

HB266 INTRODUCED



1 YPB8N2-1
2 By Representative Almond
3 RFD: Judiciary
4 First Read: 06-Apr-23
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SYNOPSIS:

Under existing law, the probate court has original and general jurisdiction over the probate of wills, the granting of letters testamentary, the sale and disposition of real and personal property belonging to an intestate estate, and other matters.

Existing law also provides conditions under which a matter may be removed from the probate court to the circuit court.

This bill would clarify that while an estate or will contest is removed from the probate court to the circuit court, all subsequent filings regarding the removed matter are required to be filed in the circuit court.

A BILL
TO BE ENTITLED
AN ACT

Relating to the probate code; to amend Act 2022-427, 2022 Regular Session, now appearing as Sections 43-8-213 and 43-8-215, Code of Alabama 1975, to provide for the jurisdiction of certain will contest proceedings that have been removed from the probate court to the circuit court.



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29 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

30 Section 1. Act 2022-427, 2022 Regular Session, now
31 appearing as Sections 43-8-213 and 43-8-215, Code of Alabama
32 1975, is amended to read as follows:

33 "§43-8-213

34 To the full extent permitted by the Constitution of
35 Alabama of ~~1901~~ 2022:

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

38 (2) The probate court where a will is offered for
39 probate has original and general jurisdiction over the contest
40 of the validity of the will in accordance with Section
41 43-8-215, unless the proceeding has been removed to the
42 circuit court under Section 43-8-216 and is then pending in
43 the circuit court, in which case jurisdiction will lie with
44 the circuit court until the proceeding is remanded in
45 accordance with Section 43-8-216."

46 "§43-8-215

47 (a) A will, before the probate thereof or at any time
48 within 180 days after the admission of such will to probate,
49 may be contested by any interested person by filing in the
50 court where it is offered for probate, or if the proceedings
51 in that court have been removed to the circuit court in
52 accordance with Section 43-8-216 and is then pending in the
53 circuit court, then in the circuit court to which the
54 proceeding has been removed, allegations in writing that the
55 will was not duly executed, or of the unsoundness of mind of
56 the testator, or of any other valid objections thereto; and



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57 thereupon an issue must be made up, under the direction of the
58 ~~probate~~ court, between the person who made or is making the
59 application for the probate of the will, as plaintiff, and the
60 person contesting the validity of the will, as defendant; and
61 the issue, on application of either party, must be tried by a
62 jury.

63 (b) In the event of a contest of the probate of a will,
64 all interested persons shall be made parties to the contest;
65 the contest proceedings shall be conclusive as to all matters
66 which were litigated or could have been litigated in such
67 contest; and no further proceedings shall ever be entertained
68 in any courts of this state to probate or contest the probate
69 of the will.

70 (c) After the expiration of the 180-day period after
71 the admission of the will to probate, the validity of the will
72 can only be contested by infants and persons of unsound mind
73 who had no legal conservator at the time the will was admitted
74 to probate, or who were not represented by a guardian ad
75 litem, who are allowed one year after the appointment of a
76 conservator, or, if none be appointed, one year from the
77 termination of their respective disabilities in which to
78 contest such will, but in no case to exceed 20 years from the
79 time the will was admitted to probate; and also provided there
80 has not been a contest of such will instituted and prosecuted
81 to final judgment.

82 (d) Except for proceedings pending in a probate court
83 in a county where the probate court or judge exercises equity
84 jurisdiction concurrent with that of the circuit court by



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85 virtue of a provision of the Constitution of Alabama of ~~1901~~
86 2022, specific to the county, a local act, or a statute
87 specific to the county, then, pursuant to Section 43-8-216,
88 any party to the will contest may remove the will contest from
89 the probate court to the circuit court, provided the removal
90 occurs no later than 42 days before the first setting of the
91 contest for trial unless leave of the probate court is
92 obtained based on a showing of good cause."

93 Section 2. This act shall become effective immediately
94 following its passage and approval by the Governor, or its
95 otherwise becoming law.