

SB195 ENROLLED



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



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1 Enrolled, An Act,

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4 Relating to decedents' estates; to amend Section
5 43-8-216, Code of Alabama 1975; to allow will contests and
6 estate administration to be removed to probate court without
7 assigning special equity; and to make nonsubstantive,
8 technical revisions to update the existing code language to
9 current style.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 "§43-8-216

14 (a) Except for a proceeding pending in a probate court
15 in a county where the probate court or judge exercises equity
16 jurisdiction concurrent with that of the circuit court by
17 virtue of a provision of the Constitution of Alabama of 2022,
18 specific to such county, a local act, or a statute specific to
19 such county, a proceeding in a probate court pertaining to a
20 will contest or an administration of a decedent's estate may
21 be removed by an interested person to the circuit court for
22 the county where the proceeding in probate court is pending
23 without assigning any special equity; provided, however: (i)
24 no removal of a will contest under this section can occur
25 unless Section 43-8-215 is complied with; and (ii) a removal
26 of the administration of a decedent's estate under this
27 section may not be made prior to the issuance of letters
28 testamentary, letters of administration, or letters of



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29 administration with the will annexed or after the probate
30 court has taken steps toward a final settlement.

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

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

37 (2) If the proceeding is a will contest under this
38 division, the name of the person who has petitioned to admit
39 the will to probate, who will be the plaintiff in the removed
40 proceeding, and the person contesting the validity of the
41 will, who will be the defendant in the removed proceeding.

42 (3) Whether jury trial is demanded.

43 (4) The removing party's interest in the proceeding
44 being removed.

45 (5) The name of all interested persons to the
46 proceeding being removed to which the removing party is
47 delivering the notice of removal.

48 (c) Once the removing party has filed the notice of
49 removal with the clerk of the circuit court, the proceeding
50 shall be removed to the circuit court. Following the removal
51 to the circuit court, the removing party shall file a copy of
52 the notice of removal with the clerk of the probate court and
53 shall send a copy of the notice of removal to all interested
54 persons listed therein. Upon receiving a copy of the notice of
55 removal, the probate court shall take no further action unless
56 and until the removed proceeding is remanded, except to



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57 deliver a copy of the record in the probate court to the clerk
58 of the circuit court. The circuit court shall have
59 jurisdiction of a removed proceeding upon filing of the notice
60 of removal with the circuit clerk. Neither the omission nor
61 incorrect statement of any information required to be included
62 in the notice of removal, nor the failure of the probate court
63 to deliver a copy of the record of proceedings in that court,
64 shall deprive the circuit court of jurisdiction to hear and
65 decide the removed proceeding.

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

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

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

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

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

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



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85 (f) If the circuit court finds that ~~a lawyer~~ an
86 attorney or party vexatiously or for improper purposes removed
87 a proceeding, then the court may tax the ~~lawyer~~ attorney or
88 party with the costs of the proceeding. In doing so, the
89 circuit court may assess the full amount or any portion of the
90 costs against any offending ~~lawyer~~ attorney or party, or both,
91 and among them, as the court determines just. When granting an
92 award of costs and lawyer fees, the court shall specifically
93 state the reasons for the award and shall consider the factors
94 in Section 12-19-273, among others, in determining whether to
95 assess ~~lawyer~~ attorney fees and costs and the amount to be
96 assessed.

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

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

111 (i) Following remand by the circuit court, the clerk of
112 the circuit court shall deliver a copy of the order of remand



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113 and the record of all proceedings in the circuit court to the
114 clerk of the probate court to be filed with the records of the
115 proceeding in the probate court, and the probate court shall
116 proceed with the proceeding in accordance with the circuit
117 court's order.

118 (j) In any proceeding removed from a probate court, the
119 circuit court may issue all necessary orders and process to
120 bring before it all proper parties whether served by process
121 issued by the probate court or otherwise.

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

125 Section 2. This act shall become effective on October
126 1, 2026.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB195
Senate 05-Feb-26
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 05-Mar-26

By: Senator Smitherman