**South Carolina General Assembly**

118th Session, 2009-2010

**S. 571**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Elliott

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Introduced in the Senate on March 11, 2009

Currently residing in the Senate Committee on **Judiciary**

Summary: Probate court

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/11/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\03-11-09.docx)‑6

3/11/2009 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\03-11-09.docx)‑6

3/13/2009 Senate Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin, Mulvaney

**VERSIONS OF THIS BILL**

[3/11/2009](file:///p:\pprever\2009-10\571_20090311.docx)

**A** **BILL**

TO AMEND SECTION 62‑1‑302, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REMOVAL OF CASES FROM PROBATE COURT TO CIRCUIT COURT, SO AS TO PROVIDE A PROBATE COURT MUST MAKE A FINDING OF GOOD CAUSE BEFORE A CASE MAY BE REMOVED FROM PROBATE COURT TO CIRCUIT COURT; TO PROVIDE A PROBATE COURT SHALL HOLD A HEARING ON A PARTY’S MOTION FOR REMOVAL AND ISSUE A WRITTEN ORDER MAKING A SPECIFIC FACTUAL FINDING THAT GOOD CAUSE FOR THE REMOVAL DOES NOT EXIST; AND TO PROVIDE REMOVAL FROM PROBATE COURT TO CIRCUIT COURT OF A MATTER WITHIN THE EXCLUSIVE JURISDICTION OF THE PROBATE COURT ONLY APPLIES TO THE PARTICULAR ACTION OR PROCEEDING BEING REMOVED, AND THE PROBATE COURT OTHERWISE RETAINS CONTINUING AND EXCLUSIVE JURISDICTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑1‑302 of the 1976 Code, as last amended by Act 257 of 2008, is further amended to read:

“Section 62‑1‑302. ~~(a)~~(A) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons;

(2) protection of minors, except that jurisdiction over the care, custody, and control of the persons of minors is governed by Section 62‑5‑201 and incapacitated persons, including the mortgage and sale of personal and real property owned by minors or incapacitated persons as well as gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, except that jurisdiction for approval of settlement of claims in favor of or against minors or incapacitated persons is governed by Section 62‑5‑433;

(3) trusts, inter vivos or testamentary, including the appointment of successor trustees;

(4) the issuance of marriage licenses, in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control; record, index, and dispose of copies of marriage certificates; and issue certified copies of the licenses and certificates;

(5) the performance of the duties of the clerk of the circuit and family courts of the county in which the probate court is held when there is a vacancy in the office of clerk of court and in proceedings in eminent domain for the acquisition of rights‑of‑way by railway companies, canal companies, governmental entities, or public utilities when the clerk is disqualified by reason of ownership of or interest in lands over which it is sought to obtain the rights‑of‑way; and

(6) the involuntary commitment of persons suffering from mental illness, mental retardation, alcoholism, drug addiction, and active pulmonary tuberculosis.

~~(b)~~(B) The court’s jurisdiction over matters involving wrongful death or actions under the survival statute is concurrent with that of the circuit court and extends only to the approval of settlements as provided in Sections 15‑51‑41 and 15‑51‑42 and to the allocation of settlement proceeds among the parties involved in the estate.

~~(c)~~(C) The probate court has jurisdiction to hear and determine issues relating to paternity, common‑law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court, pursuant to Section 63‑3‑530.

~~(d)~~(D)(1) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, ~~any~~an action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party and upon finding of good cause by the court, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:

~~(1)~~(a) formal proceedings for the probate of wills and for the appointment of general personal representatives;

~~(2)~~(b) construction of wills;

~~(3)~~(c) actions to try title;

~~(4)~~(d) trusts;

~~(5)~~(e) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and

~~(6)~~(f) actions concerning gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63.

(2) The probate court shall hold a hearing on a party’s motion for removal and issue a written order making a specific finding that good cause for removal exists.

(3) Removal to circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding and removal, and the probate court otherwise retains continuing exclusive jurisdiction.

~~(e)~~(E) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.”

SECTION 2. This act takes effect upon approval by the Governor.

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