

SUBJECT: Updating certain procedures in courts exercising probate jurisdiction

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

1 absent — Gutierrez

SENATE VOTE: On final passage, March 20 — 30-0

WITNESSES: No public hearing

BACKGROUND: Some have raised concerns that certain procedures used by courts in probate proceedings are inefficient or outdated.

DIGEST: SB 38 would revise procedures so that a court could, on its own motion and after 30 days' written notice, remove a personal representative who failed to timely file an affidavit or certificate regarding notice to beneficiaries. The personal representative or independent executor would be required to answer at a time and place set in the notice. The bill would apply similar requirements for a probate court to remove an independent estate executor on the court's own motion.

Under the bill, a court could remove a guardian for a reason listed in the statute on:

- its own motion, after the guardian had been notified by certified mail, return receipt requested, to answer at a time and place set in the notice; or
- the complaint of an interested person, after the guardian had been cited by personal service to answer at a time and place set in the notice.

The bill would allow a court in which a guardianship was pending to make its own motion to transfer the business of the guardianship to another county where the ward resided, with notice to the guardian and the sureties of the guardianship bond. The bill would change the required notice before a guardian could be removed on the court's own motion from personal service to certified mail with a return receipt requested.

The bill would take effect September 1, 2017, and would apply to guardianships created before, on, or after the effective date.