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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SB256
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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
13 administration of a decedent's estate or wills
14 filed for probate on or after January 1, 2023,
15 probate courts have jurisdiction for will contests
16 and that any proceeding in probate court pertaining
17 to a will contest or the administration of a
18 decedent's estate may be removed from probate
19 courts without equity jurisdiction to circuit
20 court.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

26 Relating to decedents' estates; to specify that
27 probate courts have jurisdiction for will contests and provide

1 for removal of proceedings in probate court pertaining to a
2 will contest or the administration of a decedent's estate from
3 probate courts without equity jurisdiction to circuit court in
4 certain circumstances.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 Division 4. Jurisdiction for Will Contests Filed for
10 Probate on or after January 1, 2023, and the Removal of the
11 Administration of a Decedent's Estate when the Administration
12 Commenced on or after January 1, 2023.

13 §43-8-210.

14 (a) This division applies to wills filed for probate
15 on or after January 1, 2023, and the removal to circuit court
16 of the administration of a decedent's estate when the
17 administration commenced on or after January 1, 2023.

18 (b) Sections 12-11-41, 12-11-41.1, 43-8-190,
19 43-8-197, 43-8-198, 43-8-199, 43-8-200, and 43-8-201, shall
20 not apply to wills filed for probate on or after January 1,
21 2023, or the removal of the administration of a decedent's
22 estate, when the administration was commenced on or after
23 January 1, 2023.

24 (c) If any provision of this division conflicts with
25 any provision of Chapter 13 of Title 12, Division 3, Article
26 7, Chapter 8 of Title 43, or any other provision of law, the
27 provision of this division prevails.

1 §43-8-211.

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

5 (1) Death occurs when an individual is determined to
6 be dead under the Alabama Determination of Death Act, Section
7 22-31-1, et seq.

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

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

18 (4) In the absence of prima facie evidence of death
19 under subdivision (2) or (3), the fact of death may be
20 established by clear and convincing evidence, including
21 circumstantial evidence.

22 (5) An individual whose death is not established
23 under the preceding subdivisions who is absent for a
24 continuous period of five years, during which the individual
25 has not been heard from, and whose absence is not
26 satisfactorily explained after diligent search or inquiry, is
27 presumed to be dead. The individual's death is presumed to

1 have occurred at the end of the period unless there is
2 sufficient evidence for determining that death occurred
3 earlier.

4 §43-8-212.

5 Unless the context otherwise requires, in this
6 division, a proceeding includes an action at law and a suit in
7 equity.

8 §43-8-213.

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

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

13 (2) The probate court where a will is offered for
14 probate has original and general jurisdiction over the contest
15 of the validity of the will in accordance with Section
16 43-8-215.

17 §43-8-214.

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

22 (b) If proceedings concerning the same estate are
23 commenced in more than one probate court of this state, the
24 probate court in which the proceeding was first commenced
25 shall continue to hear the matter, and the other courts shall
26 hold the matter in abeyance until the question of venue is
27 decided; and if the ruling probate court determines that venue

1 is properly in another court, it shall transfer the proceeding
2 to the other probate court.

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

7 §43-8-215.

8 (a) A will, before the probate thereof or at any
9 time within 180 days after the admission of such will to
10 probate, may be contested by any interested person by filing
11 in the court where it is offered for probate allegations in
12 writing that the will was not duly executed, or of the
13 unsoundness of mind of the testator, or of any other valid
14 objections thereto; and thereupon an issue must be made up,
15 under the direction of the probate court, between the person
16 who made or is making the application for the probate of the
17 will, as plaintiff, and the person contesting the validity of
18 the will, as defendant; and the issue, on application of
19 either party, must be tried by a jury.

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

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

13 (d) Except for proceedings pending in a probate
14 court in a county where the probate court or judge exercises
15 equity jurisdiction concurrent with that of the circuit court
16 by virtue of a provision of the Constitution of Alabama of
17 1901 specific to the county, a local act, or a statute
18 specific to the county, then, pursuant to Section 43-8-216,
19 any party to the will contest may remove the will contest from
20 the probate court to the circuit court, provided the removal
21 occurs no later than 42 days before the first setting of the
22 contest for trial unless leave of the probate court is
23 obtained based on a showing of good cause.

24 §43-8-216.

25 (a) Except for a proceeding pending in a probate
26 court in a county where the probate court or judge exercises
27 equity jurisdiction concurrent with that of the circuit court

1 by virtue of a provision of the Constitution of Alabama of
2 1901, specific to such county, a local act, or a statute
3 specific to such county, a proceeding in a probate court
4 pertaining to a will contest or an administration of a
5 decedent's estate may be removed by an interested person to
6 the circuit court for the county where the proceeding in
7 probate court is pending; provided, however: (i) no removal of
8 a will contest can occur unless Section 43-8-215 is complied
9 with; and (ii) a removal of the administration of a decedent's
10 estate may not be made prior to the issuance of letters
11 testamentary, letters of administration, or letters of
12 administration with the will annexed or after the probate
13 court has taken steps toward a final settlement.

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

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

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

26 (3) Whether jury trial is demanded.

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

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

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

24 (d) If a necessary party to the proceedings has not
25 received notice of the proceeding as required by law before
26 the notice of removal is filed, notice of the proceeding must
27 be issued by the circuit court to such necessary party as

1 provided in the Alabama Rules of Civil Procedure or as
2 otherwise prescribed by law.

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

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

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

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

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

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

1 (g) Costs of an action that may be assessed under
2 subsection (f) 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 (h) Upon entry of an order taxing costs under
10 subsection (f), 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 (i) 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 (j) 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 (k) Neither remand nor anything else shall prevent
2 the subsequent removal of a proceeding to the circuit court
3 under this section.

4 §43-8-217.

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
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.