

1 SB48
2 128231-3
3 By Senators Brooks and Glover
4 RFD: Judiciary
5 First Read: 01-MAR-11
6 PFD: 02/24/2011

1 SB48

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4 ENROLLED, An Act,

5 Relating to the administration of an estate or a
6 guardianship or conservatorship in probate court; to add
7 Sections 12-11-41.1 and 26-2-2.1 to the Code of Alabama 1975,
8 to provide that in any county where the judge of probate is
9 required to be learned in the law, the administration of an
10 estate or a guardianship or conservatorship may be transferred
11 to circuit court at any time before the proceeding on final
12 settlement commences and to provide for the remand of the
13 administration of the estate or a guardianship or
14 conservatorship to probate court under certain circumstances.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 §12-11-41.1.

19 (a) In any county where the judge of probate is
20 required to be learned in the law, the administration of any
21 estate may be removed from the probate court to the circuit
22 court pursuant to Section 12-11-41 at any time before a
23 proceeding for final settlement thereof is commenced in
24 probate court by any heir, devisee, legatee, distributee,
25 executor, administrator, or administrator with the will

1 annexed of the estate, without assigning any special equity.
2 The circuit court shall remand the administration of an estate
3 transferred pursuant to this section to the probate court if
4 the circuit court finds that the removal was sought for the
5 purpose of improper delay or did not comply with applicable
6 law. The circuit court may remand the administration of an
7 estate pursuant to this section to the probate court if the
8 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 or their representatives
16 request the estate administration be remanded to probate
17 court.

18 (b) Nothing in subsection (a) shall prevent the
19 administration of an estate from being removed again to the
20 circuit court pursuant to Section 12-11-41 after the
21 administration has been remanded to the probate court as
22 provided above.

23 §26-2-2.1.

24 (a) In any county where the judge of probate is
25 required to be learned in the law, the administration or

1 conduct of any guardianship or conservatorship of a minor or
2 incapacitated person may be removed from the probate court to
3 the circuit court pursuant to Section 26-2-2 at any time
4 before a proceeding for final settlement thereof is commenced
5 in probate court by the guardian or conservator of the
6 guardianship or conservatorship or guardian ad litem or next
7 friend of a ward or anyone entitled to support out of the
8 estate of the ward without assigning any special equity. The
9 circuit court shall remand the administration of a
10 guardianship or conservatorship transferred pursuant to this
11 section to the probate court if the circuit court finds that
12 the removal was sought for the purpose of improper delay or
13 did not comply with applicable law. The circuit court may
14 remand the administration of a guardianship or conservatorship
15 pursuant to this section to the probate court if the circuit
16 court finds that any of the following apply:

17 (1) The circuit court has issued a final order or
18 judgment on all contested matters pending before the circuit
19 court in the administration of the guardianship or
20 conservatorship and the time for an appeal of the order or
21 judgment has expired without an appeal being filed or, if an
22 appeal was filed, after the final adjudication of the appeal.

23 (2) All interested parties or their representatives
24 request the administration of the guardianship or
25 conservatorship be remanded to probate court.

1 (b) Nothing in subsection (a) shall prevent the
2 administration of a guardianship or conservatorship from being
3 removed again to the circuit court pursuant to Section 26-2-2
4 after the administration has been remanded to the probate
5 court as provided above.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB48

Senate 09-MAR-11

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Amended and passed 26-MAY-11

Senate concurred in House amendment 31-MAY-11

By: Senator Brooks