

1           HB383  
2           217581-1  
3           By Representative Wadsworth  
4           RFD: Judiciary  
5           First Read: 22-FEB-22

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

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

18  
19 A BILL  
20  
21 TO BE ENTITLED  
22  
23 AN ACT

24  
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27 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:

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

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

§43-8-210.

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

§43-8-211.

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

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

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

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

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

established by clear and convincing evidence, including circumstantial evidence.

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

§43-8-212.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§43-8-213.

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

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

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

§43-8-214.

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

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

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

§43-8-215.

(a) A will, before the probate thereof or at any time within 180 days after the admission of such will to probate, may be contested by any interested person by filing in the court where it is offered for probate allegations in writing that the will was not duly executed, or of the unsoundness of mind of the testator, or of any other valid

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

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

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

(d) Except for proceedings pending in a probate 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.

(3) Whether jury trial is demanded.

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

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

(f) Once the removing party has filed the notice of removal with the clerk of the circuit court, the proceeding shall be removed to the circuit court. Following the removal to the circuit court, the removing party shall file a copy of the notice of removal with the clerk of the probate court and shall send a copy of the notice of removal to all interested persons listed therein. Upon receiving a copy of the notice of removal the probate court shall take no further action, unless and until the removed proceeding is remanded, except to deliver a copy of the record in the probate court to the clerk of the circuit court. The circuit court shall have jurisdiction of a proceeding removed upon filing of the notice of removal with the circuit clerk. Neither the omission nor incorrect statement of any information required to be included in the notice of removal, nor the failure of the probate court to deliver a copy of the record of proceedings in that court shall deprive the circuit court of jurisdiction to hear and decide the removed proceeding.

(g) If a necessary party to the proceedings has not received notice of the proceeding as required by law before 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.

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

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

(1) Following remand by the circuit court, the clerk of the circuit court shall deliver a copy of the order of remand and the record of all proceedings in the circuit court to the clerk of the probate court to be filed with the records of the proceeding in the probate court, and the probate court shall proceed with the proceeding in accordance with the circuit court's order.

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

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

§43-8-216.

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

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