

1 SB256
2 217581-1
3 By Senator Barfoot
4 RFD: Judiciary
5 First Read: 23-FEB-22

SYNOPSIS: Under existing law, before probate of a will, the will may be contested in probate court or, within six months after probate of a will, the will may be contested in circuit court.

This bill would specify that for wills filed for probate on or after January 1, 2023, probate courts have jurisdiction for will contests and would provide for removal of a will contest from probate courts without equity jurisdiction to circuit court.

A BILL
TO BE ENTITLED
AN ACT

Relating to decedents' estates; to specify that probate courts have jurisdiction for will contests and provide for removal of will contests from probate courts without equity jurisdiction to circuit court in certain circumstances.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Division 4, commencing with Section
2 43-8-210, is added to Article 7 of Chapter 8 of Title 43, Code
3 of Alabama 1975, to read as follows:

4 Division 4. Contesting Validity of Wills Filed for
5 Probate on or after January 1, 2023.

6 §43-8-210.

7 This division applies to wills filed for probate on
8 or after January 1, 2023.

9 §43-8-211.

10 (a) In addition to the rules of evidence in the
11 courts of general jurisdiction, the following rules relating
12 to a 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.

26 (4) In the absence of prima facie evidence of death
27 under subdivision (2) or (3), the fact of death may be

1 established by clear and convincing evidence, including
2 circumstantial evidence.

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

12 §43-8-212.

13 Unless the context otherwise requires, in this
14 division, the following words shall have the following
15 meanings:

16 (1) BENEFICIARY. The term, as it relates to trust
17 beneficiaries, includes a person who has any present or future
18 interest, vested, or contingent, and also includes the owner
19 of an interest by assignment or other transfer and as it
20 relates to a charitable trust, includes any person entitled to
21 enforce the trust.

22 (2) CHILD. An individual of any age whose parentage
23 is established under the Alabama Uniform Parentage Act,
24 Section 26-17-101, et seq.

25 (3) CONSERVATOR. As defined in Section 26-2A-20.

1 (4) DEVISE. A testamentary disposition of real or
2 personal property, when used as a noun, or to dispose of real
3 or personal property by will, when used as a verb.

4 (5) DEVISEE. Any person or individual designated in
5 a will to receive a devise. In the case of a devise to an
6 existing trust or trustee, or to a trustee or trust described
7 by will, the trust or trustee is the devisee and the
8 beneficiaries are not devisees.

9 (6) DISTRIBUTE. Any individual who has received
10 property of a decedent from his or her personal representative
11 other than as creditor or purchaser. A testamentary trustee is
12 a distributee only to the extent of distributed assets or
13 increment thereto remaining in the testamentary trustee's
14 hands. A beneficiary of a testamentary trust to whom the
15 trustee has distributed property received from a personal
16 representative is a distributee of the personal
17 representative. For purposes of this provision, a
18 "testamentary trustee" includes a trustee to whom assets are
19 transferred by will, to the extent of the devised assets.

20 (7) ESTATE. The term includes the property of the
21 decedent, trust, or other person whose affairs are subject to
22 this division as originally constituted and as it exists from
23 time to time during administration.

24 (8) FIDUCIARY. The term includes a personal
25 representative, guardian, conservator, and trustee.

26 (9) GUARDIAN. As defined in Section 26-2A-20.

1 (10) HEIRS. Those individuals, including the
2 surviving spouse, who are entitled under the statutes of
3 intestate succession to the property of a decedent.

4 (11) INTERESTED PERSON. Any person having an
5 enforceable right or claim that may be affected by the
6 proceeding. The term includes heirs, devisees, children,
7 spouses, creditors, beneficiaries, and any other person having
8 a property right in or claim against a trust estate or the
9 estate of a decedent which may be affected by the proceeding.
10 The term also includes persons having priority for appointment
11 as personal representative, and other fiduciaries representing
12 interested persons. The term, as it relates to particular
13 persons, may vary from time to time and must be determined
14 according to the particular purposes of, and matter involved
15 in, any proceeding.

16 (12) PARENT. An individual who has established a
17 parent-child relationship under the Alabama Uniform Parentage
18 Act, Section 26-17-101.

19 (13) PERSON. An individual, a corporation, an
20 organization, or other legal entity.

21 (14) PERSONAL REPRESENTATIVE. The term includes
22 executor, administrator, successor personal representative,
23 special administrator, and persons who perform substantially
24 the same function under the law governing their status.

25 (15) PROCEEDING. The term includes action at law and
26 suit in equity.

1 (16) PROPERTY. The term includes both real and
2 personal property or any interest therein and means anything
3 that may be the subject of ownership.

4 (17) STATE. The term includes any state of the
5 United States, the District of Columbia, the Commonwealth of
6 Puerto Rico, and any territory or possession subject to the
7 legislative authority of the United States.

8 (18) SUCCESSORS. Those persons, other than
9 creditors, who are entitled to property of a decedent under
10 the decedent's will or this chapter.

11 (19) TRUSTS. The term includes express trusts,
12 charitable or noncharitable, and trusts created pursuant to a
13 statute, judgment, or decree that requires the trust to be
14 administered in the manner of an express trust.

15 (20) TRUSTEE. The term includes an original,
16 additional, or successor trustee, whether or not appointed or
17 confirmed by court.

18 (21) WILL. The term includes a codicil and any
19 testamentary instrument which merely appoints an executor or
20 revokes or revises another will.

21 §43-8-213.

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

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

1 (2) The probate court where a will is offered for
2 probate has original and general jurisdiction over the contest
3 of the validity of the will.

4 §43-8-214.

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

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

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

21 §43-8-215.

22 (a) A will, before the probate thereof or at any
23 time within 180 days after the admission of such will to
24 probate, may be contested by any interested person by filing
25 in the court where it is offered for probate allegations in
26 writing that the will was not duly executed, or of the
27 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.

26 (d) Except for proceedings pending in a probate
27 court in a county where the probate court or judge exercises

1 equity jurisdiction concurrent with that of the circuit court
2 by virtue of a provision of the Constitution of Alabama of
3 1901, specific to the county, a local act, or a statute
4 specific to the county, then, pursuant to subsection (e), any
5 party to the will contest may remove the will contest from the
6 probate court to the circuit court, provided the removal
7 occurs no later than 42 days before the first setting of the
8 contest for trial unless leave of the probate court is
9 obtained based on a showing of good cause. A removal of a will
10 contest may not occur unless this section is complied with,
11 and no removal of the administration of a decedent's estate
12 may be made prior to the issuance of letters testamentary,
13 letters of administration, or letters of administration with
14 the will annexed or after the probate court has taken steps
15 toward a final settlement.

16 (e) To remove a proceeding from the probate court to
17 the circuit court, the removing party shall file in the
18 circuit court to which the proceeding is being removed, a
19 notice of removal which must set forth or contain all of the
20 following:

21 (1) A description of the nature of the proceedings
22 being removed.

23 (2) If the proceeding is a will contest under this
24 division, the name of the person who has petitioned to admit
25 the will to probate, who will be the plaintiff in the removed
26 proceeding, and the person contesting the validity of the
27 will, who will be the defendant in the removed proceeding.

1 (3) Whether jury trial is demanded.

2 (4) The removing party's interest in the proceeding
3 being removed.

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

7 (f) Once the removing party has filed the notice of
8 removal with the clerk of the circuit court, the proceeding
9 shall be removed to the circuit court. Following the removal
10 to the circuit court, the removing party shall file a copy of
11 the notice of removal with the clerk of the probate court and
12 shall send a copy of the notice of removal to all interested
13 persons listed therein. Upon receiving a copy of the notice of
14 removal the probate court shall take no further action, unless
15 and until the removed proceeding is remanded, except to
16 deliver a copy of the record in the probate court to the clerk
17 of the circuit court. The circuit court shall have
18 jurisdiction of a proceeding removed upon filing of the notice
19 of removal with the circuit clerk. Neither the omission nor
20 incorrect statement of any information required to be included
21 in the notice of removal, nor the failure of the probate court
22 to deliver a copy of the record of proceedings in that court
23 shall deprive the circuit court of jurisdiction to hear and
24 decide the removed proceeding.

25 (g) If a necessary party to the proceedings has not
26 received notice of the proceeding as required by law before
27 the notice of removal is filed, notice of the proceeding must

1 be issued by the circuit court to such necessary party as
2 provided in the Alabama Rules of Civil Procedure or as
3 otherwise prescribed by law.

4 (h) The circuit court may remand the proceeding
5 removed under this section to the probate court if the circuit
6 court finds any of the following:

7 (1) The removal was sought for the purpose of
8 improper delay.

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

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

14 (4) All interested parties or their representatives
15 have requested the removed proceeding be remanded to probate
16 court.

17 (i) If the circuit court finds that a lawyer or
18 party vexatiously or for improper purposes removed a
19 proceeding, then the court may tax the lawyer or party with
20 the costs of the proceeding. In doing so, the circuit court
21 may assess the full amount or any portion of the costs against
22 any offending lawyer or party, or both, and among them, as the
23 court determines just. When granting an award of costs and
24 lawyer fees, the court shall specifically state the reasons
25 for the award and shall consider the factors in Section
26 12-19-273, among others, in determining whether to assess
27 lawyer fees and costs and the amount to be assessed.

1 (j) Costs of an action that may be assessed under
2 subsection (i) include reasonable compensation for and
3 expenses incurred by a lawyer, guardian ad litem, or party,
4 including the cost of experts to testify in or advise
5 regarding the proceeding. Costs taxed under this subsection
6 shall be limited to those incurred by the parties opposing an
7 improperly removed proceeding or incurred as a result of the
8 improperly removed proceeding.

9 (k) Upon entry of an order taxing costs under
10 subsection (i), the clerk of the circuit court shall issue an
11 itemized bill of all costs and expenses taxed against each
12 person, which itemized statements of costs and expenses shall
13 have the full force and effect of a judgment. The provisions
14 of this subsection are cumulative.

15 (l) Following remand by the circuit court, the clerk
16 of the circuit court shall deliver a copy of the order of
17 remand and the record of all proceedings in the circuit court
18 to the clerk of the probate court to be filed with the records
19 of the proceeding in the probate court, and the probate court
20 shall proceed with the proceeding in accordance with the
21 circuit court's order.

22 (m) In any proceeding removed from a probate court,
23 the circuit court may issue all necessary orders and process
24 to bring before it all proper parties whether served by
25 process issued by the probate court or otherwise.

1 (n) Neither remand nor anything else shall prevent
2 the subsequent removal of a proceeding to the circuit court
3 under this section.

4 §43-8-216.

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

13 Section 2. This act shall become effective following
14 its passage and approval by the Governor, or its otherwise
15 becoming law.