STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2622 By: Davis

AS INTRODUCED

An Act relating to wills; amending 84 O.S. 1991, Section 55, which relates to self-proved wills and codicils; modifying execution formalities for self-proved instruments; deleting requirement for formal acknowledgments; authorizing certain written declarations by the testator and subscribing witnesses; prohibiting false signing; prescribing criminal penalty; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 84 O.S. 1991, Section 55, is amended to read as follows:

Section 55. Every will, other than a nuncupative will, must be in writing; and every will, other than a holographic will and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person, in his presence and by his direction, must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will.

4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence.

5. Every will, other than a holographic and a nuncupative will, and every codicil to such will or to a holographic will may, at the time of execution or at any subsequent date during the lifetimes of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary by the ~~acknowledgment thereof by~~ written declaration of the testator and the ~~affidavits~~ written declarations of the attesting witnesses~~, each made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state, such acknowledgments and affidavits being evidenced by the certificate, with official seal affixed, of such officer attached or annexed to such testamentary instrument in form and contents substantially as follows~~ made in substantially the following form:

THE STATE OF OKLAHOMA

COUNTY OF _____

~~Before me,~~ We the undersigned ~~authority, on this day personally appeared _____, _____, and _____, known to me to be~~ are the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and~~, all of said persons being by me first duly sworn,~~ we do hereby state that said _____, testator, declared to ~~me and to the~~ said witnesses ~~in my presence~~ that said

instrument is his last will and testament or a codicil to his last will and testament, and that he ~~had~~ willingly made and executed it as his free and voluntary act and deed for the purposes therein expressed; and ~~the~~ said witnesses~~, each on his oath stated to me, in the presence and hearing of the said testator,~~ further state that the said testator ~~had~~ declared to them that said instrument is his last will and testament or codicil to his last will and testament, and that he executed same as such and wanted each of ~~them~~ us to sign it as a witness; and ~~upon their oaths each witness stated further~~ that ~~they~~ we did sign the same as witnesses in the presence of the said testator and at his request and that said testator was at that time eighteen (18) years of age or over and was of sound mind, all of which we state under penalty of perjury.

_____ _____

_____Testator

_____ _____

_____Witness

_____ _____

_____Witness

~~Subscribed and acknowledged before me by the said _____, testator, and subscribed and sworn before me by the said _____, and _____ witnesses, this _____ day of _____, A.D., _____.~~

~~(SEAL) (SIGNED) _____~~

~~_____ _____~~

~~_____ (OFFICIAL CAPACITY~~

~~_____ OF OFFICER)~~

6. Any person falsely executing a written declaration as a witness or misrepresenting his or her identity with the intent to defraud another person pursuant to paragraph 5 of this subsection shall, upon conviction, be deemed guilty of the crime of perjury and shall be subject to the penalties prescribed by law.

7. A self-proved testamentary instrument shall be admitted to probate without the testimony of any subscribing witness, unless contested, but otherwise it shall be treated no differently than a will or codicil not self-proved. Furthermore, a self-proved testamentary instrument may be revoked or amended by a codicil in exactly the same fashion as a will or codicil not self-proved and such a testamentary instrument may be contested as a will not self-proved.

SECTION 2. This act shall become effective November 1, 1996.

45-2-8341 MAH