

## HB266 ENROLLED



1 YPB8N2-2  
2 By Representative Almond  
3 RFD: Judiciary  
4 First Read: 06-Apr-23  
5 2023 Regular Session



## HB266 Enrolled

Enrolled, An Act,

Relating to the probate code; to amend Act 2022-427, 2022 Regular Session, now appearing as Sections 43-8-210, 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; and to provide retroactive effect.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Act 2022-427, 2022 Regular Session, now appearing as Sections 43-8-210, 43-8-213, and 43-8-215, Code of Alabama 1975, is amended to read as follows:

"§43-8-210

(a) This division applies to ~~wills filed for~~ both of the following:

(1) Wills filed for probate on or after January 1, 2023, and the removal to circuit court of the administration of a decedent's estate when the administration commenced on or after January 1, 2023.

(2) Any probate proceeding, including a will contest or the removal of the administration of a decedent's estate, regardless of when filed, which was before a circuit or appeals court as of April 14, 2022, and which was subject to an order issued by a probate or circuit court purporting to transfer or remove the case to circuit court or purporting to accept the case into circuit court.

(b) Sections 12-11-41, 12-11-41.1, 43-8-190, 43-8-197,



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43-8-198, 43-8-199, 43-8-200, and 43-8-201, shall not apply to ~~wills filed for~~, and shall not deprive a circuit court of jurisdiction of probate proceedings pursuant to the enumerated sections, in either of the following:

(1) Wills filed for probate on or after January 1, 2023, or the removal of the administration of a decedent's estate, when the administration was commenced on or after January 1, 2023.

(2) Any probate proceeding, including a will contest or the removal of the administration of a decedent's estate, regardless of when filed, which was before a circuit or appeals court as of April 14, 2022, and which was subject to an order issued by a probate court or circuit court purporting to transfer or remove the case to circuit court or purporting to accept the case into circuit court.

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

"§43-8-213

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

(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 in accordance with Section 43-8-215, unless the proceeding has been removed to the



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circuit court under Section 43-8-216 and is then pending in the circuit court, in which case jurisdiction will lie with the circuit court until the proceeding is remanded in accordance with Section 43-8-216."

"§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 or if the proceedings in that court have been removed to the circuit court in accordance with Section 43-8-216 and is then pending in the circuit court, then in the circuit court to which the proceeding has been removed, 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.



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

Section 2. This act shall be retroactive and curative to April 14, 2022.

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and  
was passed by the House 25-Apr-23.

John Treadwell  
Clerk

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Senate	<hr/> <b>04-May-23</b>	Passed
House	<hr/> <b>23-May-23</b>	Passed