

**SB149 INTRODUCED**



1 9VNFBP-1  
2 By Senator Givhan  
3 RFD: Judiciary  
4 First Read: 04-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. Relating to the probate code; to amend Act  
31 2022-427, 2022 Regular Session, now appearing as Sections  
32 43-8-213 and 43-8-215, Code of Alabama 1975, to provide for  
33 the jurisdiction of certain will contest proceedings that have  
34 been removed from the probate court to the circuit court.

35 "§43-8-213

36 To the full extent permitted by the Constitution of  
37 Alabama of ~~1901~~ 2022:

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

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

48 "§43-8-215

49 (a) A will, before the probate thereof or at any time  
50 within 180 days after the admission of such will to probate,  
51 may be contested by any interested person by filing in the  
52 court where it is offered for probate, or if the proceedings  
53 in that court have been removed to the circuit court in  
54 accordance with Section 43-8-216 and is then pending in the  
55 circuit court, then in the circuit court to which the  
56 proceeding has been removed, allegations in writing that the



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57 will was not duly executed, or of the unsoundness of mind of  
58 the testator, or of any other valid objections thereto; and  
59 thereupon an issue must be made up, under the direction of the  
60 ~~probate~~ court, between the person who made or is making the  
61 application for the probate of the will, as plaintiff, and the  
62 person contesting the validity of the will, as defendant; and  
63 the issue, on application of either party, must be tried by a  
64 jury.

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

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

84 (d) Except for proceedings pending in a probate court



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

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