

SENATE No. 736

The Commonwealth of Massachusetts

SENATE, April 12, 1954.

The committee on Legal Affairs, to whom was referred the petition (accompanied by House, No. 1497) of Hibbard Richter and William D. Morton, Jr., that judges of probate may, in the event of the removal of an administrator, executor, guardian, conservator or trustee, fill such vacancy by appointing a successor without the necessity of a new petition or proceeding, report the accompanying Bill (Senate, No. 736).

For the committee,

RICHARD H. LEE.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Four.

AN ACT PROVIDING THAT JUDGES OF PROBATE MAY, IN THE EVENT OF THE REMOVAL OF AN ADMINISTRATOR, EXECUTOR, GUARDIAN, CONSERVATOR OR TRUSTEE, FILL SUCH VACANCY BY APPOINTING A SUCCESSOR WITHOUT THE NECESSITY OF A NEW PETITION OR PROCEEDING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 11 of chapter 195 of the Gen-
2 eral Laws, as appearing in the Tercentenary Edition,
3 is hereby amended by inserting after the word “ninety-
4 three”, in line 10, the words:— or may appoint a
5 suitable person to act as administrator without the
6 necessity of a new petition and a hearing thereon;
7 provided, that due notice has been given to all per-
8 sons interested in said appointment, — so as to read
9 as follows:— *Section 11.* If an executor or adminis-
10 trator becomes insane or otherwise incapable of per-
11 forming the trust, or is unsuitable therefor, or if an
12 executor or administrator who resides out of the com-
13 monwealth, having been duly cited by the probate
14 court, neglects to render his accounts and to settle
15 the estate, the probate court may remove him; and
16 thereupon the other executor or administrator, if any,
17 may proceed in performing the trust as if the one re-
18 moved were dead or, if there is no other executor or
19 administrator, the court may appoint an administra-
20 tor as provided in section nine of chapter one hundred
21 and ninety-three or may appoint a suitable person to
22 act as administrator without the necessity of a new
23 petition and a hearing thereon; provided, that due

24 notice has been given to all persons interested in said
25 appointment.

1 SECTION 2. Section 33 of chapter 201 of the Gen-
2 eral Laws, as amended by chapter 420 of the acts of
3 1950, is hereby further amended by adding at the end
4 the following sentence:— The probate court may,
5 without the necessity of a new petition or a hearing
6 thereon, fill any such vacancy by appointing a suc-
7 cessor; provided, that due notice has been given to
8 all persons interested in said appointment., — so as
9 to read as follows:— *Section 33.* If a guardian or
10 conservator becomes insane or otherwise incapable of
11 performing his trust or is unsuitable therefor, the
12 probate court, after notice to him and to all other
13 persons interested, may remove him. Upon the re-
14 quest of a guardian or conservator, the probate court
15 may allow him to resign his trust. Upon such removal
16 or resignation, and upon the death of a guardian or
17 conservator, another may be appointed in his stead
18 by the same court. The probate court may, without
19 the necessity of a new petition or a hearing thereon,
20 fill any such vacancy by appointing a successor; pro-
21 vided, that due notice has been given to all persons
22 interested in said appointment.

1 SECTION 3. Section 12 of chapter 203 of the Gen-
2 eral Laws, as appearing in the Tercentenary Edition,
3 is hereby amended by adding at the end the following
4 sentence:— In the event of such removal the probate
5 court may, without the necessity of a petition and
6 hearing thereon, fill such vacancy by appointing a
7 new trustee, after due notice to all persons interested.,
8 — so as to read as follows:— *Section 12.* The su-
9 preme judicial court, the superior court or the probate
10 court may, upon petition of a party beneficially inter-
11 ested in a trust under a written instrument, and after
12 notice to the trustee and all persons interested, remove
13 the trustee if it finds that such removal is for the in-

14 terests of the beneficiaries of the trust or if he has
15 become insane or otherwise incapable or is unsuitable
16 therefor. In the event of such removal the probate
17 court may, without the necessity of a petition and
18 hearing thereon, fill such vacancy by appointing a
19 new trustee, after due notice to all persons interested.