

1 SB256  
2 218673-3  
3 By Senator Barfoot  
4 RFD: Judiciary  
5 First Read: 23-FEB-22

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3  
4 ENGROSSED

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6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to decedents' estates; to specify that  
12 probate courts have jurisdiction for will contests and provide  
13 for removal of proceedings in probate court pertaining to a  
14 will contest or the administration of a decedent's estate from  
15 probate courts without equity jurisdiction to circuit court in  
16 certain circumstances.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Division 4, commencing with Section  
19 43-8-210, is added to Article 7 of Chapter 8 of Title 43, Code  
20 of Alabama 1975, to read as follows:

21 Division 4. Jurisdiction for Will Contests Filed for  
22 Probate on or after January 1, 2023, and the Removal of the  
23 Administration of a Decedent's Estate when the Administration  
24 Commenced on or after January 1, 2023.

25 §43-8-210.

26 (a) This division applies to wills filed for probate  
27 on or after January 1, 2023, and the removal to circuit court

1 of the administration of a decedent's estate when the  
2 administration commenced on or after January 1, 2023.

3 (b) Sections 12-11-41, 12-11-41.1, 43-8-190,  
4 43-8-197, 43-8-198, 43-8-199, 43-8-200, and 43-8-201, shall  
5 not apply to wills filed for probate on or after January 1,  
6 2023, or the removal of the administration of a decedent's  
7 estate, when the administration was commenced on or after  
8 January 1, 2023.

9 (c) If any provision of this division conflicts with  
10 any provision of Chapter 13 of Title 12, Division 3, Article  
11 7, Chapter 8 of Title 43, or any other provision of law, the  
12 provision of this division prevails.

13 §43-8-211.

14 In addition to the rules of evidence in the courts  
15 of general jurisdiction, the following rules relating to a  
16 determination of death and status apply:

17 (1) Death occurs when an individual is determined to  
18 be dead under the Alabama Determination of Death Act, Section  
19 22-31-1, et seq.

20 (2) A certified or authenticated copy of a death  
21 certificate purporting to be issued by an official or agency  
22 of the place where the death purportedly occurred is prima  
23 facie evidence of the fact, place, date, and time of death and  
24 the identity of the decedent.

25 (3) A certified or authenticated copy of any record  
26 or report of a governmental agency, domestic or foreign, that  
27 an individual is missing, detained, dead, or alive is prima

1        facie evidence of the status and of the dates, circumstances,  
2        and places disclosed by the record or report.

3                (4) In the absence of prima facie evidence of death  
4        under subdivision (2) or (3), the fact of death may be  
5        established by clear and convincing evidence, including  
6        circumstantial evidence.

7                (5) An individual whose death is not established  
8        under the preceding subdivisions who is absent for a  
9        continuous period of five years, during which the individual  
10       has not been heard from, and whose absence is not  
11       satisfactorily explained after diligent search or inquiry, is  
12       presumed to be dead. The individual's death is presumed to  
13       have occurred at the end of the period unless there is  
14       sufficient evidence for determining that death occurred  
15       earlier.

16                §43-8-212.

17                Unless the context otherwise requires, in this  
18        division, a proceeding includes an action at law and a suit in  
19        equity.

20                §43-8-213.

21                To the full extent permitted by the Constitution of  
22        Alabama of 1901:

23                (1) The probate court has jurisdiction over all  
24        matters set forth in Section 12-13-1; and

25                (2) The probate court where a will is offered for  
26        probate has original and general jurisdiction over the contest

1 of the validity of the will in accordance with Section 43-8-215.

2 §43-8-214.

3 (a) Where a proceeding under this division could be  
4 maintained in more than one place in this state, the probate  
5 court in which the proceeding is first commenced has the  
6 exclusive right to proceed.

7 (b) If proceedings concerning the same estate are  
8 commenced in more than one probate court of this state, the  
9 probate court in which the proceeding was first commenced  
10 shall continue to hear the matter, and the other courts shall  
11 hold the matter in abeyance until the question of venue is  
12 decided; and if the ruling probate court determines that venue  
13 is properly in another court, it shall transfer the proceeding  
14 to the other probate court.

15 (c) If a probate court finds that in the interest of  
16 justice a proceeding or a file should be located in another  
17 probate court of this state, the court making the finding may  
18 transfer the proceeding or file to the other probate court.

19 §43-8-215.

20 (a) A will, before the probate thereof or at any  
21 time within 180 days after the admission of such will to  
22 probate, may be contested by any interested person by filing  
23 in the court where it is offered for probate allegations in  
24 writing that the will was not duly executed, or of the  
25 unsoundness of mind of the testator, or of any other valid  
26 objections thereto; and thereupon an issue must be made up,  
27 under the direction of the probate court, between the person

1 who made or is making the application for the probate of the  
2 will, as plaintiff, and the person contesting the validity of  
3 the will, as defendant; and the issue, on application of  
4 either party, must be tried by a jury.

5 (b) In the event of a contest of the probate of a  
6 will, all interested persons shall be made parties to the  
7 contest; the contest proceedings shall be conclusive as to all  
8 matters which were litigated or could have been litigated in  
9 such contest; and no further proceedings shall ever be  
10 entertained in any courts of this state to probate or contest  
11 the probate of the will.

12 (c) After the expiration of the 180-day period after  
13 the admission of the will to probate, the validity of the will  
14 can only be contested by infants and persons of unsound mind  
15 who had no legal conservator at the time the will was admitted  
16 to probate, or who were not represented by a guardian ad  
17 litem, who are allowed one year after the appointment of a  
18 conservator, or, if none be appointed, one year from the  
19 termination of their respective disabilities in which to  
20 contest such will, but in no case to exceed 20 years from the  
21 time the will was admitted to probate; and also provided there  
22 has not been a contest of such will instituted and prosecuted  
23 to final judgment.

24 (d) Except for proceedings pending in a probate  
25 court in a county where the probate court or judge exercises  
26 equity jurisdiction concurrent with that of the circuit court  
27 by virtue of a provision of the Constitution of Alabama of

1 1901 specific to the county, a local act, or a statute  
2 specific to the county, then, pursuant to Section 43-8-216,  
3 any party to the will contest may remove the will contest from  
4 the probate court to the circuit court, provided the removal  
5 occurs no later than 42 days before the first setting of the  
6 contest for trial unless leave of the probate court is  
7 obtained based on a showing of good cause.

8 §43-8-216.

9 (a) Except for a proceeding pending in a probate  
10 court in a county where the probate court or judge exercises  
11 equity jurisdiction concurrent with that of the circuit court  
12 by virtue of a provision of the Constitution of Alabama of  
13 1901, specific to such county, a local act, or a statute  
14 specific to such county, a proceeding in a probate court  
15 pertaining to a will contest or an administration of a  
16 decedent's estate may be removed by an interested person to  
17 the circuit court for the county where the proceeding in  
18 probate court is pending; provided, however: (i) no removal of  
19 a will contest can occur unless Section 43-8-215 is complied  
20 with; and (ii) a removal of the administration of a decedent's  
21 estate may not be made prior to the issuance of letters  
22 testamentary, letters of administration, or letters of  
23 administration with the will annexed or after the probate  
24 court has taken steps toward a final settlement.

25 (b) To remove a proceeding from the probate court to  
26 the circuit court, the removing party shall file in the  
27 circuit court to which the proceeding is being removed, a

1 notice of removal which must set forth or contain all of the  
2 following:

3 (1) A description of the nature of the proceedings  
4 being removed.

5 (2) If the proceeding is a will contest under this  
6 division, the name of the person who has petitioned to admit  
7 the will to probate, who will be the plaintiff in the removed  
8 proceeding, and the person contesting the validity of the  
9 will, who will be the defendant in the removed proceeding.

10 (3) Whether jury trial is demanded.

11 (4) The removing party's interest in the proceeding  
12 being removed.

13 (5) The name of all interested persons to the  
14 proceeding being removed to which the removing party is  
15 delivering the notice of removal.

16 (c) Once the removing party has filed the notice of  
17 removal with the clerk of the circuit court, the proceeding  
18 shall be removed to the circuit court. Following the removal  
19 to the circuit court, the removing party shall file a copy of  
20 the notice of removal with the clerk of the probate court and  
21 shall send a copy of the notice of removal to all interested  
22 persons listed therein. Upon receiving a copy of the notice of  
23 removal the probate court shall take no further action, unless  
24 and until the removed proceeding is remanded, except to  
25 deliver a copy of the record in the probate court to the clerk  
26 of the circuit court. The circuit court shall have  
27 jurisdiction of a proceeding removed upon filing of the notice



1 of removal with the circuit clerk. Neither the omission nor  
2 incorrect statement of any information required to be included  
3 in the notice of removal, nor the failure of the probate court  
4 to deliver a copy of the record of proceedings in that court  
5 shall deprive the circuit court of jurisdiction to hear and  
6 decide the removed proceeding.

7 (d) If a necessary party to the proceedings has not  
8 received notice of the proceeding as required by law before  
9 the notice of removal is filed, notice of the proceeding must  
10 be issued by the circuit court to such necessary party as  
11 provided in the Alabama Rules of Civil Procedure or as  
12 otherwise prescribed by law.

13 (e) The circuit court may remand the proceeding  
14 removed under this section to the probate court if the circuit  
15 court finds any of the following:

16 (1) The removal was sought for the purpose of  
17 improper delay.

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

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

23 (4) All interested parties or their representatives  
24 have requested the removed proceeding be remanded to probate  
25 court.

26 (f) If the circuit court finds that a lawyer or  
27 party vexatiously or for improper purposes removed a

1 proceeding, then the court may tax the lawyer or party with  
2 the costs of the proceeding. In doing so, the circuit court  
3 may assess the full amount or any portion of the costs against  
4 any offending lawyer or party, or both, and among them, as the  
5 court determines just. When granting an award of costs and  
6 lawyer fees, the court shall specifically state the reasons  
7 for the award and shall consider the factors in Section  
8 12-19-273, among others, in determining whether to assess  
9 lawyer fees and costs and the amount to be assessed.

10 (g) Costs of an action that may be assessed under  
11 subsection (f) include reasonable compensation for and  
12 expenses incurred by a lawyer, guardian ad litem, or party,  
13 including the cost of experts to testify in or advise  
14 regarding the proceeding. Costs taxed under this subsection  
15 shall be limited to those incurred by the parties opposing an  
16 improperly removed proceeding or incurred as a result of the  
17 improperly removed proceeding.

18 (h) Upon entry of an order taxing costs under  
19 subsection (f), the clerk of the circuit court shall issue an  
20 itemized bill of all costs and expenses taxed against each  
21 person, which itemized statements of costs and expenses shall  
22 have the full force and effect of a judgment. The provisions  
23 of this subsection are cumulative.

24 (i) Following remand by the circuit court, the clerk  
25 of the circuit court shall deliver a copy of the order of  
26 remand and the record of all proceedings in the circuit court  
27 to the clerk of the probate court to be filed with the records

1 of the proceeding in the probate court, and the probate court  
2 shall proceed with the proceeding in accordance with the  
3 circuit court's order.

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

8 (k) Neither remand nor anything else shall prevent  
9 the subsequent removal of a proceeding to the circuit court  
10 under this section.

11 §43-8-217.

12 Except as otherwise specifically provided in this  
13 division or by rule, every document filed with the probate  
14 court under this division, including applications, petitions,  
15 and demands for notice, shall be deemed to include an oath,  
16 affirmation, or statement to the effect that its  
17 representations are true as far as the person executing or  
18 filing it knows or is informed, and penalties for perjury may  
19 follow deliberate falsification therein.

20 Section 2. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 23-FEB-22

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 09-MAR-22

Read for the third time and passed as amended .... 29-MAR-22

Yeas 33  
Nays 0

Patrick Harris,  
Secretary.