 (b) Nothing in subsection (a) shall prevent the
18 administration of an estate from being removed again to the
19 circuit court pursuant to subsection (a) after the
20 administration has been transferred back to the probate court
21 as provided above.

22 Section 2. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate committee on Judiciary	19-JAN-10
Read for the second time and placed on the calen- dar 1 amendment	11-FEB-10
Read for the third time and passed as amended ...	08-APR-10

Yeas 33
Nays 0

McDowell Lee
Secretary