

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

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8 SYNOPSIS: Under existing law, the administration of
9 an estate or a guardianship or conservatorship may
10 be removed from the probate court to the circuit
11 court at any time before a final settlement of the
12 estate. Existing law does not provide for the
13 transfer of the estate or guardianship or
14 conservatorship back to probate court from circuit
15 court. Also, existing law does not provide for the
16 transfer of a trust from probate court to circuit
17 court.

18 This bill would provide that in any county
19 where the judge of probate is required to be
20 learned in the law, the administration of an
21 estate, a trust, or a conservatorship or
22 guardianship may be removed from probate court to
23 circuit court at any time before a proceeding on
24 final settlement is commenced in probate court. The
25 bill would provide that the administration of the
26 estate, a trust, or a guardianship or
27 conservatorship would be transferred back to

1 probate court if the circuit court finds the
2 removal was sought for the purpose of delay or did
3 not comply with applicable law and would authorize
4 these proceedings to be transferred back to probate
5 court if the circuit court has issued a final order
6 or judgment on all contested matters pending before
7 the circuit court, or if all of the parties request
8 the proceeding to be transferred back to the
9 probate court.

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

1 trust from probate court to circuit court and for the transfer
2 back to probate court in a similar manner as provided for
3 estates and guardianships or conservatorships.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 12-11-41.1, 12-11-41.2, and
6 26-2-2.1 are added to the Code of Alabama 1975, to read as
7 follows:

8 §12-11-41.1.

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

25 (1) The circuit court has issued a final order or
26 judgment on all contested matters pending before the circuit
27 court in the administration of the estate and the time for an

1 appeal of the order or judgment has expired without an appeal
2 being filed or, if an appeal was filed, after the final
3 adjudication of the appeal.

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

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

11 §12-11-41.2.

12 (a) In any county where the judge of probate is
13 required to be learned in the law, a proceeding involving a
14 trust may be removed from the probate court to the circuit
15 court at any time before a proceeding for final settlement
16 thereof is commenced in probate court, by any settlor,
17 beneficiary, or trustee of the trust, or other person
18 interested therein, without assigning any special equity; an
19 order of removal shall be made by the circuit court, upon the
20 filing of a sworn petition by the settlor, beneficiary,
21 trustee, or an interested person, reciting that the petitioner
22 is the settlor, beneficiary, trustee, or an interested person
23 of the trust and that, in the opinion of the petitioner, the
24 proceeding can be better administered in the circuit court
25 than in the probate court. The circuit court shall transfer
26 the proceeding involving a trust transferred pursuant to this
27 section back to the probate court if the circuit court finds

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

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

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

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

19 §26-2-2.1.

20 (a) In any county where the judge of probate is
21 required to be learned in the law, the administration or
22 conduct of any guardianship or conservatorship of a minor or
23 incapacitated person may be removed from the probate court to
24 the circuit court, at any time before a proceeding for final
25 settlement thereof is commenced in probate court by the
26 guardian or conservator of the guardianship or conservatorship
27 or guardian ad litem or next friend of a ward or anyone

1 entitled to support out of the estate of the ward without
2 assigning any special equity. The circuit court shall transfer
3 the administration of a guardianship or conservatorship
4 transferred pursuant to this section back to the probate court
5 if the circuit court finds that the removal in the first
6 instance was sought for the purpose of delay or did not comply
7 with applicable law. The circuit court may transfer the
8 administration of a guardianship or conservatorship
9 transferred pursuant to this section back to the probate court
10 if the circuit court finds that any of the following apply:

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

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

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

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