

1 **SENATE FLOOR VERSION**

2 April 1, 2014

3 ENGROSSED HOUSE
4 BILL NO. 2343

By: Biggs of the House

5 and

6 Griffin and Ivester of the
7 Senate

8
9 An Act relating to civil procedure; amending 12 O.S.
10 2011, Section 2804, which relates to the Oklahoma
11 Evidence Code; providing for the inclusion of certain
12 statements; and providing an effective date.

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

14 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2804, is
15 amended to read as follows:

16 Section 2804. A. "Unavailability as a witness," as used in
17 this section, includes the situation in which the declarant:

18 1. Is exempt by ruling of the court on the ground of privilege
19 from testifying concerning the subject matter or of the declarant's
20 statement;

21 2. Persists in refusing to testify concerning the subject
22 matter of the declarant's statement despite an order of the court to
23 do so;

1 3. Testifies to a lack of memory of the subject matter of the
2 declarant's statement;

3 4. Is unable to be present or to testify at the hearing because
4 of death or then existing physical or mental illness or infirmity;
5 or

6 5. Is absent from the hearing and the proponent of the
7 declarant's statement has been unable to procure the declarant's
8 attendance or, in the case of a hearsay exception under paragraphs
9 2, 3 or 4 of subsection B of this section, the declarant's
10 attendance or testimony, by process or other reasonable means.

11 A declarant is not unavailable as a witness if the declarant's
12 exemption, refusal, claim of lack of memory, inability or absence is
13 due to an act by the proponent of the declarant's statement for the
14 purpose of preventing the witness from attending or testifying.

15 B. The following are not excluded by the hearsay rule if the
16 declarant is unavailable as a witness:

17 1. Testimony given as a witness at another hearing of the same
18 or another proceeding, or in a deposition taken in compliance with
19 law in the course of the same or another proceeding, if the party
20 against whom the testimony is now offered or, in a civil action or
21 proceeding, a predecessor in interest had an opportunity and similar
22 motive to develop the testimony by direct, cross or redirect
23 examination;

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1 2. In a prosecution for homicide or in a civil action or
2 proceeding, a statement made by a declarant while believing that the
3 declarant's death was imminent, concerning the cause or
4 circumstances of what the declarant believed to be the declarant's
5 impending death;

6 3. A statement which was at the time of its making contrary to
7 the declarant's pecuniary or proprietary interest, or which tended
8 to subject the declarant to civil or criminal liability, or to
9 render invalid a claim by the declarant against another, and which a
10 reasonable person in the declarant's position would not have made
11 unless the declarant believed it to be true. A statement tending to
12 expose the declarant to criminal liability and offered to exculpate
13 the accused is not admissible unless corroborating circumstances
14 clearly indicate the trustworthiness of the statement. A statement
15 or confession offered against the accused in a criminal case, made
16 by a codefendant or other individual implicating both the
17 codefendant or other individual and the accused, is not within this
18 exception; ~~and~~

19 4. A statement concerning the declarant's own birth, adoption,
20 marriage, divorce, legitimacy, ancestry, relationship to another
21 person or other similar fact of personal or family history, even
22 though declarant had no means of acquiring personal knowledge of the
23 matter stated; or statement concerning the foregoing matters or
24 death of another person, if the declarant was related to that person

1 by blood, adoption or marriage or was so intimately associated with
2 the person's family as to be likely to have accurate information
3 concerning the matter declared; and

4 5. A statement offered against a party that wrongfully caused
5 or acquiesced in wrongfully causing the declarant's unavailability
6 as a witness, and did so intending that result.

7 SECTION 2. This act shall become effective November 1, 2014.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
9 April 1, 2014 - DO PASS

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