

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

1 SB256

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3
4 ENROLLED, An Act,

5 Relating to decedents' estates; to specify that
6 probate courts have jurisdiction for will contests and provide
7 for removal of proceedings in probate court pertaining to a
8 will contest or the administration of a decedent's estate from
9 probate courts without equity jurisdiction to circuit court in
10 certain circumstances.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Division 4, commencing with Section
13 43-8-210, is added to Article 7 of Chapter 8 of Title 43, Code
14 of Alabama 1975, to read as follows:

15 Division 4. Jurisdiction for Will Contests Filed for
16 Probate on or after January 1, 2023, and the Removal of the
17 Administration of a Decedent's Estate when the Administration
18 Commenced on or after January 1, 2023.

19 §43-8-210.

20 (a) This division applies to wills filed for probate
21 on or after January 1, 2023, and the removal to circuit court
22 of the administration of a decedent's estate when the
23 administration commenced on or after January 1, 2023.

24 (b) Sections 12-11-41, 12-11-41.1, 43-8-190,
25 43-8-197, 43-8-198, 43-8-199, 43-8-200, and 43-8-201, shall

1 not apply to wills filed for probate on or after January 1,
2 2023, or the removal of the administration of a decedent's
3 estate, when the administration was commenced on or after
4 January 1, 2023.

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

9 §43-8-211.

10 In addition to the rules of evidence in the courts
11 of general jurisdiction, the following rules relating to a
12 determination of death and status apply:

13 (1) Death occurs when an individual is determined to
14 be dead under the Alabama Determination of Death Act, Section
15 22-31-1, et seq.

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

21 (3) A certified or authenticated copy of any record
22 or report of a governmental agency, domestic or foreign, that
23 an individual is missing, detained, dead, or alive is prima
24 facie evidence of the status and of the dates, circumstances,
25 and places disclosed by the record or report.

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

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

14 §43-8-212.

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

18 §43-8-213.

19 To the full extent permitted by the Constitution of
20 Alabama of 1901:

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

23 (2) The probate court where a will is offered for
24 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

1 objections thereto; and thereupon an issue must be made up,
2 under the direction of the probate court, between the person
3 who made or is making the application for the probate of the
4 will, as plaintiff, and the person contesting the validity of
5 the will, as defendant; and the issue, on application of
6 either party, must be tried by a jury.

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

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

1 (d) Except for proceedings pending in a probate
2 court in a county where the probate court or judge exercises
3 equity jurisdiction concurrent with that of the circuit court
4 by virtue of a provision of the Constitution of Alabama of
5 1901 specific to the county, a local act, or a statute
6 specific to the county, then, pursuant to Section 43-8-216,
7 any party to the will contest may remove the will contest from
8 the probate court to the circuit court, provided the removal
9 occurs no later than 42 days before the first setting of the
10 contest for trial unless leave of the probate court is
11 obtained based on a showing of good cause.

12 §43-8-216.

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

1 testamentary, letters of administration, or letters of
2 administration with the will annexed or after the probate
3 court has taken steps toward a final settlement.

4 (b) To remove a proceeding from the probate court to
5 the circuit court, the removing party shall file in the
6 circuit court to which the proceeding is being removed, a
7 notice of removal which must set forth or contain all of the
8 following:

9 (1) A description of the nature of the proceedings
10 being removed.

11 (2) If the proceeding is a will contest under this
12 division, the name of the person who has petitioned to admit
13 the will to probate, who will be the plaintiff in the removed
14 proceeding, and the person contesting the validity of the
15 will, who will be the defendant in the removed proceeding.

16 (3) Whether jury trial is demanded.

17 (4) The removing party's interest in the proceeding
18 being removed.

19 (5) The name of all interested persons to the
20 proceeding being removed to which the removing party is
21 delivering the notice of removal.

22 (c) Once the removing party has filed the notice of
23 removal with the clerk of the circuit court, the proceeding
24 shall be removed to the circuit court. Following the removal
25 to the circuit court, the removing party shall file a copy of

1 the notice of removal with the clerk of the probate court and
2 shall send a copy of the notice of removal to all interested
3 persons listed therein. Upon receiving a copy of the notice of
4 removal the probate court shall take no further action, unless
5 and until the removed proceeding is remanded, except to
6 deliver a copy of the record in the probate court to the clerk
7 of the circuit court. The circuit court shall have
8 jurisdiction of a proceeding removed upon filing of the notice
9 of removal with the circuit clerk. Neither the omission nor
10 incorrect statement of any information required to be included
11 in the notice of removal, nor the failure of the probate court
12 to deliver a copy of the record of proceedings in that court
13 shall deprive the circuit court of jurisdiction to hear and
14 decide the removed proceeding.

15 (d) If a necessary party to the proceedings has not
16 received notice of the proceeding as required by law before
17 the notice of removal is filed, notice of the proceeding must
18 be issued by the circuit court to such necessary party as
19 provided in the Alabama Rules of Civil Procedure or as
20 otherwise prescribed by law.

21 (e) The circuit court may remand the proceeding
22 removed under this section to the probate court if the circuit
23 court finds any of the following:

24 (1) The removal was sought for the purpose of
25 improper delay.

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

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

6 (4) All interested parties or their representatives
7 have requested the removed proceeding be remanded to probate
8 court.

9 (f) If the circuit court finds that a lawyer or
10 party vexatiously or for improper purposes removed a
11 proceeding, then the court may tax the lawyer or party with
12 the costs of the proceeding. In doing so, the circuit court
13 may assess the full amount or any portion of the costs against
14 any offending lawyer or party, or both, and among them, as the
15 court determines just. When granting an award of costs and
16 lawyer fees, the court shall specifically state the reasons
17 for the award and shall consider the factors in Section
18 12-19-273, among others, in determining whether to assess
19 lawyer fees and costs and the amount to be assessed.

20 (g) Costs of an action that may be assessed under
21 subsection (f) include reasonable compensation for and
22 expenses incurred by a lawyer, guardian ad litem, or party,
23 including the cost of experts to testify in or advise
24 regarding the proceeding. Costs taxed under this subsection
25 shall be limited to those incurred by the parties opposing an

1 improperly removed proceeding or incurred as a result of the
2 improperly removed proceeding.

3 (h) Upon entry of an order taxing costs under
4 subsection (f), the clerk of the circuit court shall issue an
5 itemized bill of all costs and expenses taxed against each
6 person, which itemized statements of costs and expenses shall
7 have the full force and effect of a judgment. The provisions
8 of this subsection are cumulative.

9 (i) Following remand by the circuit court, the clerk
10 of the circuit court shall deliver a copy of the order of
11 remand and the record of all proceedings in the circuit court
12 to the clerk of the probate court to be filed with the records
13 of the proceeding in the probate court, and the probate court
14 shall proceed with the proceeding in accordance with the
15 circuit court's order.

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

20 (k) Neither remand nor anything else shall prevent
21 the subsequent removal of a proceeding to the circuit court
22 under this section.

23 §43-8-217.

24 Except as otherwise specifically provided in this
25 division or by rule, every document filed with the probate

1 court under this division, including applications, petitions,
2 and demands for notice, shall be deemed to include an oath,
3 affirmation, or statement to the effect that its
4 representations are true as far as the person executing or
5 filing it knows or is informed, and penalties for perjury may
6 follow deliberate falsification therein.

7 Section 2. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB256

Senate 29-MAR-22

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

Patrick Harris,
Secretary.

House of Representatives
Passed: 07-APR-22

By: Senator Barfoot