

1 HB383
2 218611-5
3 By Representative Wadsworth
4 RFD: Judiciary
5 First Read: 22-FEB-22

1 (b) Sections 12-11-41, 12-11-41.1, 43-8-190,
2 43-8-197, 43-8-198, 43-8-199, 43-8-200, and 43-8-201, shall
3 not apply to wills filed for probate on or after January 1,
4 2023, or the removal of the administration of a decedent's
5 estate, when the administration was commenced on or after
6 January 1, 2023.

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

11 §43-8-211.

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

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

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

23 (3) A certified or authenticated copy of any record
24 or report of a governmental agency, domestic or foreign, that
25 an individual is missing, detained, dead, or alive is prima
26 facie evidence of the status and of the dates, circumstances,
27 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
25 of the validity of the will in accordance with Section
26 43-8-215.

27 §43-8-214.

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

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

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

17 §43-8-215.

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

1 the will, as defendant; and the issue, on application of
2 either party, must be tried by a jury.

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

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

22 (d) Except for proceedings pending in a probate
23 court in a county where the probate court or judge exercises
24 equity jurisdiction concurrent with that of the circuit court
25 by virtue of a provision of the Constitution of Alabama of
26 1901 specific to the county, a local act, or a statute
27 specific to the county, then, pursuant to Section 43-8-216,

1 any party to the will contest may remove the will contest from
2 the probate court to the circuit court, provided the removal
3 occurs no later than 42 days before the first setting of the
4 contest for trial unless leave of the probate court is
5 obtained based on a showing of good cause.

6 §43-8-216.

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

23 (b) To remove a proceeding from the probate court to
24 the circuit court, the removing party shall file in the
25 circuit court to which the proceeding is being removed, a
26 notice of removal which must set forth or contain all of the
27 following:

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

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

8 (3) Whether jury trial is demanded.

9 (4) The removing party's interest in the proceeding
10 being removed.

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

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

1 in the notice of removal, nor the failure of the probate court
2 to deliver a copy of the record of proceedings in that court
3 shall deprive the circuit court of jurisdiction to hear and
4 decide the removed proceeding.

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

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

14 (1) The removal was sought for the purpose of
15 improper delay.

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

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

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

24 (f) If the circuit court finds that a lawyer or
25 party vexatiously or for improper purposes removed a
26 proceeding, then the court may tax the lawyer or party with
27 the costs of the proceeding. In doing so, the circuit court

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

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

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

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

1 shall proceed with the proceeding in accordance with the
2 circuit court's order.

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

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

10 §43-8-217.

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

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 22-FEB-22

Read for the second time and placed
on the calendar with 1 substitute
and..... 17-MAR-22

Read for the third time and passed
as amended..... 30-MAR-22

Yeas 99, Nays 0, Abstains 0

Jeff Woodard
Clerk