

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2406

By: Toure

AS INTRODUCED

An Act relating to probate procedure; amending 58 O.S. 1991, Section 41, which relates to proceedings on contest; clarifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 58 O.S. 1991, Section 41, is amended to read as follows:

Section 41. A. If anyone appears to contest the will, ~~he~~ such person must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto upon any of the grounds of demurrer allowed by law in civil actions.

B. If the demurrer be sustained, the court must allow the contestant a reasonable time, not exceeding ten (10) days, within which to amend his written opposition.

C. If the demurrer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving:

1. The competency of the decedent to make a last will and testament~~;~~;

2. The freedom of the decedent at the time of the execution of the will from duress, menace, fraud, or undue influence~~;~~;

3. The due execution and attestation of the will by the decedent or subscribing witnesses; or~~;~~

4. Any other questions substantially affecting the validity of the will must be tried and determined by the court.

D. On the trial the contestant is plaintiff, and the petitioner is defendant.

SECTION 2. This act shall become effective November 1, 1998.

46-2-8746            KSM