

S199435

No. S _____

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ESTATE OF DUKE

ROBERT B. RADIN and SEYMOUR RADIN

Plaintiffs and Respondents,

vs.

JEWISH NATIONAL FUND and CITY OF HOPE,

Defendants and Appellants.

**SUPREME COURT
FILED**

JAN 17 2012

Frederick K. Ohlrich Clerk
Deputy

California Court of Appeal, Second District, Division Four 2nd Civil No. B227954
Appeal from the Los Angeles County Superior Court
Hon. Mitchell Beckloff, Los Angeles County Superior Court Case No. BP108971

**APPELLANTS' MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR JUDICIAL NOTICE;
AND [PROPOSED] ORDER**

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Attorneys for Petitioners and Appellants
JEWISH NATIONAL FUND and CITY OF HOPE

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Attorneys for Petitioners and Appellants
JEWISH NATIONAL FUND and CITY OF HOPE

TO THE RESPECTIVE PARTIES AND THEIR ATTORNEYS OF
RECORD:

Petitioners and appellants, Jewish National Fund and City of Hope, hereby move this Court to take judicial notice of the legislative history of Senate Bill 1984 of 1990, which amended Probate Code section 6111 and enacted section 6111.5, and in particular:

1. All versions of Senate Bill 1984 (pp. 3-14)¹;
2. Analysis of Senate Bill 1984 prepared by Senate Committee on Judiciary (pp. 17-19);
3. Third Reading analysis of Senate Bill 1984 prepared by the Office of Senate Floor Analyses (pp. 25-26);
4. Analysis of Senate Bill 1984 prepared by the Assembly Committee on Judiciary (pp. 31-33);
5. Assembly Committee on Judiciary Worksheet prepared by bill's author (pp. 44-45);
6. Third Reading analysis of Senate Bill 1984 prepared by the Assembly Committee on Judiciary (pp. 68-69);
7. April 2, 1990 memo to Senator Robins from staff person Joan Hall re: addition of extrinsic evidence language (pp. 84-85);
and

¹ Page numbers refer to the sequentially numbered pagination of Exhibit B attached hereto.

8. April 24, 1990 letter from Andrew Garb re: Senate Bill 1984 (pp. 94-95).

City of Hope's and Jewish National Fund's petition for review demonstrates that Probate Code section 6111.5, cited by the Court of Appeal, does not impose any limitations on the use of extrinsic evidence in interpreting wills. The legislative history of that statute is necessary in order to fully understand the evolution of the bill that became section 6111.5 and the Legislature's goals in creating that statute.

This motion is made pursuant to sections 451, 452, 453 and 459 of the California Evidence Code. This motion is also based on the attached Memorandum of Points and Authorities and all pleadings, files and records in this action, as well as such argument as may be heard on the motion.

True and correct copies of the entire legislative history is attached hereto as Exhibit B. It was obtained by Legislative Intent Service, Inc. The declaration of Maria A. Sanders, an attorney employed by Legislative Intent Service, Inc., is attached as Exhibit A.

Dated: January 13, 2012

Respectfully submitted,

OLDMAN, COOLEY, SALLUS, GOLD,
BIRNBERG, & COLEMAN, LLP

Susan Cooley

RODRIGUEZ, HORII, CHOI & CAFFERATA, LLP

Reynolds Cafferata

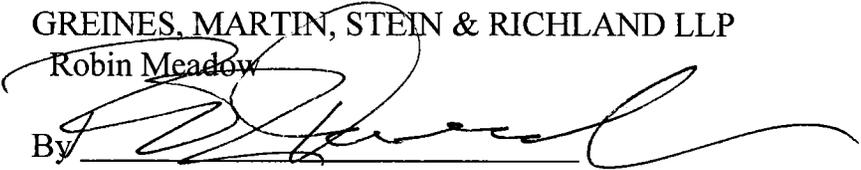
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Gerald Serlin

Douglas Benedon

GREINES, MARTIN, STEIN & RICHLAND LLP

Robin Meadow

By 

Robin Meadow

Attorneys for Defendants and Appellants
JEWISH NATIONAL FUND and CITY OF HOPE

MEMORANDUM OF POINTS AND AUTHORITIES

City of Hope and Jewish National Fund seek review of *Radin v. Jewish National Fund* in order to resolve confusion and conflicts in California law regarding implied testamentary gifts. In order to fully understand the issue, the Court must be familiar with the historical development of the relevant legislation. That includes an understanding of the Legislature's intent in enacting Probate Code section 6111.5, cited by the Court of Appeal. The Legislature never intended it to be a limitation on the use of extrinsic evidence or to constrain the appropriate development of the law.

Under Evidence Code section 459, a reviewing court has the same powers of judicial notice as the trial court. (See also *Barreiro v. State Bar* (1970) 2 Cal.3d 912, 925 [circumstances under which judicial notice is appropriately granted by this and other court]; *Martin v. General Finance Co.* (1966) 239 Cal.App.2d 438, 442 ["The power of (the Court of Appeal) to take judicial notice is the same as that of the trial court"].)

Thus, this Court may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).)

This includes legislative history materials. (See *City of Brentwood v. Central Valley Regional Water Quality Control Bd.* (2004) 123 Cal.App.4th 714, 728 [appellate court took judicial notice of letter sent by legislators to executive officer of State Water Resources Control Board to protest

Board's original interpretation of six-month period in the mandatory minimum penalty statute]; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484 [“reports of legislative committees and commissions are part of a statute's legislative history, and may properly be subject to judicial notice as official acts of the Legislature”].)

“[S]tatements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation.” (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062.) However, “[i]t is well recognized that under appropriate circumstances, the individual intent of an author of a bill may provide a reliable index of the collective legislative intent when the language of a statute is susceptible to conflicting interpretations.” (*California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 604 [granting judicial notice of the declaration of the author of a legislature regarding his intentions]; see also *People v. Eubanks* (1996) 14 Cal.4th 580, 591, fn. 3 [taking judicial notice of legislative history documents indicating the intent of the author of the bill].)

For all of the foregoing reasons, this Court should grant appellants' Motion for Judicial Notice.

Dated: January 13, 2012

Respectfully submitted,

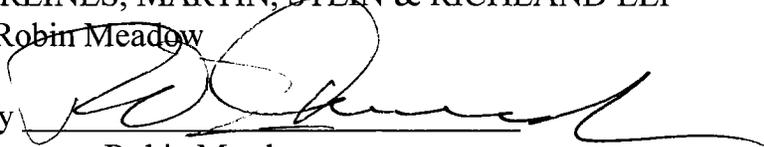
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Robin Meadow

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California Court of Appeal, Second District, Division Four 2nd Civil No. B227954
Appeal from the Los Angeles County Superior Court
Hon. Mitchell Beckloff, Los Angeles County Superior Court Case No. BP108971

**[PROPOSED] ORDER GRANTING
MOTION FOR JUDICIAL NOTICE**

IT IS HEREBY ORDERED THAT the Motion for Judicial Notice of petitioners and appellants, Jewish National Fund and City of Hope, is granted.

SO ORDERED.

DATED: _____

Chief Justice



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 1984 of 1990. Senate Bill 1984 was approved by the Legislature and was enacted as Chapter 263 of the Statutes of 1990.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 1984 of 1990. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A: SENATE BILL 1984 OF 1990:

1. All versions of Senate Bill 1984 (Robbins-1990);
2. Procedural history of Senate Bill 1984 from the 1989-90 *Senate Final History*;
3. Analysis of Senate Bill 1984 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1984;
5. Third Reading analysis of Senate Bill 1984 prepared by the Office of Senate Floor Analyses;
6. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1984;
7. Analysis of Senate Bill 1984 prepared for the Assembly

- Committee on Judiciary;
- 8. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 1984;
 - a. Previously Obtained Material
 - b. Up-to-date Collection of Material;
- + 9. Third Reading analysis of Senate Bill 1984 prepared by the Assembly Committee on Judiciary;
- 10. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1984;
 - a. Previously Obtained Material
 - b. Up-to-date Collection of Material;
- + 11. Unfinished Business analysis of Senate Bill 1984 prepared by the Office of Senate Floor Analyses;
- 12. Material from the legislative bill file of Senator Robbins on Senate Bill 1984;
 - a. Previously Obtained Material
 - b. Up-to-date Collection of Material;
- + 13. Post-enrollment documents regarding Senate Bill 1984;
 - a. Previously Obtained Material
 - b. Up-to-date Collection of Material;
- +

We have re-gathered these file materials and have noted this more recently accessed collection of documents as "up-to-date collection of material" in this declaration, which may duplicate documents previously gathered. It is not unusual for more materials to become publicly available after our initial research of legislation so our research protocols compel us to re-access a file to determine if additional documents are available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of December, 2011 at Woodland, California.



MARIA A. SANDERS

**ALL VERSIONS OF
SENATE BILL 1984**

The bill to amend Section 6111 of the Probate Code, relating to wills, is introduced by Senator Robbins. Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. This bill would provide, instead, that an instrument that contains a statement of testamentary intent on its face is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

An act to amend Section 6111 of the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1984, as introduced, Robbins. Holographic wills.

Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that an instrument that contains a statement of testamentary intent on its face is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6111 of the Probate Code is amended to read:

6111. (a) ~~A will~~ An instrument that contains a statement of testamentary intent on its face but does not comply with Section 6110 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(b) If a holographic will does not contain a statement as to the date of its execution and:

(1) If the omission results in doubt as to whether its provisions or the inconsistent provisions of another will are controlling, the holographic will is invalid to the extent of the inconsistency unless the time of its execution is established to be after the date of execution



- 1 of the other will.
- 2 (2) If it is established that the testator lacked
- 3 testamentary capacity at any time during which the will
- 4 might have been executed, the will is invalid unless it is
- 5 established that it was executed at a time when the
- 6 testator had testamentary capacity.

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SENATE BILL No. 1984

Introduced by Senator Robbins, and of the Committee on Judiciary, February 13, 1990

An act to amend Section 6111 of the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1984, as amended, Robbins. Holographic wills. Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that an instrument a will that contains a statement of testamentary intent on its face, as specified, is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. If it does not contain such a statement, extrinsic evidence would be admissible to ascertain the intent of the signer.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6111 of the Probate Code is
- 2 amended to read:
- 3 6111. (a) ~~An instrument~~ Except as provided in
- 4 *subdivision (b)*, a will that contains a statement of
- 5 testamentary intent on its face, either in the testator's
- 6 *own handwriting or as part of a commercially preprinted*
- 7 *form will*, but does not comply with Section 6110 is valid
- 8 as a holographic will, whether or not witnessed, if the
- 9 signature and the material provisions are in the
- 10 *handwriting of the testator. However, if it contains no*



1 such statement of testamentary intent on its face,
2 extrinsic evidence is admissible to ascertain the intent of
3 the signer.

4 (b) If a holographic will does not contain a statement
5 as to the date of its execution and:

6 (1) If the omission results in doubt as to whether its
7 provisions or the inconsistent provisions of another will
8 are controlling, the holographic will is invalid to the
9 extent of the inconsistency unless the time of its
10 execution is established to be after the date of execution
11 of the other will.

12 (2) If it is established that the testator lacked
13 testamentary capacity at any time during which the will
14 might have been executed, the will is invalid unless it is
15 established that it was executed at a time when the
16 testator had testamentary capacity.

O



AMENDED IN SENATE APRIL 17, 1990
AMENDED IN SENATE MARCH 29, 1990

SENATE BILL **No. 1984**

Introduced by Senator Robbins

February 18, 1990

An act to amend Section 611.1 of , and to add Section 611.1.5 to, the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1984, as amended, Robbins. Holographic wills.

Existing law requires a will to be in writing, and to be signed and witnessed, except as otherwise proven, as specified. Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified. This bill would also provide ; instead, that a will that contains a statement of testamentary intent on its face, as specified, is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. If it does not contain such a statement, extrinsic evidence would be admissible to ascertain the intent of the signer.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Section 6111 of the Probate Code is
2 amended to read:

3 6111. (a) Except as provided in subdivision (b), a
4 will that contains a statement of testamentary intent on
5 its face, either in the testator's own handwriting or as part
6 of a commercially preprinted form will, but does not
7 comply with Section 6110 is valid as a holographic will,
8 whether or not witnessed, if the signature and the
9 material provisions are in the handwriting of the testator.
10 ~~However, if it contains no such statement of testamentary~~
11 ~~intent on its face, extrinsic evidence is admissible to~~
12 ~~ascertain the intent of the signer.~~

13 (b) If a holographic will does not contain a statement
14 as to the date of its execution and:

15 (1) If the omission results in doubt as to whether its
16 provisions or the inconsistent provisions of another will
17 are controlling, the holographic will is invalid to the
18 extent of the inconsistency unless the time of its
19 execution is established to be after the date of execution
20 of the other will.

21 (2) If it is established that the testator lacked
22 testamentary capacity at any time during which the will
23 might have been executed, the will is invalid unless it is
24 established that it was executed at a time when the
25 testator had testamentary capacity.

26 SEC. 2. Section 6111.5 is added to the Probate Code,
27 to read:

28 6111.5. Extrinsic evidence is admissible to determine
29 whether a document constitutes a will pursuant to
30 Section 6110 or 6111, or to determine the meaning of a
31 will or a portion of a will if the meaning is unclear on the
32 face of the document.



AMENDED IN ASSEMBLY MAY 21, 1990

AMENDED IN SENATE APRIL 17, 1990

AMENDED IN SENATE MARCH 29, 1990

SENATE BILL

No. 1984

Introduced by Senator Robbins

February 13, 1990

An act to amend Section 6111 of, and to add Section 6111.5 to, the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1984, as amended, Robbins. Holographic wills.

Existing law requires a will to be in writing, and to be signed and witnessed, except as otherwise proven, as specified. Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified. This bill would also provide that a will that contains a statement of testamentary intent on its face, as specified, is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Section 6111 of the Probate Code is
2 amended to read:

3 6111. (a) Except as provided in subdivision (b), a will
4 that contains a statement of testamentary intent on its
5 face, either in the testator's own handwriting or as part
6 of a commercially preprinted form will, but does not
7 comply with Section 6110 is valid as a holographic will,
8 whether or not witnessed, if the signature and the
9 material provisions are in the handwriting of the testator.

10 (b) If a holographic will does not contain a statement
11 as to the date of its execution and:

12 (1) If the omission results in doubt as to whether its
13 provisions or the inconsistent provisions of another will
14 are controlling, the holographic will is invalid to the
15 extent of the inconsistency unless the time of its
16 execution is established to be after the date of execution
17 of the other will.

18 (2) If it is established that the testator lacked
19 testamentary capacity at any time during which the will
20 might have been executed, the will is invalid unless it is
21 established that it was executed at a time when the
22 testator had testamentary capacity.

23 SEC. 2. Section 6111.5 is added to the Probate Code,
24 to read:

25 6111.5. Extrinsic evidence is admissible to determine
26 whether a document constitutes a will pursuant to
27 Section 6110 or 6111, or to determine the meaning of a
28 will or a portion of a will if the meaning is unclear ~~on the~~
29 ~~face of the document.~~

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AMENDED IN ASSEMBLY JUNE 21, 1990
AMENDED IN ASSEMBLY MAY 21, 1990
AMENDED IN SENATE APRIL 17, 1990
AMENDED IN SENATE MARCH 29, 1990

SENATE BILL

No. 1984

Introduced by Senator Robbins

February 13, 1990

An act to amend Section 6111 of, and to add Section 6111.5 to, the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1984, as amended, Robbins. Holographic wills.

Existing law requires a will to be in writing, and to be signed and witnessed, except as otherwise provided, as specified. Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified. This bill would also provide that a will that contains a statement of testamentary intent on its face, as specified, is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator any statement of testamentary intent in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Section 6111 of the Probate Code is
2 amended to read:

3 6111. (a) Except as provided in subdivision (b), a will that contains a statement of testamentary intent on
4 its face, either in the testator's own handwriting or as part
5 of a commercially preprinted form will, but does not
6 comply with Section 6110 is valid as a holographic will,
7 whether or not witnessed, if the signature and the
8 material provisions are in the handwriting of the testator.

9 (b) If a holographic will does not contain a statement
10 as to the date of its execution and:

11 (1) If the omission results in doubt as to whether its
12 provisions or the inconsistent provisions of another will
13 are controlling, the holographic will is invalid to the
14 extent of the inconsistency unless the time of its
15 execution is established to be after the date of execution
16 of the other will.

17 (2) If it is established that the testator lacked
18 testamentary capacity at any time during which the will
19 might have been executed, the will is invalid unless it is
20 established that it was executed at a time when the
21 testator had testamentary capacity.

22 (c) Any statement of testamentary intent contained in
23 a holographic will may be set forth either in the testator's
24 own handwriting or as part of a commercially printed
25 form will.

26 SEC. 2. Section 6111.5 is added to the Probate Code,
27 to read:

28 6111.5. Extrinsic evidence is admissible to determine
29 whether a document constitutes a will pursuant to
30 Section 6110 or 6111, or to determine the meaning of a
31 will or a portion of a will if the meaning is unclear.
32



An act to amend Section 6111 of, and to add Section 6111.5 to, the Probate Code, relating to wills.

[Approved by Governor July 13, 1990. Filed with Secretary of State July 16, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1984, Robbins. Holographic wills.

Existing law requires a will to be in writing, and to be signed and witnessed, as specified. Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified. This bill would also provide that any statement of testamentary intent in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

The people of the State of California do enact as follows:

SECTION 1. Section 6111 of the Probate Code is amended to read:

6111. (a) A will that does not comply with Section 6110 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(b) If a holographic will does not contain a statement as to the date of its execution and:

(1) If the omission results in doubt as to whether its provisions or the inconsistent provisions of another will are controlling, the holographic will is invalid to the extent of the inconsistency unless the time of its execution is established to be after the date of execution of the other will.

(2) If it is established that the testator lacked testamentary capacity at any time during which the will might have been executed, the will is invalid unless it is established that it was executed at a time when the testator had testamentary capacity.

(c) Any statement of testamentary intent contained in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

SEC. 2. Section 6111.5 is added to the Probate Code, to read:
6111.5. Extrinsic evidence is admissible to determine whether a document constitutes a will pursuant to Section 6110 or 6111, or to determine the meaning of a will or a portion of a will if the meaning

Ch. 263
is unclear.

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**PROCEDURAL HISTORY
OF SENATE BILL 1984
FROM THE 1989-90
*SENATE FINAL HISTORY***

VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1989-90 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS
AND SENATE RESOLUTIONS

CONVENED DECEMBER 5, 1988
ADJOURNED SINE DIE NOVEMBER 30, 1990

DAYS IN SESSION..... 269
CALENDAR DAYS 726

LT. GOVERNOR
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
DARRYL R. WHITE
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk



S.B. No. 1984—Robbins.

An act to amend Section 6111 of, and to add Section 6111.5 to, the Probate Code, relating to wills.

1990

- Feb. 13—Introduced. Read first time. To Com. on RLS. for assignment. To print.
 Feb. 14—From print. May be acted upon on or after March 16.
 Feb. 22—To Com. on JUD.
 Feb. 26—Set for hearing March 20.
 Mar. 19—Set, first hearing. Hearing canceled at the request of author. Set for hearing April 3.
 Mar. 29—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 April 16—From committee: Do pass as amended. (Ayes 8. Noes 0. Page 5148.)
 April 17—Read second time. Amended. To third reading.
 April 23—To Special Consent Calendar.
 April 26—Read third time. Passed. (Ayes 25. Noes 0. Page 5500.) To Assembly.
 April 26—In Assembly. Read first time. Held at Desk.
 May 3—To Com. on JUD.
 May 21—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 June 20—Set, first hearing. Hearing canceled at the request of author.
 June 21—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 June 28—From committee: Do pass. To Consent Calendar.
 July 2—Read second time. To Consent Calendar.
 July 5—Read third time. Passed. (Ayes 72. Noes 0. Page 8625.) To Senate.
 July 5—In Senate. To unfinished business.
 July 6—Senate concurs in Assembly amendments. (Ayes 38. Noes 0. Page 6874.) To enrollment.
 July 9—Enrolled. To Governor at 1 p.m.
 July 13—Approved by Governor.
 July 16—Chaptered by Secretary of State. Chapter 263, Statutes of 1990.

S.B. No. 1985—Cecil Green.

An act to amend Section 832.8 of the Penal Code, relating to peace officers.

1990

- Feb. 13—Introduced. Read first time. To Com. on RLS. for assignment. To print.
 Feb. 14—From print. May be acted upon on or after March 16.
 Feb. 22—To Com. on JUD.
 Mar. 21—Set for hearing May 1.
 May 1—Set, first hearing. Hearing canceled at the request of author.
 May 2—Set for hearing May 8.
 May 2—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 May 15—From committee: Do pass as amended. (Ayes 11. Noes 0. Page 5711.)
 May 16—Read second time. Amended. To third reading.
 May 21—To Special Consent Calendar.
 May 25—Read third time. Passed. (Ayes 33. Noes 0. Page 6038.) To Assembly.
 May 25—In Assembly. Read first time. Held at Desk.
 May 31—To Com. on PUB. S.
 June 27—From committee: Do pass. To Consent Calendar.
 June 28—Read second time. To Consent Calendar.
 July 5—Read third time. Passed. (Ayes 72. Noes 0. Page 8625.) To Senate.
 July 5—In Senate. To enrollment.
 July 9—Enrolled. To Governor at 1 p.m.
 July 13—Approved by Governor.
 July 16—Chaptered by Secretary of State. Chapter 264, Statutes of 1990.



**ANALYSIS OF SENATE BILL
1984 PREPARED FOR THE
SENATE COMMITTEE
ON JUDICIARY**

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB 1984 (Robbins)
As Amended March 29, 1990
Hearing date: April 3, 1990
Probate Code
JRP:jm

SB
1984

HOLOGRAPHIC WILLS

HISTORY

Source: Author

Prior Legislation: None

Support: Unknown

Opposition: No Known

KEY ISSUE

SHOULD AN OTHERWISE VALID HOLOGRAPHIC WILL BE VALID IF IT CONTAINS A STATEMENT OF TESTAMENTARY INTENT WHICH IS COMMERCIALY PREPRINTED?

WHERE NO STATEMENT OF TESTAMENTARY INTENT APPEARS ON THE FACE OF A PURPORTED HOLOGRAPHIC WILL, SHOULD EXTRINSIC EVIDENCE BE ADMISSIBLE TO ASCERTAIN THE INTENT OF THE SIGNER?

PURPOSE

Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would also provide that where there is no such statement



of testamentary intent on the face of the document, that extrinsic evidence is admissible to ascertain the intent of the signer.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

COMMENT

1. Background

Existing law contains various requirements in order for a document to be considered a valid will. One of these requirements is that the document be signed by two witnesses who know the document is intended as a will and who observed the testator, or a person acting on his or her behalf, sign the document.

However, California also recognizes the holographic or handwritten will as valid regardless of whether it is witnessed or whether other technical requirements have been met. The signature and the material provisions of a holographic will must be in the handwriting of the testator.

A problem may develop where a person handwrites a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where a testator and witnesses are to sign their names.

Under a similar statute, the Arizona Court of Appeals ruled that a will which was entirely handwritten by the testator, except for the preprinted statement of testamentary intent, was invalid due to the printed matter. In the Matter of the Estate of Johnson (1981) 129 Arizona 307; 630 P.2d 1039.

The bill specifically permits a commercially preprinted statement of testamentary intent where a signature and material provisions of the will are in the handwriting of the testator.

The bill also provides that where there is no statement of testamentary intent, either preprinted or in the handwriting of the testator, extrinsic evidence (e.g. testimony of witnesses, other documents etc.) shall be admissible in order to ascertain the intent of the signer.

The author believes that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author

(More)

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hopes to effectuate the intentions of those who die after executing a handwritten will.

2. Need for the language on preprinted statement of testamentary intent

It is not known how the Johnson case would have been decided by a court in California. However, in a similar case, where the statement of testamentary intent was typewritten by the testator, the Court of Appeal affirmed a judgment holding that such a document is not a valid holographic will.

Estate of Christian (1976) 60 Cal. App. 3d 975; 131 Cal.Rptr. 841.

The author believes that this bill is necessary to avoid litigation regarding this issue and to make it clear that public policy favors the distribution of an estate according to the intent of the deceased.

3. Extrinsic evidence

Extrinsic evidence is currently admissible if there is some doubt as to whether a document was intended as a will. This bill clarifies that such evidence can be introduced to determine whether or not a document was intended as a holographic will if the material provisions and the signature are in the handwriting of the testator.

4. Concern expressed

Concern was expressed that this bill could conflict with the work of the California Law Revision Commission.

The Commission is currently completing a ten year project to reform and re-write the Probate Code. The Commission circulates proposed amendments to hundreds of attorneys and organizations who are then given a chance to comment on the proposals.

This bill has not been reviewed by the California Law Revision Commission. It might be appropriate to submit the proposal in this bill to the Commission for review and comment.



**MATERIAL FROM THE
LEGISLATIVE BILL FILE OF
THE SENATE COMMITTEE
ON JUDICIARY ON SENATE
BILL 1984**

J

MAR 28 1990

48571
RECORD #

30 BF:

90087 15:14
RN 90 007001 PAGE NO. 1

Substantive

AMENDMENTS TO SENATE BILL NO. 1984

Amendment 1

On page 1, line 3, strike out "An instrument"
and insert:

Except as provided in subdivision (b), a will

Amendment 2

On page 1, line 4, after "face" insert:

, either in the testator's own handwriting or as part of a
commercially preprinted form will,

Amendment 3

On page 1, line 7, after the period insert:

However, if it contains no such statement of testamentary
intent on its face, extrinsic evidence is admissible to
ascertain the intent of the signer.

- 0 -

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB 1984 (Robbins)
As Amended March 29, 1990
Hearing date: April 3, 1990
Probate Code
JRP:jm

S
B
1
9
8
4

HOLOGRAPHIC WILLS

HISTORY

Source: Author

Prior Legislation: None

Support: Unknown

Opposition: No Known

KEY ISSUE

SHOULD AN OTHERWISE VALID HOLOGRAPHIC WILL BE VALID IF IT CONTAINS A STATEMENT OF TESTAMENTARY INTENT WHICH IS COMMERCIALY PREPRINTED?

WHERE NO STATEMENT OF TESTAMENTARY INTENT APPEARS ON THE FACE OF A PURPORTED HOLOGRAPHIC WILL, SHOULD EXTRINSIC EVIDENCE BE ADMISSIBLE TO ASCERTAIN THE INTENT OF THE SIGNER?

PURPOSE

Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would also provide that where there is no such statement

(More)

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of testamentary intent on the face of the document, that extrinsic evidence is admissible to ascertain the intent of the signer.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

COMMENT

1. Background

Existing law contains various requirements in order for a document to be considered a valid will. One of these requirements is that the document be signed by two witnesses who know the document is intended as a will and who observed the testator, or a person acting on his or her behalf, sign the document.

However, California also recognizes the holographic or handwritten will as valid regardless of whether it is witnessed or whether other technical requirements have been met. The signature and the material provisions of a holographic will must be in the handwriting of the testator.

A problem may develop where a person handwrites a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where a testator and witnesses are to sign their names.

Under a similar statute, the Arizona Court of Appeals ruled that a will which was entirely handwritten by the testator, except for the preprinted statement of testamentary intent, was invalid due to the printed matter. In the Matter of the Estate of Johnson (1981) 129 Arizona 307; 630 P.2d 1039.

The bill specifically permits a commercially preprinted statement of testamentary intent where a signature and material provisions of the will are in the handwriting of the testator.

The bill also provides that where there is no statement of testamentary intent, either preprinted or in the handwriting of the testator, extrinsic evidence (e.g. testimony of witnesses, other documents etc.) shall be admissible in order to ascertain the intent of the signer.

The author believes that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author

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hopes to effectuate the intentions of those who die after executing a handwritten will.

2. Need for the language on preprinted statement of testamentary intent

It is not known how the Johnson case would have been decided by a court in California. However, in a similar case, where the statement of testamentary intent was typewritten by the testator, the Court of Appeal affirmed a judgment holding that such a document is not a valid holographic will. Estate of Christian (1976) 60 Cal. App. 3d 975; 131 Cal.Rptr. 841.

The author believes that this bill is necessary to avoid litigation regarding this issue and to make it clear that public policy favors the distribution of an estate according to the intent of the deceased.

3. Extrinsic evidence

Extrinsic evidence is currently admissible if there is some doubt as to whether a document was intended as a will. This bill clarifies that such evidence can be introduced to determine whether or not a document was intended as a holographic will if the material provisions and the signature are in the handwriting of the testator.

4. Concern expressed

Concern was expressed that this bill could conflict with the work of the California Law Revision Commission.

The Commission is currently completing a ten year project to reform and re-write the Probate Code. The Commission circulates proposed amendments to hundreds of attorneys and organizations who are then given a chance to comment on the proposals.

This bill has not been reviewed by the California Law Revision Commission. It might be appropriate to submit the proposal in this bill to the Commission for review and comment.



TO LC 4-1-90
initial 3-9-90
J. [unclear]

**AMENDMENTS TO SENATE BILL NO. 1984
AS AMENDED ON March 29, 1990**

Amendment 1

On page 1, line 10, strike out "However, if it contains no" and on page 2, strike out lines 2 through 3, inclusive

Amendment 2

On page 2, after line 16, insert:

SECTION 2 Section 6111.5 is added to the Probate Code:

6111.5 Extrinsic evidence shall be admissible to determine if a document is a will under Sections 6110 or 6111 or to determine the meaning of a will, or portion of a will, if the meaning is unclear on the face of the document.

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**THIRD READING ANALYSIS
OF SENATE BILL 1984
PREPARED BY THE OFFICE
OF SENATE
FLOOR ANALYSES**

THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1984
	Author:	Robbins (D)
	Amended:	4/17/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1984	
DATE OF HEARING:	4-3-90	
SENATORS:	AYE	NO
Roolittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce		
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Assembly Floor Vote:

SUBJECT: Holographic Wills

SOURCE: Author

DIGEST: This bill provides that an otherwise valid holographic will be valid if it contains a statement of testamentary intent which is commercially preprinted.

The bill would further provide that extrinsic evidence is admissible when determining the meaning of a will if the meaning is unclear.

ANALYSIS: Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would further provide that extrinsic evidence is admissible to determine whether a document constitutes a will, or to determine the meaning of a will, or a portion thereof, if the meaning is unclear on the face of the document.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

LEGISLATIVE INTENT SERVICE (800) 666-1917



ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJG:nf 4/16/90 Senate Floor Analyses



**MATERIAL FROM THE
LEGISLATIVE BILL FILE OF
THE OFFICE OF SENATE
FLOOR ANALYSES ON
SENATE BILL 1984**

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1984
	Author:	Robbins (D)
	Amended:	6/21/90
	Vote Required:	Majority
	Committee Votes:	Senate Floor Vote: Page 5500, 4/26/90

SENATE JUDICIARY		
BILL NO.:	SB 1984	
DATE OF HEARING:	4-3-90	
SENATORS:	AYE	NO
Doolittle	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Keene	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patris	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Presley	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberti	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Royce	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Torres	<input type="checkbox"/>	<input type="checkbox"/>
Watson	<input type="checkbox"/>	<input type="checkbox"/>
Davis (VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lockyer (Ch)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
YEA:	11	0

Senate Bill 1984—An act to amend Section 6111 of, and to add Section 6111.5 to, the Probate Code, relating to wills.
 Bill read third time, passed, and ordered transmitted to the Assembly.

The roll was called, and the above measures on the Consent Calendar passed by the following vote:

AYES (25)—Senators Ayala, Bergeson, Calderon, Davis, Dills, Cecil Green, Bill Greene, Hill, Keene, Killea, Kopp, Lockyer, Maddy, Marks, McCorquodale, Mello, Nielsen, Presley, Robbins, Roberti, Rogers, Royce, Russell, Vuich, and Watson.
NOES (0)—None.

Assembly Floor Vote: 72-0, Pg. 8625, 7/5/90
 (Passed Assembly on Consent)

SUBJECT: Holographic Wills

SOURCE: Author

DIGEST: This bill provides that the testamentary intent contained in a holographic will may be either in the testator's handwriting or as part of a commercially printed form will.

Assembly Amendments were clarifying.

ANALYSIS: Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified. This bill would also provide that any statement of testamentary intent in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

The bill would further provide that extrinsic evidence is admissible to determine whether a document constitutes a will, or to determine the meaning of a will, or a portion thereof.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

LEGISLATIVE INTENT SERVICE (800) 606-1017

CONTINUED

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJG:nf 7/5/90 Senate Floor Analyses

SPECIAL CONSENT

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1984
	Author:	Robbins (D)
	Amended:	4/17/90
	Vote Required:	Majority

Committee Votes:

LEGISLATIVE JUDICIARY		
BILL NO.:	SB 1984	
DATE OF HEARING:	4-3-90	
SENATORS:	AYE	NO
Doellittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
ROBERTI	✓	
Royce		
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Senate Floor Vote: Page 5500, 4/26/90

Senate Bill 1984—An act to amend Section 6111 of, and to add Section 6111.5 to, the Probate Code, relating to wills.
 Bill read third time, passed, and ordered transmitted to the Assembly.

The roll was called, and the above measures on the Consent Calendar passed by the following vote:

AYES (25)—Senators Ayala, Bergeson, Calderon, Davis, Dills, Cecil Green, Bill Greene, Hill, Keene, Killea, Kopp, Lockyer, Maddy, Marks, McCorquodale, Mello, Nielsen, Presley, Robbins, Roberti, Rogers, Royce, Russell, Vuich, and Watson.
NOES (0)—None.

Assembly Floor Vote:

SUBJECT: Holographic Wills

SOURCE: Author

DIGEST: This bill provides that an otherwise valid holographic will be valid if it contains a statement of testamentary intent which is commercially preprinted.

The bill would further provide that extrinsic evidence is admissible when determining the meaning of a will if the meaning is unclear.

ANALYSIS: Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would further provide that extrinsic evidence is admissible to determine whether a document constitutes a will, or to determine the meaning of a will, or a portion thereof, if the meaning is unclear on the face of the document.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

00312

CONTINUED

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ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJG:nf 4/16/90 Senate Floor Analyses

LEGISLATIVE INTENT SERVICE (800) 666-1917



**ANALYSIS OF SENATE BILL
1984 PREPARED FOR THE
ASSEMBLY COMMITTEE
ON JUDICIARY**

Date of Hearing: June 27, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 1984 (Robbins) - As Amended: June 21, 1990

PRIOR ACTIONS

Sen. Com. on JUD. 8-0

Sen. Floor 25-0

SUBJECT: This bill provides that the testamentary intent contained in a holographic will may be either in the testator's handwriting or as part of a commercially printed form will.

BACKGROUND

History. The California Law Revision Commission proposed and the Legislature adopted AB 25 (McAlister) - Chapter 842, Statutes of 1983, operative January 1, 1985, which relaxed the formalities required under former law for typed and holographic wills. This bill also created the California Statutory Will, which sets forth specific provisions which are to be contained in a printed will. A person may then fill in the blanks of the relevant provisions, and is required to sign and date the will in front of two or three witnesses who also sign the will. However, it is not always clear as to what information goes on a particular line of the statutory will. The holographic or typewritten will continue to be an alternative for persons who choose not to use a statutory will.

Facts. The sponsor has not supplied data relative to the number or nature of problems arising under existing law.

DIGEST

Existing law:

- 1) Requires a will to be in writing, and to be signed by the testator and by two witnesses who know the document is intended as a will and who observed the testator sign the document.
- 2) Provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. It does not need to be witnessed. Under the common law, a holographic will must be entirely in the testator's own handwriting, and contain the testator's signature and the date of its execution.
- 3) Requires the testator to be competent at the time of execution of a will.

- continued -



This bill:

- 1) Revises the provisions of the statutory holographic will by providing that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.
- 2) Makes extrinsic evidence admissible into a court proceeding to determine (a) whether a document constitutes a will under the law or (b) the meaning of a will or a portion of a will if the meaning is unclear.

FISCAL EFFECT

This bill will not be referred to the Assembly Committee on Ways and Means.

COMMENTS

- 1) Author's Statement. According to the author:

This bill allows form wills such as those you can get in stationary stores to be probated as holographs by allowing the statement of testamentary intent to be either part of the preprinted form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of documents is not clear. Current law, strictly construed, can result in a form will (where you fill in the blanks) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

The author believes that this bill will help avoid litigation over whether the technical requirements of a holographic will have been met. Further, the author hopes to effectuate the intentions of those who die after executing a handwritten will, which is consistent with the public policy favoring the distribution of an estate according to the intent of the deceased.

- 2) Problems Under Existing Law. A problem may develop where a person hand writes a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where the testator and witnesses are to sign their names.

- 3) Issues. The California Law Revision Commission (CLRC) is currently completing an eight to ten year project to reform and re-write the Probate Code. CLRC circulates proposed amendments to hundreds of attorneys and organizations who are then given an opportunity to comment

- continued -



on the proposals. This bill has not been reviewed by CLRC. It might be appropriate to submit the proposal in this bill to CLRC for review and comment.

- 4) Extrinsic Evidence. This bill essentially codifies existing law regarding extrinsic evidence. In summary, existing law provides that where the meaning of a will is entirely clear on its face, and the will contains no ambiguity, latent or patent, extrinsic evidence is not admissible to show that the decedent intended or desired to do something not expressed in the will. Extrinsic evidence, including evidence as to the circumstances under which the will was made, is admissible to explain or apply an ambiguous will. Substantial compliance with the statutory requirements for a will is sufficient, so long as it is evident that the decedent intended the document to be a will and the dispositions are sufficiently clear. [64 Cal.Jur.3d Section 335 et. seq., Estate of MacLeod (1988) 206 Cal.App.3d 1235]

SUPPORT

Unknown

OPPOSITION

Unknown



**MATERIAL FROM THE
LEGISLATIVE BILL FILE OF
THE ASSEMBLY COMMITTEE
ON JUDICIARY ON SENATE
BILL 1984**

6005

10/14/90

Senate Select Committee
on
Governmental Efficiency

F41

The attached language
is being drafted for
SB 1984, so as not
to require a statement
of testamentary intent.

Teri 5-3121

B. TERI BURNS
445-3121



ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair
ROLL CALL FORM

Hearing Date:	June 27, 1990	Fiscal Committee:	NO
Measure :	SB 1984	Urgency :	NO
Author :	Robbins	Appropriation :	NO
Consultant :	Deborah DeBow	Levy :	NO
Amendments :		Set # :	2
Author :	Presented _____ Adopted _____	Presented By:	_____
Other :	_____	Policy Committee :	JUD.
Action:	_____	On Call :	_____
		30 Days :	03/16/90
		Rules Waived :	_____

(C)

	AYE	NO	AYE	NO
Connelly	(✓)	()	()	()
Friedman	(✓)	()	()	()
Harris	(✓)	()	()	()
Johnston	()	()	()	()
Leslie	(✓)	()	()	()
McClintock	(✓)	()	()	()
Mojonnier	(✓)	()	()	()
Speier	(✓)	()	()	()
Statham	(✓)	()	()	()
Maxine Waters	()	()	()	()
Isenberg, Chair	(✓)	()	()	()

MOTION _____ AYES _____ AYES _____
 SECOND _____ NOES _____ NOES _____

AP-2

LEGISLATIVE INTENT SERVICE (800) 666-1917



(2) AUTHOR'S AMENDMENTS<C2>

(2) Committee on JUDICIARY

Assembly Chamber 06/21/90 [1]<r>

Mr. Speaker: The Chairman of your Committee on JUDICIARY reports:

Senate Bill No. 1984

Senate Bill No. 2599

(1) With author's amendments with the recommendation: Amend, and re-refer to the committee. <1>

Isenberg

Chair [1]

AP-3

JUN 18 1990

44613
RECORD #

20 BF:

90169 16:01
RN 90 016472 PAGE NO. 1

Substantive

AMENDMENTS TO SENATE BILL NO. 1984
AS AMENDED IN ASSEMBLY MAY 21, 1990

Amendment 1

On page 2, line 3, strike out "Except as provided in subdivision (b), a" and insert:

A

Amendment 2

On page 2, line 4, strike out "contains a statement of testamentary intent on its" strike out line 5, in line 6, strike out "of a commercially preprinted form will, but"

Amendment 3

On page 2, between lines 22 and 23, insert:

(c) Any statement of testamentary intent contained in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

- 0 -

LEGISLATIVE INTENT SERVICE (800) 666-1917

AP-11

(2)REPORTS OF STANDING COMMITTEES<c2>

(2)Committee on JUDICIARY

Date of Hearing: 06/27/90 []<r>

Mr. Speaker: Your Committee on JUDICIARY reports:

Senate Bill No. 1734 (11-0)

Senate Bill No. 1984 (11-0)

LEGISLATIVE INTENT SERVICE / (800) 666-1917



(1)With the recommendation: Do pass.

[z6]Pursuant to the provisions of Joint Rules Nos. 22.1, 22.2, and 22.3, the committee recommends that the above bill(s) be placed on the Consent Calendar. <1>

Isenberg, Chair []
Isenberg

(5)Above bill ordered to second reading.

AP-5

JUDICIARY

Date of Hearing: 06/27/90

BILL NO.	SB 1943	SB 1984	SB 2015	SB 2047
ACTION VOTED ON	Do pass and re-refer to the Com on W. & M. Rec. Consent:	Do pass, to Consent	Do pass as amended	Do pass as amended
	Aye : No	Aye : No	Aye : No	Aye : No
Connelly	X :	X :	N.V.:	X :
Friedman	X :	X :	X :	X :
Harris	X :	X :	X :	X :
Johnston	X :	X :	X :	X :
Leslie	X :	X :	X :	X :
McClintock	X :	X :	X :	X :
Mojonnier	X :	X :	X :	X :
Speier	X :	X :	X :	X :
Statham	X :	X :	X :	X :
Maxine Waters	X :	X :	Ab. :	Ab. :
Isenberg(Chair)	X :	X :	X :	X :
	Ayes: 11	Ayes: 11	Ayes: 9	Ayes: 9
	Noes: 0	Noes: 0	Noes: 0	Noes: 1

N.V. - Not voting
Ab. - Absent

Abst - Abstain

RECEIVED: _____

 Chair

LEGISLATIVE INTENT SERVICE (800) 666-1917



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB 1984 (Robbins)
As Amended March 29, 1990
Hearing date: April 3, 1990
Probate Code
JRP:jm

HOLOGRAPHIC WILLS

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: No Known

KEY ISSUE

SHOULD AN OTHERWISE VALID HOLOGRAPHIC WILL BE VALID IF IT CONTAINS A STATEMENT OF TESTAMENTARY INTENT WHICH IS COMMERCIALY PREPRINTED?

WHERE NO STATEMENT OF TESTAMENTARY INTENT APPEARS ON THE FACE OF A PURPORTED HOLOGRAPHIC WILL, SHOULD EXTRINSIC EVIDENCE BE ADMISSIBLE TO ASCERTAIN THE INTENT OF THE SIGNER?

PURPOSE

Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would also provide that where there is no such statement

(More)

AP-7

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LEGISLATIVE INTENT SERVICE (800) 666-1917



of testamentary intent on the face of the document, that extrinsic evidence is admissible to ascertain the intent of the signer.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

COMMENT

1. Background

Existing law contains various requirements in order for a document to be considered a valid will. One of these requirements is that the document be signed by two witnesses who know the document is intended as a will and who observed the testator, or a person acting on his or her behalf, sign the document.

However, California also recognizes the holographic or handwritten will as valid regardless of whether it is witnessed or whether other technical requirements have been met. The signature and the material provisions of a holographic will must be in the handwriting of the testator.

A problem may develop where a person handwrites a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where a testator and witnesses are to sign their names.

Under a similar statute, the Arizona Court of Appeals ruled that a will which was entirely handwritten by the testator, except for the preprinted statement of testamentary intent, was invalid due to the printed matter. In the Matter of the Estate of Johnson (1981) 129 Arizona 307; 630 P.2d 1039.

The bill specifically permits a commercially preprinted statement of testamentary intent where a signature and material provisions of the will are in the handwriting of the testator.

The bill also provides that where there is no statement of testamentary intent, either preprinted or in the handwriting of the testator, extrinsic evidence (e.g. testimony of witnesses, other documents etc.) shall be admissible in order to ascertain the intent of the signer.

The author believes that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author

*Overruled by
Muller
159 Ar.
173*

*refer to
Estate of
Black
30 Cal 3d
(1982) 880*

- 152 CA 3d 817
- 171 CA 3d 1068
- 178 CA 3d 560
- 206 CA 3d 1242 (1988)

(More)

AP-8

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Estate of Block - substantial compliance

→ ~~valid~~ holograph on a
printed form ~~with the~~
since material provisions
in testatrix's signature.

Clearly her testam. intent -

No sound public policy to invalidate



hopes to effectuate the intentions of those who die after executing a handwritten will.

2. Need for the language on preprinted statement of testamentary intent

It is not known how the Johnson case would have been decided by a court in California. However, in a similar case, where the statement of testamentary intent was typewritten by the testator, the Court of Appeal affirmed a judgment holding that such a document is not a valid holographic will. Estate of Christian (1976) 60 Cal. App. 3d 975; 131 Cal.Rptr. 841.

The author believes that this bill is necessary to avoid litigation regarding this issue and to make it clear that public policy favors the distribution of an estate according to the intent of the deceased.

3. Extrinsic evidence

Extrinsic evidence is currently admissible if there is some doubt as to whether a document was intended as a will. This bill clarifies that such evidence can be introduced to determine whether or not a document was intended as a holographic will if the material provisions and the signature are in the handwriting of the testator.

4. Concern expressed

Concern was expressed that this bill could conflict with the work of the California Law Revision Commission.

The Commission is currently completing a ten year project to reform and re-write the Probate Code. The Commission circulates proposed amendments to hundreds of attorneys and organizations who are then given a chance to comment on the proposals.

This bill has not been reviewed by the California Law Revision Commission. It might be appropriate to submit the proposal in this bill to the Commission for review and comment.



TO: Honorable Alan Robbins

RE: SB 1984

MAY 16 1990

PLEASE RETURN BY 5-14-90 TO: ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON:

Address, telephone number: staff person - JORD HALL 5-1046

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

Name of contact person: author
Address, telephone number: Ma Shagraft - Professor of Law (Wills and Trusts) at ~~the~~ Southwestern (213) 738-6754

PRIOR COMMITTEE & FLOOR VOTES:

Sen Jud 28-0
Sen Floor 25-0

SET INFORMATION:

Preferred hearing dates: ~~5/16~~ 6/6
Estimated time to present testimony: ---
Names of witnesses: none

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

Allows form wills such as those you can get in stationary stores to be probated as holographic by allowing the statement of testamentary intent to be either part of the printed form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of document is not clear. We need to take an amendment which clears up the extrinsic

AP-11

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HOW DOES THIS BILL REMEDY THE PROBLEM?

Current law, strictly construed, can result in a form will (where you fill in the blanks) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

Professor Shapiro
case law

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

none known

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

no opposition

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.

page 2

(Revised 1/30/89, #105)



*****FOR YOUR INFORMATION*****

EXCERPTS FROM COMMITTEE RULES

- 1) Completed worksheet shall be returned to the Committee within 5 legislative days after delivery.
- 2) The Chairperson may refuse to hear a bill that has been set upon failure to return or complete the worksheet at the expense of an author's set.
- 3) Each bill may only be set three times.
- 4) No substantive amendments shall be accepted after 5:00 p.m. on the Tuesday one week prior to the Wednesday that the bill is to be heard.
- 5) No substantive amendments will be accepted at the time of the hearing on the bill.
- 6) Witness testimony is not to be a repetition of what other witnesses have previously stated.
- 7) Bills will be heard in file order at the time of the hearing.
- 8) Hearings will start promptly at the time given in the file.
- 9) Hearings are authorized to be held the second and fourth Wednesdays of the month (as designated by the Legislative Calendar).
- 10) If you are proposing a pilot project, the bill must contain a statement of purpose of the proposed pilot project; a precise cost projections and methods by which saving, if any, may be calculate; and a definitive mechanism by which the value and success of the project may be quantified. [See Committee Rule 14(a) for greater details.]

[Complete set of Committee Rules may be obtained from the Committee Secretary.]

*****KEEP FOR YOUR FILE*****

(revised 1/19/89)

LEGISLATIVE INTENT SERVICE (800) 666-1917





California Legislature

Assembly Committee on Judiciary

PHILLIP ISENBERG
CHAIRMAN

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LLOYD G. CONNELLY
GERALD N. FELAND
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MAXINE WATERS

STAFF
RUBEN R. LOPEZ
Chief Counsel
RAY LeBOV
Counsel
DEBORAH DeBOW
Counsel
GENE ERWIN
Counsel

FAX COVER SHEET

Date: 6-14-90 Time: 4pm No. of Pages 52
(includes this page)
To: Marshall Oldman Company: Attorney
City/State: Encino Ca
Phone: 818-986-8080 FAX: 818 789-0947

From: Deborah M. DeBow, Counsel
Assembly Committee on Judiciary
State Capitol
P. O. Box 942849
Sacramento, CA 94249-0001
(916) 445-4560
(916) 327-1788 (FAX)

Notes:

SA 1984
Holographic Wills.
6-14 - NEW amendments
New hearing date: 6/27/90

LEGISLATIVE INTENT SERVICE (800) 666-1917



ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair
ROLL CALL FORM

Hearing Date: June 27, 1990
 Measure : SB 1984
 Author : Robbins
 Consultant : Deborah DeBow
 Amendments :
 Author : Presented _____ Adopted _____
 Other : _____
 Action: _____

Fiscal Committee: NO
 Urgency : NO
 Appropriation : NO
 Levy : NO
 Set \$: 2
 Presented By: _____
 Policy Committee : JUD.
 On Call : _____
 30 Days : _____
 Rules Waived : 03/16/90

	AYE	NO	AYE	NO
Connelly (✓)	()	()	()	()
Friedman (✓)	()	()	()	()
Harris (✓)	()	()	()	()
Johnston ()	()	()	()	()
Leslie (✓)	()	()	()	()
McClintock (✓)	()	()	()	()
Mojonnier (✓)	()	()	()	()
Speier (✓)	()	()	()	()
Stathan (✓)	()	()	()	()
Maxine Waters ()	()	()	()	()
Isenberg, Chair (✓)	()	()	()	()

MOTION _____ AYES _____ AYES _____
 SECOND _____ NOES _____ NOES _____

LEGISLATIVE INTENT SERVICE (800) 666-1917

Date of Hearing: June 27, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 1984 (Robbins) - As Amended: June 21, 1990

PRIOR ACTIONS

Sen. Com. on JUD. S-0

Sen. Floor 25-0

SUBJECT: This bill provides that the testamentary intent contained in a holographic will may be either in the testator's handwriting or as part of a commercially printed form will.

BACKGROUND

History. The California Law Revision Commission proposed and the Legislature adopted AB 25 (McAlister) - Chapter 842, Statutes of 1983, operative January 1, 1985, which relaxed the formalities required under former law for typed and holographic wills. This bill also created the California Statutory Will, which sets forth specific provisions which are to be contained in a printed will. A person may then fill in the blanks of the relevant provisions, and is required to sign and date the will in front of two or three witnesses who also sign the will. However, it is not always clear as to what information goes on a particular line of the statutory will. The holographic or typewritten will continue to be an alternative for persons who choose not to use a statutory will.

Facts. The sponsor has not supplied data relative to the number or nature of problems arising under existing law.

DIGEST

Existing law:

- 1) Requires a will to be in writing, and to be signed by the testator and by two witnesses who know the document is intended as a will and who observed the testator sign the document.
- 2) Provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. It does not need to be witnessed. Under the common law, a holographic will must be entirely in the testator's own handwriting, and contain the testator's signature and the date of its execution.
- 3) Requires the testator to be competent at the time of execution of a will.

- continued -



This bill:

- 1) Revises the provisions of the statutory holographic will by providing that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.
- 2) Makes extrinsic evidence admissible into a court proceeding to determine (a) whether a document constitutes a will under the law or (b) the meaning of a will or a portion of a will if the meaning is unclear.

FISCAL EFFECT

This bill will not be referred to the Assembly Committee on Ways and Means.

COMMENTS

- 1) Author's Statement. According to the author:

This bill allows form wills such as those you can get in stationary stores to be probated as holographs by allowing the statement of testamentary intent to be either part of the preprinted form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of documents is not clear. Current law, strictly construed, can result in a form will (where you fill in the blanks) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

The author believes that this bill will help avoid litigation over whether the technical requirements of a holographic will have been met. Further, the author hopes to effectuate the intentions of those who die after executing a handwritten will, which is consistent with the public policy favoring the distribution of an estate according to the intent of the deceased.

- 2) Problems Under Existing Law. A problem may develop where a person hand writes a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where the testator and witnesses are to sign their names.

- 3) Issues. The California Law Revision Commission (CLRC) is currently completing an eight to ten year project to reform and re-write the Probate Code. CLRC circulates proposed amendments to hundreds of attorneys and organizations who are then given an opportunity to comment

- continued -

LEGISLATIVE INTENT SERVICE (800) 688-1511

on the proposals. This bill has not been reviewed by CLRC. It might be appropriate to submit the proposal in this bill to CLRC for review and comment.

- 4) Extrinsic Evidence. This bill essentially codifies existing law regarding extrinsic evidence. In summary, existing law provides that where the meaning of a will is entirely clear on its face, and the will contains no ambiguity, latent or patent, extrinsic evidence is not admissible to show that the decedent intended or desired to do something not expressed in the will. Extrinsic evidence, including evidence as to the circumstances under which the will was made, is admissible to explain or apply an ambiguous will. Substantial compliance with the statutory requirements for a will is sufficient, so long as it is evident that the decedent intended the document to be a will and the dispositions are sufficiently clear. [64 Cal.Jur.3d Section 935 et. seq., Estate of MacLeod (1988) 208 Cal.App.3d 1235]

SUPPORT

Unknown

OPPOSITION

Unknown

D. DeBov
445-4560
ajud

SB 1284
Page 3

LEGISLATIVE INTENT SERVICE (800) 666-1977

(2)AUTHOR'S AMENDMENTS<2>

(2)Committee on JUDICIARY

Assembly Chamber, 06/21/90 (1)

Mr. Speaker: The Chairman of your Committee on JUDICIARY reports:

Senate Bill No. 1994

Senate Bill No. 2599

(1)With author's amendments with the recommendation: Amend, and re-refer to the committee. <1>

_____, Chair [1]
Isenberg

LEGISLATIVE INTENT SERVICE (800) 665-7877



JUN 18 1990

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PAGE NO. 1

Substantive

AMENDMENTS TO SENATE BILL NO. 1984
AS AMENDED IN ASSEMBLY MAY 21, 1990

Amendment 1

On page 2, line 3, strike out "Except as provided in subdivision (b), a" and insert:

A

Amendment 2

On page 2, line 4, strike out "contains a statement of testamentary intent on its" strike out line 5, in line 6, strike out "of a commercially preprinted form will, but"

Amendment 3

On page 2, between lines 22 and 23, insert:

(c) Any statement of testamentary intent contained in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

- 0 -

SENATE THIRD READING

SB 1984 (Robbins) - As Amended: June 21, 1990

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD _____ VOTE 8-0 COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

PRIOR ACTIONS

Sen. Cos. on JUD. 8-0

Sen. Floor 25-0

DIGEST

Existing law:

- 1) Requires a will to be in writing, and to be signed by the testator and by two witnesses who know the document is intended as a will and who observed the testator sign the document.
- 2) Provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. It does not need to be witnessed. Under the common law, a holographic will must be entirely in the testator's own handwriting, and contain the testator's signature and the date of its execution.

This bill:

- 1) Revises the provisions of the statutory holographic will by providing that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.
- 2) Codifies existing law by making extrinsic evidence admissible into a court proceeding to determine (a) whether a document constitutes a will under the law or (b) the meaning of a will or a portion of a will if the meaning is unclear.

FISCAL EFFECT

This bill will not be referred to the Assembly Committee on Ways and Means.

- continued -

SENATE THIRD READING

SB 1984 (Robbins) - As Amended: June 21, 1990

ASSEMBLY ACTIONS:

COMMITTEE	JUD	VOTE	8-0	COMMITTEE	VOTE
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Ayes:

Ayes:

Nays:

Nays:

PRIOR ACTIONS

Sen. Com. on JUD. 8-0

Sen. Floor 25-0

DIGEST

Existing law:

- 1) Requires a will to be in writing, and to be signed by the testator and by two witnesses who know the document is intended as a will and who observed the testator sign the document.
- 2) Provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. It does not need to be witnessed. Under the common law, a holographic will must be entirely in the testator's own handwriting, and contain the testator's signature and the date of its execution.

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- 1) Revises the provisions of the statutory holographic will by providing that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.
- 2) Codifies existing law by making extrinsic evidence admissible into a court proceeding to determine (a) whether a document constitutes a will under the law or (b) the meaning of a will or a portion of a will if the meaning is unclear.

FISCAL EFFECT

This bill will not be referred to the Assembly Committee on Ways and Means.

- continued -

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COMMENTS

1) **Author's Statement.** According to the author:

This bill allows form wills such as those you can get in stationery stores to be probated as holographs by allowing the statement of testamentary intent to be either part of the preprinted form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of documents is not clear. Current law, strictly construed, can result in a form will (where you fill in the blanks) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

The author believes that this bill will help avoid litigation over whether the technical requirements of a holographic will have been met. Further, the author hopes to effectuate the intentions of those who die after executing a handwritten will, which is consistent with the public policy favoring the distribution of an estate according to the intent of the deceased.

D. DeBow
445-4360
ajud

SB 1984
Page 2



(2)REPORTS OF STANDING COMMITTEES<c2>

(2)Committee on JUDICIARY

Date of Hearing: 06/27/90 []<r>

Mr. Speaker: Your Committee on JUDICIARY reports:

Senate Bill No. 1734 (11-0)

Senate Bill No. 1984 (11-0)

(1)With the recommendation: Do pass.

[z6]Pursuant to the provisions of Joint Rules Nos. 22.1, 22.2, and 22.3, the committee recommends that the above bill(s) be placed on the Consent Calendar. <1>

Isenberg, Chair []
Isenberg

(5)Above bill ordered to second reading.

LEGISLATIVE INTENT SERVICE - (800) 666-1917

JUDICIARY

Date of Hearing: 06/27/90

BILL NO.	SB 1942	SB 1984	SB 2015	SB 2047
ACTION VOTED ON	Do pass and re-refer to the Com on W. & H. Rec. Consent:	Do pass, to Consent	Do pass as amended	Do pass as amended
	Aye	Aye	Aye	Aye
	No	No	No	No
Connelly	X	X	N.V.	X
Friedman	X	X	X	X
Harris	X	X	X	X
Johnston	X	X	X	X
Leslie	X	X	X	X
McClintock	X	X	X	X
MoJonnier	X	X	X	X
Speier	X	X	X	X
Statham	X	X	X	X
Maxine Waters	X	X	Ab.	Ab.
Isenberg(Chair)	X	X	X	X
	Ayes: 11	Ayes: 11	Ayes: 9	Ayes: 9
	Noes: 0	Noes: 0	Noes: 0	Noes: 1

N.V. - Not voting
Ab. - Absent

Abst - Abstain

RECEIVED: _____

[Signature], Chair

LEGISLATIVE INTENT SERVICE (800) 666-1917

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB 1984 (Robbins)
As Amended March 29, 1990
Hearing date: April 3, 1990
Probate Code
JRP:ja

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HOLOGRAPHIC WILLS

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: No Known

KEY ISSUE

SHOULD AN OTHERWISE VALID HOLOGRAPHIC WILL BE VALID IF IT CONTAINS A STATEMENT OF TESTAMENTARY INTENT WHICH IS COMMERCIALY PREPRINTED?

WHERE NO STATEMENT OF TESTAMENTARY INTENT APPEARS ON THE FACE OF A PURPORTED HOLOGRAPHIC WILL, SHOULD EXTRINSIC EVIDENCE BE ADMISSIBLE TO ASCERTAIN THE INTENT OF THE SIGNER?

PURPOSE

Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would also provide that where there is no such statement

(More)

LEGISLATIVE INTENT SERVICE (800) 666-1917

of testamentary intent on the face of the document, that extrinsic evidence is admissible to ascertain the intent of the signer.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

COMMENT

1. Background

Existing law contains various requirements in order for a document to be considered a valid will. One of these requirements is that the document be signed by two witnesses who know the document is intended as a will and who observed the testator, or a person acting on his or her behalf, sign the document.

However, California also recognizes the holographic or handwritten will as valid regardless of whether it is witnessed or whether other technical requirements have been met. The signature and the material provisions of a holographic will must be in the handwriting of the testator.

A problem may develop where a person handwrites a will on a preprinted form. These forms typically begin with a statement such as the following:

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The remainder of the form is usually blank, except for spaces at the end where a testator and witnesses are to sign their names.

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The bill specifically permits a commercially preprinted statement of testamentary intent where a signature and material provisions of the will are in the handwriting of the testator.

The bill also provides that where there is no statement of testamentary intent, either preprinted or in the handwriting of the testator, extrinsic evidence (e.g. testimony of witnesses, other documents etc.) shall be admissible in order to ascertain the intent of the signer.

The author believes that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author

152 (A 3d 817)
171 (A 3d 1068)
178 (A 3d 560)

206 (A 3d 1242 (1987))

(More)

*Over the years
Muller
159 Ar.
473*

*refers to
statute
Black*

*30 Cal 3d
(1952) 880*

LEGISLATIVE INTENT SERVICE (800) 666-1917

SB 1984 (Robbins)
Page 3

hopes to effectuate the intentions of those who die after executing a handwritten will.

2. Need for the language on preprinted statement of testamentary intent

It is not known how the Johnson case would have been decided by a court in California. However, in a similar case, where the statement of testamentary intent was typewritten by the testator, the Court of Appeal affirmed a judgment holding that such a document is not a valid holographic will. Estate of Christian (1976) 60 Cal. App. 3d 975; 131 Cal.Rptr. 841.

The author believes that this bill is necessary to avoid litigation regarding this issue and to make it clear that public policy favors the distribution of an estate according to the intent of the deceased.

3. Extrinsic evidence

Extrinsic evidence is currently admissible if there is some doubt as to whether a document was intended as a will. This bill clarifies that such evidence can be introduced to determine whether or not a document was intended as a holographic will if the material provisions and the signature are in the handwriting of the testator.

4. Concern expressed

Concern was expressed that this bill could conflict with the work of the California Law Revision Commission.

The Commission is currently completing a ten year project to reform and re-write the Probate Code. The Commission circulates proposed amendments to hundreds of attorneys and organizations who are then given a chance to comment on the proposals.

This bill has not been reviewed by the California Law Revision Commission. It might be appropriate to submit the proposal in this bill to the Commission for review and comment.

TO: Honorable Alan Robbins
RE: SB 1984

MAY 16 1990

PLEASE RETURN BY 5-14-90 TO: ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON:

Address, telephone number: staff person - about April 5-1646

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

Name of contact person: author
Address, telephone number: Mr. Sheffert - Professor of Law (wills and Trusts) at Southwestern (213) 738-6754

PRIOR COMMITTEE & FLOOR VOTES:

Sen Jud 08-0
Sen Floor 25-0

SET INFORMATION:

Preferred hearing dates: 6/6
Estimated time to present testimony: —
Names of witnesses: none

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

Allow some wills such as those you can get in stationery stores to be probated as holographic by allowing the statement of testamentary intent to be either part of the prepared form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of document is not clear. We need to take an amendment which cleans up the extrinsic evidence language a little.

LEGISLATIVE INTENT SERVICE (800) 606-1017

HOW DOES THIS BILL REMEDY THE PROBLEM?

Current law, strictly construed, can result in a firm will (where you fall on the blade) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

*Professor Shapiro
case law*

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

none known

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

no opposition

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.

page 2

(Revised 1/30/89, #105)

(800) 666-1917

LEGISLATIVE INTENT SERVICE



*****FOR YOUR INFORMATION*****

EXCERPTS FROM COMMITTEE RULES

- 1) Completed worksheet shall be returned to the Committee within 5 legislative days after delivery.
- 2) The Chairperson may refuse to hear a bill that has been set upon failure to return or complete the worksheet at the expense of an author's set.
- 3) Each bill may only be set three times.
- 4) No substantive amendments shall be accepted after 5:00 p.m. on the Tuesday one week prior to the Wednesday that the bill is to be heard.
- 5) No substantive amendments will be accepted at the time of the hearing on the bill.
- 6) Witness testimony is not to be a repetition of what other witnesses have previously stated.
- 7) Bills will be heard in file order at the time of the hearing.
- 8) Hearings will start promptly at the time given in the file.
- 9) Hearings are authorized to be held the second and fourth Wednesdays of the month (as designated by the Legislative Calendar).
- 10) If you are proposing a pilot project, the bill must contain a statement of purpose of the proposed pilot project; a precise cost projections and methods by which saving, if any, may be calculate; and a definitive mechanism by which the value and success of the project may be quantified. [See Committee Rule 14(a) for greater details.]

[Complete set of Committee Rules may be obtained from the Committee Secretary.]

*****KEEP FOR YOUR FILE*****

(revised 1/19/89)



ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJD:nf 4/16/90 Senate Floor Analyses





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California Legislature
 Assembly Committee on Judiciary

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FAX COVER SHEET

Date: 6-14-90 Time: 4:45pm No. of Pages 52
 (includes this page)

To: Marshall Oldman Company: Attorney

City/State: Encino Ca

Phone: 818-986-8080 FAX: 818-789-0947

From: Deborah M. DeBow, Counsel
 Assembly Committee on Judiciary
 State Capitol
 P. O. Box 942849
 Sacramento, CA 94249-0001
 (916) 445-4560
 (916) 327-1788 (FAX)

Notes:

5A 1984
Holographic Wills.
6-14 - NEW amendments
New hearing date: 6/27/90

LEGISLATIVE INTENT SERVICE (800) 666-1917

**THIRD READING ANALYSIS
OF SENATE BILL 1984
PREPARED BY THE
ASSEMBLY COMMITTEE
ON JUDICIARY**

SENATE THIRD READING

SB 1984 (Robbins) - As Amended: June 21, 1990

ASSEMBLY ACTIONS:

COMMITTEE	JUD	VOTE	8-0	COMMITTEE	VOTE
-----------	-----	------	-----	-----------	------

Ayes: Ayes:

Nays: Nays:

PRIOR ACTIONS

Sen. Com. on JUD. 8-0

Sen. Floor 25-0

DIGEST

Existing law:

- 1) Requires a will to be in writing, and to be signed by the testator and by two witnesses who know the document is intended as a will and who observed the testator sign the document.
- 2) Provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. It does not need to be witnessed. Under the common law, a holographic will must be entirely in the testator's own handwriting, and contain the testator's signature and the date of its execution.

This bill:

- 1) Revises the provisions of the statutory holographic will by providing that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.
- 2) Codifies existing law by making extrinsic evidence admissible into a court proceeding to determine (a) whether a document constitutes a will under the law or (b) the meaning of a will or a portion of a will if the meaning is unclear.

FISCAL EFFECT

This bill will not be referred to the Assembly Committee on Ways and Means.

- continued -

LEGISLATIVE INTENT SERVICE (800) 666-1917



COMMENTS1) Author's Statement. According to the author:

This bill allows form wills such as those you can get in stationary stores to be probated as holographs by allowing the statement of testamentary intent to be either part of the preprinted form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of documents is not clear. Current law, strictly construed, can result in a form will (where you fill in the blanks) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

The author believes that this bill will help avoid litigation over whether the technical requirements of a holographic will have been met. Further, the author hopes to effectuate the intentions of those who die after executing a handwritten will, which is consistent with the public policy favoring the distribution of an estate according to the intent of the deceased.



**MATERIAL FROM THE
LEGISLATIVE BILL FILE OF
THE ASSEMBLY
REPUBLICAN CAUCUS ON
SENATE BILL 1984**

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LIBRARY

SB 1984 (Robbins)
Analyzed: 6/26/90

ASSEMBLY COMMITTEE ON JUDICIARY REPUBLICAN ANALYSIS

SB 1984 (Robbins) -- HOLOGRAPHIC WILLS

Version: 6/21/90

Vice-chairman: Tom McClintock

Recommendation: Support

Vote: Majority.

Summary: Provides that a person may execute a holographic will (a signed will in the maker's own handwriting) declaring his testamentary intent on a commercially-printed form will. Existing law generally requires a will on printed form be signed and witnessed by two other persons. Existing law also provides for the execution of a holographic will, without witnesses, where the signature and the material provisions are in the handwriting of the testator (maker). This bill specifically revises statutory law on holgraphic wills to provide that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially-printed form will. Also provides that extrinsic evidence is admissable in court proceedings to determine (1) whether a document constitutes a will under law or (b) the meaning of any portion of a will that is unclear. Fiscal Impact: Unknown.

Supported by: Unknown Opposed by: Unknown Governor's position: Unknown

Comments: A bill to allow the use of form wills obtainable in stationary stores for purposes of making a holgraphic will without the necessity of witnesses. The bill further provides for the admissability of extrinsic evidence if necessary to clearly determine the intent of the testator. The author views this measure as helping to avoid litigation over whether the technical requirements of a holgraphic will have been met. This bill is consistent with a public policy favoring the distribution of an estate according to the intent of a deceased who executes such a handwritten will.

Senate Republican Floor Vote -- 4/26/90

(25-0)

Ayes: All Republicans except

Abs/NV: Beverly, Craven, Doolittle, Leonard, Morgan, Seymour.

Assembly Republican Committee Vote

Judiciary -- 6/27/90

(>)

Ayes: >

Noes: >

Abs.: >

N.V.: >

Consultant: Mark Redmond

LEGISLATIVE INTENT SERVICE (800) 666-1917



Date of Hearing: June 27, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 1984 (Robbins) - As Amended: June 21, 1990

PRIOR ACTIONS

Sen. Com. on JUD. 8-0

Sen. Floor 25-0

SUBJECT: This bill provides that the testamentary intent contained in a holographic will may be either in the testator's handwriting or as part of a commercially printed form will.

BACKGROUND

History. The California Law Revision Commission proposed and the Legislature adopted AB 25 (McAlister) - Chapter 842, Statutes of 1983, operative January 1, 1985, which relaxed the formalities required under former law for typed and holographic wills. This bill also created the California Statutory Will, which sets forth specific provisions which are to be contained in a printed will. A person may then fill in the blanks of the relevant provisions, and is required to sign and date the will in front of two or three witnesses who also sign the will. However, it is not always clear as to what information goes on a particular line of the statutory will. The holographic or typewritten will continue to be an alternative for persons who choose not to use a statutory will.

Facts. The sponsor has not supplied data relative to the number or nature of problems arising under existing law.

DIGEST

Existing law:

- 1) Requires a will to be in writing, and to be signed by the testator and by two witnesses who know the document is intended as a will and who observed the testator sign the document.
- 2) Provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. It does not need to be witnessed. Under the common law, a holographic will must be entirely in the testator's own handwriting, and contain the testator's signature and the date of its execution.
- 3) Requires the testator to be competent at the time of execution of a will.

This bill:

- 1) Revises the provisions of the statutory holographic will by providing that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.
- 2) Makes extrinsic evidence admissible into a court proceeding to determine (a) whether a document constitutes a will under the law or (b) the meaning of a will or a portion of a will if the meaning is unclear.

FISCAL EFFECT

This bill will not be referred to the Assembly Committee on Ways and Means.

COMMENTS

- 1) Author's Statement. According to the author:

This bill allows form wills such as those you can get in stationary stores to be probated as holographs by allowing the statement of testamentary intent to be either part of the preprinted form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of documents is not clear. Current law, strictly construed, can result in a form will (where you fill in the blanks) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

The author believes that this bill will help avoid litigation over whether the technical requirements of a holographic will have been met. Further, the author hopes to effectuate the intentions of those who die after executing a handwritten will, which is consistent with the public policy favoring the distribution of an estate according to the intent of the deceased.

- 2) Problems Under Existing Law. A problem may develop where a person hand writes a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where the testator and witnesses are to sign their names.

- 3) Issues. The California Law Revision Commission (CLRC) is currently completing an eight to ten year project to reform and re-write the Probate Code. CLRC circulates proposed amendments to hundreds of attorneys and organizations who are then given an opportunity to comment.

- continued -

on the proposals. This bill has not been reviewed by CLRC. It might be appropriate to submit the proposal in this bill to CLRC for review and comment.

- 4) Extrinsic Evidence. This bill essentially codifies existing law regarding extrinsic evidence. In summary, existing law provides that where the meaning of a will is entirely clear on its face, and the will contains no ambiguity, latent or patent, extrinsic evidence is not admissible to show that the decedent intended or desired to do something not expressed in the will. Extrinsic evidence, including evidence as to the circumstances under which the will was made, is admissible to explain or apply an ambiguous will. Substantial compliance with the statutory requirements for a will is sufficient, so long as it is evident that the decedent intended the document to be a will and the dispositions are sufficiently clear. [64 Cal.Jur.3d Section 335 et. seq., Estate of MacLeod (1988) 206 Cal.App.3d 1235]

SUPPORT

Unknown

OPPOSITION

Unknown

LEGISLATIVE INTENT SERVICE (800) 666-1917



D. DeBow
445-4560
-jed

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB 1984 (Robbins)
As Amended March 29, 1990
Hearing date: April 3, 1990
Probate Code
JRP:jm

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HOLOGRAPHIC WILLS

HISTORY

Source: Author

Prior Legislation: None

Support: Unknown

Opposition: No Known

KEY ISSUE

SHOULD AN OTHERWISE VALID HOLOGRAPHIC WILL BE VALID IF IT CONTAINS A STATEMENT OF TESTAMENTARY INTENT WHICH IS COMMERCIALY PREPRINTED?

WHERE NO STATEMENT OF TESTAMENTARY INTENT APPEARS ON THE FACE OF A PURPORTED HOLOGRAPHIC WILL, SHOULD EXTRINSIC EVIDENCE BE ADMISSIBLE TO ASCERTAIN THE INTENT OF THE SIGNER?

PURPOSE

Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would also provide that where there is no such statement

(Note)

LEGISLATIVE INTENT SERVICE (800) 666-1917

of testamentary intent on the face of the document, that extrinsic evidence is admissible to ascertain the intent of the signer.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

COMMENT

1. Background

Existing law contains various requirements in order for a document to be considered a valid will. One of these requirements is that the document be signed by two witnesses who know the document is intended as a will and who observed the testator, or a person acting on his or her behalf, sign the document.

However, California also recognizes the holographic or handwritten will as valid regardless of whether it is witnessed or whether other technical requirements have been met. The signature and the material provisions of a holographic will must be in the handwriting of the testator.

A problem may develop where a person handwrites a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where a testator and witnesses are to sign their names.

Under a similar statute, the Arizona Court of Appeals ruled that a will which was entirely handwritten by the testator, except for the preprinted statement of testamentary intent, was invalid due to the printed matter. In the Matter of the Estate of Johnson (1981) 129 Arizona 307; 630 P.2d 1004.

The bill specifically permits a commercially preprinted statement of testamentary intent where a signature and material provisions of the will are in the handwriting of the testator.

The bill also provides that where there is no statement of testamentary intent, either preprinted or in the handwriting of the testator, extrinsic evidence (e.g. testimony of witnesses, other documents etc.) shall be admissible in order to ascertain the intent of the signer.

The author believes that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author

hopes to effectuate the intentions of those who die after executing a handwritten will.

2. Need for the language on preprinted statement of testamentary intent

It is not known how the Johnson case would have been decided by a court in California. However, in a similar case, where the statement of testamentary intent was typewritten by the testator, the Court of Appeal affirmed a judgment holding that such a document is not a valid holographic will.

Estate of Christian (1976) 60 Cal. App. 3d 975; 131 Cal.Rptr. 841.

The author believes that this bill is necessary to avoid litigation regarding this issue and to make it clear that public policy favors the distribution of an estate according to the intent of the deceased.

3. Extrinsic evidence

Extrinsic evidence is currently admissible if there is some doubt as to whether a document was intended as a will. This bill clarifies that such evidence can be introduced to determine whether or not a document was intended as a holographic will if the material provisions and the signature are in the handwriting of the testator.

4. Concern expressed

Concern was expressed that this bill could conflict with the work of the California Law Revision Commission.

The Commission is currently completing a ten year project to reform and re-write the Probate Code. The Commission circulates proposed amendments to hundreds of attorneys and organizations who are then given a chance to comment on the proposals.

This bill has not been reviewed by the California Law Revision Commission. It might be appropriate to submit the proposal in this bill to the Commission for review and comment.



REMARKS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJC:mf 4/16/90 Senate Floor Analyses



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SB 1984 (Robbins)
Analyzed: 6/26/90

ASSEMBLY COMMITTEE ON JUDICIARY REPUBLICAN ANALYSIS

SB 1984 (Robbins) -- HOLOGRAPHIC WILLS

Version: 6/21/90

Recommendation: Support

Vice-chairman: Tom McClintock

Vote: Majority.

Summary: Provides that a person may execute a holographic will (a signed will in the maker's own handwriting) declaring his testamentary intent on a commercially-printed form will. Existing law generally requires a will on printed form be signed and witnessed by two other persons. Existing law also provides for the execution of a holographic will, without witnesses, where the signature and the material provisions are in the handwriting of the testator (maker). This bill specifically revises statutory law on holgraphic wills to provide that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially-printed form will. Also provides that extrinsic evidence is admissable in court proceedings to determine (1) whether a document constitutes a will under law or (b) the meaning of any portion of a will that is unclear. Fiscal Impact: Unknown.

Supported by: Unknown Opposed by: Unknown Governor's position: Unknown

Comments: A bill to allow the use of form wills obtainable in stationary stores for purposes of making a holgraphic will without the necessity of witnesses. The bill further provides for the admissability of extrinsic evidence if necessary to clearly determine the intent of the testator. The author views this measure as helping to avoid litigation over whether the technical requirements of a holgraphic will have been met. This bill is consistent with a public policy favoring the distribution of an estate according to the intent of a deceased who executes such a handwritten will.

Senate Republican Floor Vote -- 4/26/90

(25-0)

Ayes: All Republicans except

Abs/NV: Beverly, Craven, Doolittle, Leonard, Morgan, Seymour

Assemlly Republican Committee Vote

Judiciary -- 6/27/90

(>)

Ayes: >

Noes: >

Abs.: >

N.V.: >

Consultant: Mark Redmond

LEGISLATIVE INTENT SERVICE (800) 666-1917



**UNFINISHED BUSINESS
ANALYSIS OF SENATE BILL
1984 PREPARED BY THE
OFFICE OF THE SENATE
FLOOR ANALYSES**

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1984
	Author:	Robbins (D)
	Amended:	6/21/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote: Page 6873, 7/6/90

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1984	
DATE OF HEARING:	7-3-90	
SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce		
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Senate Bill 1984—An act to amend Section 6111 of, and to add, Section 6111.5 to, the Probate Code, relating to wills.
 Bill presented by Senator Robbins
 The.

The roll was called and the Senate concurred in Assembly amendments by the following vote:

AYES (38)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Calderon, Craven, Davis, Deddeh, Dills, Doolittle, Garamendi, Cecil Green, Leroy Greene, Hart, Hill, Keene, Killea, Kopp, Leonard, Lockyer, Maddy, Marks, McCorquodale, Mello, Morgan, Petris, Presley, Robbins, Roberti, Rogers, Rosenthal, Royce, Russell, Seymour, Torres, Vuich, and Watson.

NOES (0)—None.

Above bill ordered enrolled.

Assembly Floor Vote: 72-0, Pg. 8625, 7/5/90

(Passed Assembly on Consent)

SUBJECT: Holographic Wills

SOURCE: Author

DIGEST: This bill provides that the testamentary intent contained in a holographic will may be either in the testator's handwriting or as part of a commercially printed form will.

Assembly Amendments were clarifying.

ANALYSIS: Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified. This bill would also provide that any statement of testamentary intent in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

The bill would further provide that extrinsic evidence is admissible to determine whether a document constitutes a will, or to determine the meaning of a will, or a portion thereof.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.



FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJG:nf 7/5/90 Senate Floor Analyses



**MATERIAL FROM THE
LEGISLATIVE BILL FILE OF
SENATOR ROBBINS ON
SENATE BILL 1984**

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Ann Mackey
Chief Deputies

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Jerry L. Bassett
John T. Shudebaker
Jimmie Wing

David D. Alves
John A. Corzine
C. David Dickerson
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Thomas O. Whelan
Belinda Whitsett
Debra J. Zidich
Deputies

Sacramento, California
July 24, 1990

Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1984

ROBBINS. Wills. — *Chapt 263:90*

SUMMARY:

See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

This bill would amend Section 6111 of, and add Section 6111.5 to, the Probate Code, to revise the law regarding the validity of holographic wills. A.B. 759, enacted as Chapter 79 of the Statutes of 1990, repeals and reenacts the Probate Code (contingent upon the enactment of A.B. 831, to take effect on or before January 1, 1991), operative July 1, 1991 (Sec. 37, Ch. 79, Stats. 1990). A.B. 831 has not yet passed the Legislature.

Thus, whether or not A.B. 831 is chaptered and takes effect on or before January 1, 1991, if this bill is chaptered, it would amend Section 6111 of, and add Section 6111.5 to, the current Probate Code effective January 1, 1991 (subd. (c), Sec. 8, Art. IV, Cal. Const.). If A.B. 831 is chaptered and takes effect on or before January 1, 1991, the version of Section 6111.5 contained in this bill, as the higher chaptered bill,



Report on S.B. 1984 - p. 2

would continue and prevail over the version of Section 6111 of the Probate Code reenacted by Chapter 79 of the Statutes of 1990 (Sec. 9605, Gov. C.) when the latter chapter becomes operative July 1, 1991. Moreover, Section 6111.5 added by this bill would, by virtue of the same rule, continue in existence.

Bion M. Gregory
Legislative Counsel



By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:dfb

Two copies to:

Honorable Alan Robbins,
Honorable Terry B. Friedman,
and Honorable Elihu M. Harris,
pursuant to Joint Rule 34.

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-2

April 2, 1990

TO: AR
FM: Joan
RE: SB 1984 (Sponsor - Author)
Holographic wills

The California Law Revision Commission on Wills has asked that we take an amendment to the bill which also allows extrinsic evidence to be used when testamentary intent is ambiguous from the reading of the holograph or formal will. This amendment is fine and does not conflict with the intent of the bill. Senate Judiciary staff is aware of this request and will recommend it be adopted as a committee amendment. A copy of the amendment is attached.

(800) 666-191

LEGISLATIVE INTENT SERVICE



AMENDMENTS TO SENATE BILL NO. 1984
AS AMENDED ON March 29, 1990

Amendment 1

On page 1, line 10, strike out "However, if it contains no" and on page 2, strike out lines 2 through 3, inclusive

Amendment 2

On page 2, after line 16, insert:

SECTION 2 Section 6111.5 is added to the Probate Code:

6111.5 (a) Extrinsic evidence shall be admissible to determine if a document is a will under Sections 6110 or 6111 or to determine the meaning of a will, or portion of a will, if the meaning is unclear on the face of the document.





THE STATE BAR OF CALIFORNIA

OFFICE OF GOVERNMENTAL AFFAIRS

MARK T. HARRIS, Senior Executive

915 L STREET, SUITE 1260, SACRAMENTO, CALIFORNIA 95814

(916) 444-2762

March 19, 1990

The Honorable Alan Robbins
Senator, 20th District
State Capitol, Room 5114
Sacramento, CA 95814

Handwritten note: 2/23/90

SB 1984, as introduced -- OPPOSE
Estate Planning, Trust and Probate Law Section

Dear Senator Robbins,

The Estate Planning, Trust and Probate Law Section of the State Bar of California, composed of experts in the field, respectfully opposes your SB 1984.

The section has taken this position for a number of reasons, but chiefly because it believes the change proposed by this bill will throw of existing decisional law into doubt and create uncertainty. For more information, please refer to the attached report, or call Irwin Goldring at (213) 551-0222.

THIS POSITION IS ONLY THAT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION OF THE STATE BAR, AND HAS NOT BEEN ADOPTED OR ENDORSED BY EITHER THE STATE BAR'S BOARD OF GOVERNORS OR OVERALL MEMBERSHIP. THIS POSITION IS NOT TO BE CONSTRUED AS REPRESENTING THE POSITION OF THE STATE BAR OF CALIFORNIA. MEMBERSHIP IN THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION OF THE STATE BAR IS VOLUNTARY. THE SECTION IS COMPOSED OF 4,767 MEMBERS FROM AMONG THE 122,000 MEMBERS OF THE STATE BAR OF CALIFORNIA.

It is the policy of the State Bar to refer legislative proposals affecting specific legal questions or the practice of law to the appropriate State Bar Committee or Section for review and comment. Please do not hesitate to contact me for further information on this position or assistance in obtaining an expert witness to testify before legislative committees.

Sincerely,

Handwritten signature of Larry Doyle

Larry Doyle
Director, Office of
Governmental Affairs

Enclosure

cc: Members, Senate Committee on Judiciary
Bill Hoisington, Legislative Chair, Estate
Planning, Trust and Probate Law Section

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-5

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THE STATE BAR OF CALIFORNIA

MAR 15 1990

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March 13, 1990

REPLY TO:

400 Sansome St.
S.F. CA 94111
Tele. 415-773-5555
Fax. 415-773-5759

Larry Doyle
State Bar of California
915 L Street, Suite 1260
Sacramento, CA 95814

Re: Senate Bill No. 1984

Dear Larry:

As Legislative Liaison of the Estate Planning, Trust & Probate Law Section of the State Bar of California, I am writing on behalf of the Executive Committee of the Section in regard to the subject bill.

Present law provides that "a will" is valid as a holographic will if the signature and material provisions are in the handwriting of the testator. This bill would substitute the words "an instrument that contains a statement of testamentary intent on its face" for the words "a will."

We are opposed to this bill. There are many technical problems with the language used in this bill. But, we are opposed to the proposed change primarily on policy grounds. Scores of court decisions provide an adequate common law basis for determining when a particular instrument is or is not "a will," particularly in the case of holographic

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Larry Doyle
March 13, 1990
Page 2

instruments. The change proposed by this bill will throw much of that decisional law into doubt because of uncertainty regarding the intention of the Legislature in making this change.

Irwin Goldring (213-551-0222) will be contacting Senator Robbins, who authored this bill, in an attempt to persuade him to drop this bill. By copy of this letter, I am asking Irv to contact you directly with the results of his efforts. If Irv is unsuccessful, we would appreciate your making our position known to the appropriate legislators and staff.

Sincerely,



William L. Hoisington

cc: James V. Quillinan
Bruce S. Ross
Irwin D. Goldring
Leonard W. Pollard II
Mathew S. Rae, Jr.
William V. Schmidt
Harley J. Spitler

James A. Willett
Glee Ewell
Michael J. Morris
James W. Obrien
Robert H. Oliver

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A-7

~~Joan~~ Senate Select Committee
on
Governmental Efficiency

3/12
4:45

Irv Goldring
(213) 551-0222
re: SB 1984

call late morning
(in court early am)

was involved w/
St Bar comm. on wills
opposes ^{SB} 1984

Please call.
B. TERI BURNS
445-3121 *Teri*

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re write
Jr

MAE Be less

~~1488~~ →
 206 Cal App 3d 1235 ←
 254 CR 156

TO <i>Joan</i>			ROOM/STA NO
FROM <i>Ira Shapiroff</i>			ROOM/STA NO
REPRESENTING			
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BY <i>IS</i>			

MESSAGE

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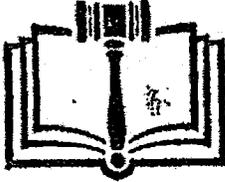
213(2) 277-7903

Conn
CH 13-1234
JUN 10 37

Jan Provenza

April 10th

SOUTHWESTERN



**UNIVERSITY
SCHOOL OF LAW**

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FAX NUMBER: (213) 383-1688

DATE:

4/30/90

TO:

Jean Hall

FROM:

Ira Shafiroff

OF PAGES
INCLUDING COVER:

9

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VIA TELECOPIER #(213) 277-7903

April 24, 1990

Irwin D. Goldring, Esq.
1888 Century Park East
Suite 350
Los Angeles, California 90067

Re: SB 1984

Dear Irv:

Clark has responded to your letter of April 23, primarily by emphasizing the substantive points relating to the validity of a holographic will. I would like to add a few comments concerning the proposed references to extrinsic evidence in Section 6111(a) and 6111.5.

Section 6111(a) would allow extrinsic evidence to ascertain the testator's intent if the will "contains no such statements of testamentary intent on its face." Likewise, Section 6111.5 would permit extrinsic evidence "if the meaning is unclear on the face of the document."

andy { Estate of Russell (1968) 69 Cal.2nd 200 permits extrinsic evidence to depict the circumstances surrounding the execution of a will. Such evidence is not conditioned upon the existence of an ambiguity on the face of the will, but rather may be admitted to prove that an ambiguity exists even where the face of the will does not disclose it. The repeal of former Probate Code §105 in 1983 also made it clear that statements and circumstances surrounding the execution of the will are now admissible to determine whether any ambiguity exists as well as to construe any ambiguities that are found to exist.

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Irwin D. Goldring, Esq.
April 24, 1990
Page 2

The proposed last sentence to §6111(a) and the last clause of §6111.5 would limit and restrict the introduction of extrinsic evidence which is now permitted by Russell. It would turn the clock back on the issue of admitting evidence to advise the court of all the circumstances surrounding the execution of a will. This is certainly counter to the trend existing in the construction of wills, contracts, and other written documents in general, and I believe it to be unsound policy.

and Thus, I would recommend deleting the last sentence of proposed §6111(a) and either deleting all of §6111.5 or deleting the words "if the meaning is unclear on the face of the document" and moving the entire balance to the Evidence Code. I prefer deleting the section entirely, since I do not believe an addition to the Evidence Code is needed on this issue.

Please call if I can be of any further help on this.

Cordially,

Andrew S. Garb
Andrew S. Garb

ASG:cb
GAA10720.L01

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REPLY TO:

Clark R. Byam
Telecopier (818) 449-7357

Irwin D. Goldring, Esq.
1880 Century Park East
Suite 350
Los Angeles, California 90067

Re: SB 1984

Dear Irv:

In reference to your letter of April 23rd and the enclosure, the following are my comments:

1. The comment to the Bill cites the Estate of Johnson case, an Arizona case and then states that it is not now known how the Johnson case would have been decided by a court in California. This is not correct since the California Supreme Court has already held that where the dispositive provisions of a Will are in the handwriting of the decedent the fact that it's on a pre-printed form does not invalidate the Will. Estate of Black, (1982) 30 Cal.3d 38. Further, Estate of Archer (1987) 193 Cal.App.3d 238 further holds that the presence of signatures of witnesses to a Will does not invalidate an otherwise effective holographic Will in construing Section 6111(a) of the Probate Code as further liberalizing the requirements for admissions of Wills as holographic Wills.

Neither of these cases is cited in the comment or background and apparently the author is not aware of these cases. Obviously, these cases should be mentioned in any comment to the proposed legislation.

I don't think that the language to Section 6111(a) is objectionable since I believe that to already be the law based on Estate of Black and Estate of Archer. However, I would remove the language of Section 6111.5 discussing the admissibility of extrinsic evidence. This is because, and as discussed at our meeting, such rules should be

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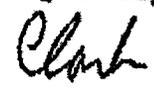


Erwin D. Goldring, Esq.
April 24, 1990
Page Two

dealt with in the evidence code, not in the probate code and second, such evidence is clearly admissable under Estate of Russell (a 1969 California Supreme Court case). Again, apparently the author is unaware of this case.

I recently prepared a brief and argued the issue of whether a Will that had interlineations and had initially been witnessed could qualify as a holographic Will and I enclose copies of pages 3 through 6 of my brief on this matter that discusses both Estate of Black and Estate of Archer.

Very truly yours,



Clark R. Byam

CRB:ra
Enclosures

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This matter presents essentially two issues, namely:

1. Can a Will that is initially hand written and witnessed also qualify as a holographic Will pursuant to § 6111 of the Probate Code; and
2. If it so can qualify, can additions or interlineations made to the holographic Will after the initial execution of it operate to adopt the old date and signature of the original Will and therefore be valid.

As will be noted in the following discussion, both of the answers to these questions are in the affirmative and it is clear under California case law and statute that the Will of the Decedent, with the interlineations, is a valid holographic Will entitled to be admitted and to have Petitioner named as the Executor thereof.

ARGUMENT

1. THE WILL OF A DECEDENT THAT IS AN INITIALLY HANDWRITTEN WITNESSED WILL ALSO CAN QUALIFY AS A HOLOGRAPHIC WILL UNDER § 6111 OF THE CALIFORNIA PROBATE CODE.

California Probate Code § 6111, effective for estates of decedent's who died on or after January 1, 1985, provides in part that: "(a) A Will that does not comply with § 6110 is valid a holographic Will, whether or not witnessed, if the signature and the material provisions are in the hand writing of the testator." (Emphasis added)

The California Supreme Court, in Estate of Black (1982) 30 Cal.3d 880, held that an instrument of the decedent was a valid holographic Will despite the fact that the testatrix physically incorporated portions of preprinted language into the Will where

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1 the printed language, including a preamble and testimonial clause
2 was unnecessary to be an effective Will. The Court ruled that the
3 decedent had accomplished in clearly expressed words of the
4 document that were written in her own hand and to which she had
5 dated the instrument the dispositive provisions of the Will. Of
6 critical importance in the reasoning of the California Supreme
7 Court's decision was the fact that the material portions of the
8 Will were all hand written by the decedent and that the printed
9 portions (including the printed portion designating the executor
10 could be disregarded without effecting the substance of the Will
11 said the Court:

12 "Unanimously in Black, we stressed that
13 'The policy of the law is toward' a
14 construction favoring validity, in
15 determining whether a Will has been
16 executed in conformity with statutory
17 requirements' [Citations]. 'Moreover
18 we affirmed 'the tendency of both the
19 courts and the Legislature . . .
20 towards greater liberality in accepting
21 a writing as an holographic Will . . .
22 '(Ibid). 'Substantial compliance with
23 the statute and not absolute precision
24 is all that is required . . .'" (Id,
25 at page 685, italics added). (30
26 Cal.3d 880, at 883).

27 In Black, the Court went on to observe that:

28 "No sound purpose or policy is served
29 by invalidating a holograph where every
30 statutorily required element of the
31 Will is concededly expressed in the
32 testatrix' own hand writing and where
33 her testamentary intent is clearly
34 revealed in the words as she wrote
35 them. Francis Black's sole mistake was
36 her superfluous utilization of a small
37 portion of the language of the
38 preprinted form. Nullification of her
39 carefully expressed testamentary
40 purpose because of such error is
41 unnecessary to preserve the sanctity of

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the statute. Moreover, rejection of the instrument as a Will would have the unfortunate practical consequence of passing her estate through the laws of intestacy to the daughter of a predeceased husband through a former marriage - in fact, a stranger to her - thereby excluding those who she described in the holograph as 'my very dear friends' and 'my adopted family' and the charity which was apparently close to her heart and which she specifically wished to benefit. The resulting frustration and defeat of her testamentary plan would be directly contrary to our ~~Eska~~ reasoning and would serve neither valid public policy nor common sense." (30 Cal.3d 880, at 888.).

Both Black, and decisions rendered by the appellate courts since then, have shown that the Courts favor allowing a testator wishes to be achieved, when the document is not witnessed, by finding the document to be a valid holographic Will. In Estate of Archer, (1987) 193 Cal.App. 3d 238, the Appellate Court held the trial court had properly sustained the demurrer as to the allegation that the addition made to a holographic codicil was invalid due to lack of a signature, since the addition adopted the date and signature on the front side of the sheet as a matter of law. In reviewing the decision, the Court noted that the replacement of former Probate Code § 53 with § 6111 in 1983 was modeled after § 2.503 of the Uniform Probate Code and that the Law Revision Commission in making its recommendations issued in support of the 1983 changes to the prior section were in part to

"Prevent the invalidation of hand written Wills with non-essential provisions that are not in the

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testator's hand writing - such as a printed date, or a letterhead. [Citation.] Nowhere in the Commission's recommendations is there any indication that the new subdivision in any other way changes prior law." (193 Cal.App.3d 238, at 243).

In Archer, the appellant had first argued that because the first Will of the decedent had been witnessed, although written in his hand writing, it could not therefore be a holographic Will. In reply, the Appellate Court stated:

"We therefore conclude that the words "whether or not witnessed" in § 6111, subdivision (a), mean exactly what they say, and that the longstanding rule continues to apply to post - 1984 cases: 'the presence of the signatures of witnesses will not invalidate an otherwise effective holographic Will.' (Citation)." (193 Cal.App.3d, 238, at 243).

No doubt the addition of § 6111 to the Probate Code in 1983, effective for decedent's dying in 1985 and thereafter, was prompted by the Supreme Court decision in Estate of Black. Section 6111 was clearly an attempt by the legislature to liberalize the requirements for the admission of Wills as holographic Wills notwithstanding that they had certain printed or typed portions to them and notwithstanding the fact that they we

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Sacramento, California
September 24, 1990

Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1775

LOCKYER. Probate law.

SUMMARY:

See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

(1) This bill and Senate Bill No. 1984, which has been chaptered (Ch. 263, Stats. 1990), both affect Sections 6111 and 6111.5 of the Probate Code. S.B. 1984 amends Section 6111 of, and adds Section 6111.5 to, the existing Probate Code (Secs. 1 and 2, S.B. 1984). This bill amends Section 6111 of, and adds Section 6111.5 to, the Probate Code as enacted by Chapter 79 of the Statutes of 1990 operative July 1, 1991, contingent upon the enactment of S.B. 1984, to conform with the changes proposed to the existing Probate Code by S.B. 1984 (Secs. 13, 14, and 47, this bill).

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Thus, if this bill is chaptered, the Section 6111 contained in the new Probate Code will be amended to conform with the provisions of the Section 6111 contained in S.B. 1984 and a Section 6111.5 will be added thereto, identical to the Section 6111.5 added to the existing Probate Code by S.B. 1984.

(2) Assembly Bill No. 759, which has been chaptered (Ch. 79, Stats. 1990), amends various sections of the Civil Code, Financial Code, and Health and Safety Code, relating to probate law, and repeals and reenacts the Probate Code, contingent upon the enactment of Assembly Bill No. 831, to become operative July 1, 1991 (Sec. 37, Ch. 79, Stats. 1990). However, A.B. 831 was not passed by the Legislature.

This bill would amend Section 37 of Chapter 79 of the Statutes of 1990 to delete the contingency with respect to the enactment of A.B. 831, but retaining the July 1, 1991, operative date. Thus, A.B. 759 will become operative only if this bill is chaptered.

(3) This bill would also amend and repeal provisions of the new Probate Code, as enacted by Chapter 79 of the Statutes of 1990, to make the following changes, among others:

(a) Specify that, for purposes of a California statutory will executed by a testator who dies on or after July 1, 1991, a person is not to be deemed to survive the testator unless the person survives the testator by more than 120 hours, but the 120-hour requirement is inapplicable if its application would result in escheat of property to the state (Sec. 6211, Prob. C.).

(b) Increase from \$1,500 to \$5,000 the maximum monthly rental under a lease extension, renewal, or modification of one year or less that may be executed by an executor, administrator, guardian, or conservator without court approval and make a similar change with respect to compromise, settlement, extension, renewal, or modification of a lease with a term exceeding 2 years by a guardian or conservator (Secs. 2501, 2555, 9832, and 9941, Prob. C.).



(c) Delete a provision tolling the 4-year limitation on bringing an action on the bond of a guardian or conservator following discharge, removal, or surcharge while the person entitled to bring the action is under any legal disability to sue (Sec. 2333, Prob. C.).

(d) Revise findings which a court is required to make to authorize a guardian or conservator to consent to specified medical treatment on behalf of the ward or conservatee, and make similar changes in provisions empowering the courts to make orders authorizing medical treatment for adults without a conservator who are unable to consent to medical treatment (Secs. 2357 and 3208, Prob. C.).

(e) Limit the priority assigned for appointment of the guardian or conservator of the decedent's estate at the time of death, as administrator of the decedent's estate, to guardians and conservators that have filed a first account and are not acting as a guardian or conservator for any other person, unless the court waives these requirements for good cause shown and require the petition for such a waiver to be served on the public guardian (Secs. 8461 and 8469, Prob. C.).

(f) Revise provisions for the powers and duties of a personal representative, and the compensation of a personal representative, an attorney for a personal representative, or an attorney for a special administrator (Secs. 8547, 10404.5, 10406, 10501, 10565, 10585.5, 10810, 10830, 10831, 10954, 11000, 11623, and 12205, Prob. C.).

(g) Revise provisions for giving notice under the new Probate Code, where the person's address is unknown (Secs. 1212 and 1220, Prob. C.).

(h) Specify that in all proceedings under the Trust Law (Div. 9 (commencing with Sec. 15000), Prob. C.), rather than only proceedings concerning the internal affairs of trusts, the court has the powers of a superior court, and also specify that the court acts in these matters as a court of general jurisdiction (Sec. 17001, Prob. C.).



(i) Make technical and clarifying changes.

Thus, if this bill is chaptered the latter changes will be made in the provisions of the new Probate Code as enacted by Chapter 79 of the Statutes of 1990 (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel


By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:dfb

Two copies to:

Honorable Bill Lockyer,
Honorable Terry B. Friedman,
and Honorable Alan Robbins,
pursuant to Joint Rule 34.



AUTHOR'S COPY

AUTHOR'S COPY

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1984
	Author:	Robbins (D)
	Amended:	6/21/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote: Page 5500, 4/26/90

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1984	
DATE OF HEARING:	4-3-90	
SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce		
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Senate Bill 1984—An act to amend Section 6111 of, and to add Section 6111.5 to, the Probate Code, relating to wills.
 Bill read third time, passed, and ordered transmitted to the Assembly.

The roll was called, and the above measures on the Consent Calendar passed by the following vote:

AYES (25)—Senators Ayaia, Bergeson, Calderon, Davis, Dills, Cecil Green, Bill Greene, Hill, Keene, Killea, Kopp, Lockyer, Maddy, Marks, McCorquodale, Mello, Nielsen, Presley, Robbins, Roberti, Rogers, Royce, Russell, Vuich, and Watson.
NOES (0)—None.

Assembly Floor Vote: NOT AVAILABLE

SUBJECT: Holographic Wills

SOURCE: Author

DIGEST: This bill provides that the testamentary intent contained in a holographic will may be either in the testator's handwriting or as part of a commercially printed form will.

Assembly Amendments were clarifying.

ANALYSIS: Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified. This bill would also provide that any statement of testamentary intent in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

The bill would further provide that extrinsic evidence is admissible to determine whether a document constitutes a will, or to determine the meaning of a will, or a portion thereof.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

LEGISLATIVE INTENT SERVICE (800) 666-1917

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJG:nf 7/5/90 Senate Floor Analyses



Date of Hearing: June 27, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 1984 (Robbins) - As Amended: June 21, 1990

PRIOR ACTIONS

Sen. Com. on JUD. 8-0

Sen. Floor 25-0

SUBJECT: This bill provides that the testamentary intent contained in a holographic will may be either in the testator's handwriting or as part of a commercially printed form will.

BACKGROUND

History. The California Law Revision Commission proposed and the Legislature adopted AB 25 (McAlister) - Chapter 842, Statutes of 1983, operative January 1, 1985, which relaxed the formalities required under former law for typed and holographic wills. This bill also created the California Statutory Will, which sets forth specific provisions which are to be contained in a printed will. A person may then fill in the blanks of the relevant provisions, and is required to sign and date the will in front of two or three witnesses who also sign the will. However, it is not always clear as to what information goes on a particular line of the statutory will. The holographic or typewritten will continue to be an alternative for persons who choose not to use a statutory will.

Facts. The sponsor has not supplied data relative to the number or nature of problems arising under existing law.

DIGEST

Existing law:

- 1) Requires a will to be in writing, and to be signed by the testator and by two witnesses who know the document is intended as a will and who observed the testator sign the document.
- 2) Provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator. It does not need to be witnessed. Under the common law, a holographic will must be entirely in the testator's own handwriting, and contain the testator's signature and the date of its execution.
- 3) Requires the testator to be competent at the time of execution of a will.

- continued -

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This bill:

- 1) Revises the provisions of the statutory holographic will by providing that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.
- 2) Makes extrinsic evidence admissible into a court proceeding to determine (a) whether a document constitutes a will under the law or (b) the meaning of a will or a portion of a will if the meaning is unclear.

FISCAL EFFECT

This bill will not be referred to the Assembly Committee on Ways and Means.

COMMENTS

- 1) Author's Statement. According to the author:

This bill allows form wills such as those you can get in stationary stores to be probated as holographs by allowing the statement of testamentary intent to be either part of the preprinted form or in the testator's own handwriting. It also allows the admission of extrinsic evidence if intent of documents is not clear. Current law, strictly construed, can result in a form will (where you fill in the blanks) not being probated even though such will is a manifestation of the testator's intent. This bill enables the probate of such a will.

The author believes that this bill will help avoid litigation over whether the technical requirements of a holographic will have been met. Further, the author hopes to effectuate the intentions of those who die after executing a handwritten will, which is consistent with the public policy favoring the distribution of an estate according to the intent of the deceased.

- 2) Problems Under Existing Law. A problem may develop where a person hand writes a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where the testator and witnesses are to sign their names.

- 3) Issues. The California Law Revision Commission (CLRC) is currently completing an eight to ten year project to reform and re-write the Probate Code. CLRC circulates proposed amendments to hundreds of attorneys and organizations who are then given an opportunity to comment

- continued -



on the proposals. This bill has not been reviewed by CLRC. It might be appropriate to submit the proposal in this bill to CLRC for review and comment.

- 4) Extrinsic Evidence. This bill essentially codifies existing law regarding extrinsic evidence. In summary, existing law provides that where the meaning of a will is entirely clear on its face, and the will contains no ambiguity, latent or patent, extrinsic evidence is not admissible to show that the decedent intended or desired to do something not expressed in the will. Extrinsic evidence, including evidence as to the circumstances under which the will was made, is admissible to explain or apply an ambiguous will. Substantial compliance with the statutory requirements for a will is sufficient, so long as it is evident that the decedent intended the document to be a will and the dispositions are sufficiently clear. [64 Cal.Jur.3d Section 335 et. seq., Estate of MacLeod (1988) 206 Cal.App.3d 1235]

SUPPORT

Unknown

OPPOSITION

Unknown

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D. DeBov
445-4560
ajud

THIRD READING

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614</p>	Bill No.	SB 1984
	Author:	Robbins (D)
	Amended:	4/17/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1984	
DATE OF HEARING:	4-3-90	
SENATORS:	AYE	NO
Doalittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberts	✓	
Royce		
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Assembly Floor Vote:

SUBJECT: Holographic Wills

SOURCE: Author

DIGEST: This bill provides that an otherwise valid holographic will be valid if it contains a statement of testamentary intent which is commercially preprinted.

The bill would further provide that extrinsic evidence is admissible when determining the meaning of a will if the meaning is unclear.

ANALYSIS: Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would further provide that extrinsic evidence is admissible to determine whether a document constitutes a will, or to determine the meaning of a will, or a portion thereof, if the meaning is unclear on the face of the document.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

CONTINUED

LEGISLATIVE INTENT SERVICE (800) 666-1917

ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJG:nf 4/16/90 Senate Floor Analyses



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB 1984 (Robbins)
As Amended March 29, 1990
Hearing date: April 3, 1990
Probate Code
JRP:jm

S
B
1
9
8
4

HOLOGRAPHIC WILLS

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: No Known

KEY ISSUE

SHOULD AN OTHERWISE VALID HOLOGRAPHIC WILL BE VALID IF IT CONTAINS A STATEMENT OF TESTAMENTARY INTENT WHICH IS COMMERCIALY PREPRINTED?

WHERE NO STATEMENT OF TESTAMENTARY INTENT APPEARS ON THE FACE OF A PURPORTED HOLOGRAPHIC WILL, SHOULD EXTRINSIC EVIDENCE BE ADMISSIBLE TO ASCERTAIN THE INTENT OF THE SIGNER?

PURPOSE

Existing law provides that a will is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.

This bill would provide, instead, that a will that contains a statement of testamentary intent on its face, either in the testator's own handwriting or as part of a commercially preprinted form will, is valid as a holographic will if the signature and material provisions are in the handwriting of the testator.

The bill would also provide that where there is no such statement

(More)

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of testamentary intent on the face of the document, that extrinsic evidence is admissible to ascertain the intent of the signer.

The purpose of this bill is to effectuate the intent of those who execute handwritten wills.

COMMENT

1. Background

Existing law contains various requirements in order for a document to be considered a valid will. One of these requirements is that the document be signed by two witnesses who know the document is intended as a will and who observed the testator, or a person acting on his or her behalf, sign the document.

However, California also recognizes the holographic or handwritten will as valid regardless of whether it is witnessed or whether other technical requirements have been met. The signature and the material provisions of a holographic will must be in the handwriting of the testator.

A problem may develop where a person handwrites a will on a preprinted form. These forms typically begin with a statement such as the following:

"I _____ declare this to be my last will and testament:"

The remainder of the form is usually blank, except for spaces at the end where a testator and witnesses are to sign their names.

Under a similar statute, the Arizona Court of Appeals ruled that a will which was entirely handwritten by the testator, except for the preprinted statement of testamentary intent, was invalid due to the printed matter. In the Matter of the Estate of Johnson (1981) 129 Arizona 307; 630 P.2d 1039.

The bill specifically permits a commercially preprinted statement of testamentary intent where a signature and material provisions of the will are in the handwriting of the testator.

The bill also provides that where there is no statement of testamentary intent, either preprinted or in the handwriting of the testator, extrinsic evidence (e.g. testimony of witnesses, other documents etc.) shall be admissible in order to ascertain the intent of the signer.

The author believes that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author

(More)



COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1984

AUTHOR : Robbins

BILL HISTORY

1990

July 16 Chaptered by Secretary of State. Chapter 263, Statutes of 1990.
 July 13 Approved by Governor.
 July 9 Enrolled. To Governor at 1 p.m.
 July 6 Senate concurs in Assembly amendments. (Ayes 38. Noes 0. Page 6874.) To enrollment.
 July 5 In Senate. To unfinished business.
 July 5 Read third time. Passed. (Ayes 72. Noes 0. Page 8625.) To Senate.
 July 2 Read second time. To Consent Calendar.
 June 28 From committee: Do pass. To Consent Calendar.
 June 21 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 June 20 Set, first hearing. Hearing canceled at the request of author.
 May 21 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 May 3 To Com. on JUD.
 Apr. 26 In Assembly. Read first time. Held at Desk.
 Apr. 26 Read third time. Passed. (Ayes 25. Noes 0. Page 5500.) To Assembly.
 Apr. 23 To Special Consent Calendar.
 Apr. 17 Read second time. Amended. To third reading.
 Apr. 16 From committee: Do pass as amended. (Ayes 8. Noes 0. Page 5148.)
 Mar. 29 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 Mar. 19 Set, first hearing. Hearing canceled at the request of author. Set for hearing April 3.
 Feb. 26 Set for hearing March 20.
 Feb. 22 To Com. on JUD.
 Feb. 14 From print. May be acted upon on or after March 16.
 Feb. 13 Introduced. Read first time. To Com. on RLS. for assignment. To print.



hopes to effectuate the intentions of those who die after executing a handwritten will.

2. Need for the language on preprinted statement of testamentary intent

It is not known how the Johnson case would have been decided by a court in California. However, in a similar case, where the statement of testamentary intent was typewritten by the testator, the Court of Appeal affirmed a judgment holding that such a document is not a valid holographic will. Estate of Christian (1976) 60 Cal. App. 3d 975; 131 Cal.Rptr. 841.

The author believes that this bill is necessary to avoid litigation regarding this issue and to make it clear that public policy favors the distribution of an estate according to the intent of the deceased.

3. Extrinsic evidence

Extrinsic evidence is currently admissible if there is some doubt as to whether a document was intended as a will. This bill clarifies that such evidence can be introduced to determine whether or not a document was intended as a holographic will if the material provisions and the signature are in the handwriting of the testator.

4. Concern expressed

Concern was expressed that this bill could conflict with the work of the California Law Revision Commission.

The Commission is currently completing a ten year project to reform and re-write the Probate Code. The Commission circulates proposed amendments to hundreds of attorneys and organizations who are then given a chance to comment on the proposals.

This bill has not been reviewed by the California Law Revision Commission. It might be appropriate to submit the proposal in this bill to the Commission for review and comment.



Display 1989-1990 Votes - ROLL CALL

MEASURE: SB 1984
DATE: 07/06/90
LOCATION: SEN. FLOOR
MOTION: UNFINISHED BUSINESS SB 1984 ROBBINS
(Ayes 38. Noes 0.) (PASS)

AYES

Alquist Ayala Bergeson Beverly
Boatwright Calderon Craven Davis
Deddeh Dills Doolittle Garamendi
Cecil Green Leroy Greene Hart Hill
Keene Killea Kopp Leonard
Lockyer Maddy Marks McCorquodale
Mello Morgan Petris Presley
Robbins Roberti Rogers Rosenthal
Royce Russell Seymour Torres
Vuich Watson

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Bill Greene Nielsen

MEASURE: SB 1984
DATE: 07/05/90
LOCATION: ASM. FLOOR
MOTION: CONSENT CALENDAR SECOND DAY
(Ayes 72. Noes 0.) (PASS)

AYES

Allen Areias Bader Baker
Bane Bates Bentley Bronzan

Dennis Brown Burton Campbell Cannella
Chacon Chandler Clute Connelly
Cortese Costa Eastin Eaves
Elder Epple Farr Felando
Filante Frazee Friedman Frizzelle
Hannigan Hansen Harris Harvey
Hauser Hayden Hughes Hunter
Isenberg Johnson Johnston Jones

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Display 1989-1990 Votes - ROLL CALL

Katz	Kelley	Klehs	La Follette
Lancaster	Lempert	Leslie	Lewis
Margolin	Marston	McClintock	Mojonnier
Moore	Mountjoy	Murray	Nolan
O'Connell	Peace	Polanco	Pringle
Quackenbush	Roos	Roybal-Allard	Sher
Statham	Tanner	Vasconcellos	Norman Waters
Woodruff	Wright	Wyman	Willie Brown

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Ferguson	Floyd	Speier	Tucker
Maxine Waters			

MEASURE: SB 1984
DATE: 06/27/90
LOCATION: ASM. JUD.
MOTION: Do pass, to Consent Calendar.
(Ayes 11. Noes 0.) (PASS)

AYES

Connelly	Friedman	Harris	Johnston
Leslie	McClintock	Mojonnier	Speier
Statham	Maxine Waters	Isenberg	

NOES

ABSENT, ABSTAINING, OR NOT VOTING

MEASURE: SB 1984
DATE: 04/26/90
LOCATION: SEN. FLOOR
MOTION: CONSENT CALENDAR
(Ayes 25. Noes 0.) (PASS)

AYES

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Display 1989-1990 Votes - ROLL CALL

Ayala
Dills

Bergeson
Cecil Green

Calderon
Bill Greene

Davis
Hill

Keene
Maddy
Nielsen
Rogers
Watson

Killea
Marks
Presley
Royce

Kopp
McCorquodale
Robbins
Russell

Lockyer
Mello
Roberti
Vuich

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Alquist
Deddeh
Hart
Rosenthal

Beverly
Doolittle
Leonard
Seymour

Boatwright
Garamendi
Morgan
Torres

Craven
Leroy Greene
Petris

MEASURE: SB 1984
DATE: 04/03/90
LOCATION: SEN. JUD.
MOTION: Do pass as amended.
(Ayes 8. Noes 0.) (PASS)

AYES

Doolittle
Presley

Keene
Roberti

Marks
Davis

Petris
Lockyer

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Royce

Torres

Watson

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Deputies

Sacramento, California
September 24, 1990

Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1775

LOCKYER. Probate law.

SUMMARY:

See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

(1) This bill and Senate Bill No. 1984, which has been chaptered (Ch. 263, Stats. 1990), both affect Sections 6111 and 6111.5 of the Probate Code. S.B. 1984 amends Section 6111 of, and adds Section 6111.5 to, the existing Probate Code (Secs. 1 and 2, S.B. 1984). This bill amends Section 6111 of, and adds Section 6111.5 to, the Probate Code as enacted by Chapter 79 of the Statutes of 1990 operative July 1, 1991, contingent upon the enactment of S.B. 1984, to conform with the changes proposed to the existing Probate Code by S.B. 1984 (Secs. 13, 14, and 47, this bill).

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Thus, if this bill is chaptered, the Section 6111 contained in the new Probate Code will be amended to conform with the provisions of the Section 6111 contained in S.B. 1984 and a Section 6111.5 will be added thereto, identical to the Section 6111.5 added to the existing Probate Code by S.B. 1984.

(2) Assembly Bill No. 759, which has been chaptered (Ch. 79, Stats. 1990), amends various sections of the Civil Code, Financial Code, and Health and Safety Code, relating to probate law, and repeals and reenacts the Probate Code, contingent upon the enactment of Assembly Bill No. 831, to become operative July 1, 1991 (Sec. 37, Ch. 79, Stats. 1990). However, A.B. 831 was not passed by the Legislature.

This bill would amend Section 37 of Chapter 79 of the Statutes of 1990 to delete the contingency with respect to the enactment of A.B. 831, but retaining the July 1, 1991, operative date. Thus, A.B. 759 will become operative only if this bill is chaptered.

(3) This bill would also amend and repeal provisions of the new Probate Code, as enacted by Chapter 79 of the Statutes of 1990, to make the following changes, among others:

(a) Specify that, for purposes of a California statutory will executed by a testator who dies on or after July 1, 1991, a person is not to be deemed to survive the testator unless the person survives the testator by more than 120 hours, but the 120-hour requirement is inapplicable if its application would result in escheat of property to the state (Sec. 6211, Prob. C.).

(b) Increase from \$1,500 to \$5,000 the maximum monthly rental under a lease extension, renewal, or modification of one year or less that may be executed by an executor, administrator, guardian, or conservator without court approval and make a similar change with respect to compromise, settlement, extension, renewal, or modification of a lease with a term exceeding 2 years by a guardian or conservator (Secs. 2501, 2555, 9832, and 9941, Prob. C.).



(c) Delete a provision tolling the 4-year limitation on bringing an action on the bond of a guardian or conservator following discharge, removal, or surcharge while the person entitled to bring the action is under any legal disability to sue (Sec. 2333, Prob. C.).

(d) Revise findings which a court is required to make to authorize a guardian or conservator to consent to specified medical treatment on behalf of the ward or conservatee, and make similar changes in provisions empowering the courts to make orders authorizing medical treatment for adults without a conservator who are unable to consent to medical treatment (Secs. 2357 and 3208, Prob. C.).

(e) Limit the priority assigned for appointment of the guardian or conservator of the decedent's estate at the time of death, as administrator of the decedent's estate, to guardians and conservators that have filed a first account and are not acting as a guardian or conservator for any other person, unless the court waives these requirements for good cause shown and require the petition for such a waiver to be served on the public guardian (Secs. 8461 and 8469, Prob. C.).

(f) Revise provisions for the powers and duties of a personal representative, and the compensation of a personal representative, an attorney for a personal representative, or an attorney for a special administrator (Secs. 8547, 10404.5, 10406, 10501, 10565, 10585.5, 10810, 10830, 10831, 10954, 11000, 11623, and 12205, Prob. C.).

(g) Revise provisions for giving notice under the new Probate Code, where the person's address is unknown (Secs. 1212 and 1220, Prob. C.).

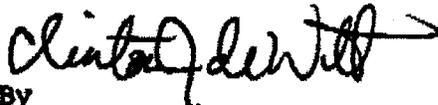
(h) Specify that in all proceedings under the Trust Law (Div. 9 (commencing with Sec. 15000), Prob. C.), rather than only proceedings concerning the internal affairs of trusts, the court has the powers of a superior court, and also specify that the court acts in these matters as a court of general jurisdiction (Sec. 17001, Prob. C.).



(i) Make technical and clarifying changes.

Thus, if this bill is chaptered the latter changes will be made in the provisions of the new Probate Code as enacted by Chapter 79 of the Statutes of 1990 (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel


By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:dfb

Two copies to:

Honorable Bill Lockyer,
Honorable Terry B. Friedman,
and Honorable Alan Robbins,
pursuant to Joint Rule 34.



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Sacramento, California
July 24, 1990

Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1984

ROBBINS. Wills. — *Chapt 263:90*

SUMMARY:

See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

This bill would amend Section 6111 of, and add Section 6111.5 to, the Probate Code, to revise the law regarding the validity of holographic wills. A.B. 759, enacted as Chapter 79 of the Statutes of 1990, repeals and reenacts the Probate Code (contingent upon the enactment of A.B. 831, to take effect on or before January 1, 1991), operative July 1, 1991 (Sec. 37, Ch. 79, Stats. 1990). A.B. 831 has not yet passed the Legislature.

Thus, whether or not A.B. 831 is chaptered and takes effect on or before January 1, 1991, if this bill is chaptered, it would amend Section 6111 of, and add Section 6111.5 to, the current Probate Code effective January 1, 1991 (subd. (c), Sec. 8, Art. IV, Cal. Const.). If A.B. 831 is chaptered and takes effect on or before January 1, 1991, the version of Section 6111.5 contained in this bill, as the higher chaptered bill,

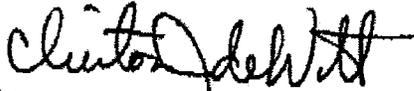
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Report on S.B. 1984 - p. 2

would continue and prevail over the version of Section 6111 of the Probate Code reenacted by Chapter 79 of the Statutes of 1990 (Sec. 9605, Gov. C.) when the latter chapter becomes operative July 1, 1991. Moreover, Section 6111.5 added by this bill would, by virtue of the same rule, continue in existence.

Bion M. Gregory
Legislative Counsel



By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:dfb

Two copies to:

Honorable Alan Robbins,
Honorable Terry B. Friedman,
and Honorable Elihu M. Harris,
pursuant to Joint Rule 34.

LEGISLATIVE INTENT SERVICE (800) 666-1917



April 2, 1990

TO: AR
FM: Joan
RE: SB 1984 (Sponsor - Author)
Holographic wills

The California Law Revision Commission on Wills has asked that we take an amendment to the bill which also allows extrinsic evidence to be used when testamentary intent is ambiguous from the reading of the holograph or formal will. This amendment is fine and does not conflict with the intent of the bill. Senate Judiciary staff is aware of this request and will recommend it be adopted as a committee amendment. A copy of the amendment is attached.

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AMENDMENTS TO SENATE BILL NO. 1984
AS AMENDED ON March 29, 1990

Amendment 1

On page 1, line 10, strike out "However, if it contains no" and on page 2, strike out lines 2 through 3, inclusive

Amendment 2

On page 2, after line 16, insert:

SECTION 2 Section 6111.5 is added to the Probate Code:

6111.5 (a) Extrinsic evidence shall be admissible to determine if a document is a will under Sections 6110 or 6111 or to determine the meaning of a will, or portion of a will, if the meaning is unclear on the face of the document.





**THE STATE BAR
OF CALIFORNIA**

OFFICE OF GOVERNMENTAL AFFAIRS

MARK T. HARRIS, *Senior Executive*

915 L STREET, SUITE 1260, SACRAMENTO, CALIFORNIA 95814

(916) 444-2762

March 19, 1990

The Honorable Alan Robbins
Senator, 20th District
State Capitol, Room 5114
Sacramento, CA 95814

*Assisted
01/21/90*

SB 1984, as introduced -- OPPOSE
Estate Planning, Trust and Probate Law Section

Dear Senator Robbins,

The Estate Planning, Trust and Probate Law Section of the State Bar of California, composed of experts in the field, respectfully opposes your SB 1984.

The section has taken this position for a number of reasons, but chiefly because it believes the change proposed by this bill will throw of existing decisional law into doubt and create uncertainty. For more information, please refer to the attached report, or call Irwin Goldring at (213) 551-0222.

THIS POSITION IS ONLY THAT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION OF THE STATE BAR, AND HAS NOT BEEN ADOPTED OR ENDORSED BY EITHER THE STATE BAR'S BOARD OF GOVERNORS OR OVERALL MEMBERSHIP. THIS POSITION IS NOT TO BE CONSTRUED AS REPRESENTING THE POSITION OF THE STATE BAR OF CALIFORNIA. MEMBERSHIP IN THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION OF THE STATE BAR IS VOLUNTARY. THE SECTION IS COMPOSED OF 4,767 MEMBERS FROM AMONG THE 122,000 MEMBERS OF THE STATE BAR OF CALIFORNIA.

It is the policy of the State Bar to refer legislative proposals affecting specific legal questions or the practice of law to the appropriate State Bar Committee or Section for review and comment. Please do not hesitate to contact me for further information on this position or assistance in obtaining an expert witness to testify before legislative committees.

Sincerely,

Larry Doyle
Director, Office of
Governmental Affairs

Enclosure

cc: Members, Senate Committee on Judiciary
Bill Hoisington, Legislative Chair, Estate
Planning, Trust and Probate Law Section

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PROBATE LAW SECTION
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March 13, 1990

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REPLY TO:

400 Sansome St.
S.F. CA 94111
Tele. 415-773-5555
Fax. 415-773-5759

Larry Doyle
State Bar of California
915 L Street, Suite 1260
Sacramento, CA 95814

Re: Senate Bill No. 1984

Dear Larry:

As Legislative Liaison of the Estate Planning, Trust & Probate Law Section of the State Bar of California, I am writing on behalf of the Executive Committee of the Section in regard to the subject bill.

Present law provides that "a will" is valid as a holographic will if the signature and material provisions are in the handwriting of the testator. This bill would substitute the words "an instrument that contains a statement of testamentary intent on its face" for the words "a will."

We are opposed to this bill. There are many technical problems with the language used in this bill. But, we are opposed to the proposed change primarily on policy grounds. Scores of court decisions provide an adequate common law basis for determining when a particular instrument is or is not "a will," particularly in the case of holographic

LEGISLATIVE INTENT SERVICE (800) 666-1917



Larry Doyle
March 13, 1990
Page 2

instruments. The change proposed by this bill will throw much of that decisional law into doubt because of uncertainty regarding the intention of the Legislature in making this change.

Irwin Goldring (213-551-0222) will be contacting Senator Robbins, who authored this bill, in an attempt to persuade him to drop this bill. By copy of this letter, I am asking Irv to contact you directly with the results of his efforts. If Irv is unsuccessful, we would appreciate your making our position known to the appropriate legislators and staff.

Sincerely,



William L. Hoisington

cc: James V. Quillinan
Bruce S. Ross
Irwin D. Goldring
Leonard W. Pollard II
Mathew S. Rae, Jr.
William V. Schmidt
Harley J. Spitler

James A. Willett
Glee Ewell
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James W. Obrien
Robert H. Oliver

LEGISLATIVE INTENT SERVICE (800) 666-1917



~~Joan~~ Senate Select Committee
on
Governmental Efficiency

3/12
4:45

Irv Goldring
(213) 551-0222
re: SB 1984

call late morning
(in court early am)

was involved w/
St Bar comm. on wills
opposes ^{SB} 1984

Please call.
B. TERI BURNS
445-3121 *Teri*

TO <i>Joan</i>			ROOM/STA NO
FROM <i>Ira Shapiroff</i>			ROOM/STA NO.
REPRESENTING			
DATE <i>3/13</i>	TIME <i>3:19</i>	PHONE <i>(213) 738-6754</i>	
<input type="checkbox"/> Telephoned	<input type="checkbox"/> Please Call	<input type="checkbox"/> Was In	
<input type="checkbox"/> Returned Call	<input type="checkbox"/> Will Call Again	<input type="checkbox"/> Wants To See You	
<input type="checkbox"/> Information	<input type="checkbox"/> Note and	<input type="checkbox"/> Reply	
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<input type="checkbox"/> Investigate	<input type="checkbox"/> Return	<input type="checkbox"/> Copy Me	
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MESSAGE/REMARKS <i>(213)-383-1688 FAX</i>			
BY <i>Teri</i>			

MESSAGE



14/04/04
J

MAC Record

1988
206 Cal App 3d 1235
254 CR 156

(213) 277-7903

Copy
443-1234
rem 1037

Jan Provenza

April 10th



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SOUTHWESTERN



**UNIVERSITY
SCHOOL OF LAW**

FAX COVER SHEET

FAX NUMBER: (213) 383-1688

DATE:

4/30/90

TO:

Jean Hall

FROM:

Ira Shafiroff

OF PAGES
INCLUDING COVER:

9

COMMENTS:

IF YOU DO NOT RECEIVE THE TOTAL NUMBER OF PAGES
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 (1963-1976)
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 (1966-1970)
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VIA TELECOPIER # (213) 277-7903

April 24, 1990

Irwin D. Goldring, Esq.
 1888 Century Park East
 Suite 350
 Los Angeles, California 90067

Re: SB 1984

Dear Irv:

Clark has responded to your letter of April 23, primarily by emphasizing the substantive points relating to the validity of a holographic will. I would like to add a few comments concerning the proposed references to extrinsic evidence in Section 6111(a) and 6111.5.

Section 6111(a) would allow extrinsic evidence to ascertain the testator's intent if the will "contains no such statements of testamentary intent on its face." Likewise, Section 6111.5 would permit extrinsic evidence "if the meaning is unclear on the face of the document."

comment { Estate of Russell (1968) 69 Cal.2nd 200 permits extrinsic evidence to depict the circumstances surrounding the execution of a will. Such evidence is not conditioned upon the existence of an ambiguity on the face of the will, but rather can be admitted to prove that an ambiguity exists even where the face of the will does not disclose it. The repeal of former Probate Code §105 in 1983 also made it clear that statements and circumstances surrounding the execution of the will are now admissible to determine whether any ambiguity exists as well as to construe any ambiguities that are found to exist.

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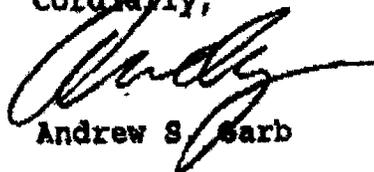
Irwin D. Goldring, Esq.
April 24, 1990
Page 2

The proposed last sentence to §6111(a) and the last clause of §6111.5 would limit and restrict the introduction of extrinsic evidence which is now permitted by Russell. It would turn the clock back on the issue of admitting evidence to advise the court of all the circumstances surrounding the execution of a will. This is certainly counter to the trend existing in the construction of wills, contracts, and other written documents in general, and I believe it to be unsound policy.

amds
Thus, I would recommend deleting the last sentence of proposed §6111(a) and either deleting all of §6111.5 or deleting the words "if the meaning is unclear on the face of the document" and moving the entire balance to the Evidence Code. I prefer deleting the section entirely, since I do not believe an addition to the Evidence Code is needed on this issue.

Please call if I can be of any further help on this.

Cordially,


Andrew S. Garb

ASG:cb
GAA10728.L01



ESTATE PLANNING, TRUST AND PROBATE LAW SECTION THE STATE BAR OF CALIFORNIA



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REPLY TO:

Clark R. Byam
Telecopier (818) 449-7357

Irwin D. Goldring, Esq.
1880 Century Park East
Suite 350
Los Angeles, California 90067

Re: SB 1984

Dear Irv:

In reference to your letter of April 23rd and the enclosure, the following are my comments:

1. The comment to the Bill cites the Estate of Johnson case, an Arizona case and then states that it is not now known how the Johnson case would have been decided by a court in California. This is not correct since the California Supreme Court has already held that where the dispositive provisions of a Will are in the handwriting of the decedent the fact that it's on a pre-printed form does not invalidate the Will. Estate of Black, (1982) 30 Cal.3d 380. Further, Estate of Archer (1987) 193 Cal.App.3d 238 further holds that the presence of signatures of witnesses to a Will does not invalidate an otherwise effective holographic Will in construing Section 6111(a) of the Probate Code as further liberalising the requirements for admissions of Wills as holographic Wills.

Neither of these cases is cited in the comment or background and apparently the author is not aware of these cases. Obviously, these cases should be mentioned in any comment to the proposed legislation.

I don't think that the language to Section 6111(a) is objectionable since I believe that to already be the law based on Estate of Black and Estate of Archer. However, I would remove the language of Section 6111.5 discussing the admissability of extrinsic evidence. This is because, and as discussed at our meeting, such rules should be

LEGISLATIVE INTENT SERVICE (800) 666-1917



Irwin D. Goldring, Esq.
April 24, 1990
Page Two

dealt with in the evidence code, not in the probate code and second, such evidence is clearly admissable under Estate of Russell (a 1969 California Supreme Court case). Again, apparently the author is unaware of this case.

I recently prepared a brief and argued the issue of whether a Will that had interlineations and had initially been witnessed could qualify as a holographic will and I enclose copies of pages 3 through 6 of my brief on this matter that discusses both Estate of Black and Estate of Archer.

Very truly yours,



Clark R. Byam

CRB:ra
Enclosures

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This matter presents essentially two issues, namely:

1. Can a Will that is initially hand written and witnessed also qualify as a holographic Will pursuant to § 6111 of the Probate Code; and

2. If it so can qualify, can additions or interlineations made to the holographic Will after the initial execution of it operate to adopt the old date and signature of the original Will and therefore be valid.

As will be noted in the following discussion, both of the answers to these questions are in the affirmative and it is clear under California case law and statute that the Will of the Decedent, with the interlineations, is a valid holographic Will entitled to be admitted and to have Petitioner named as the Executor thereof.

ARGUMENT

1. THE WILL OF A DECEDENT THAT IS AN INITIALLY HANDWRITTEN WITNESSED WILL ALSO CAN QUALIFY AS A HOLOGRAPHIC WILL UNDER § 6111 OF THE CALIFORNIA PROBATE CODE.

California Probate Code § 6111, effective for estates of decedent's who died on or after January 1, 1985, provides in part that: "(a) A Will that does not comply with § 6110 is valid as holographic will, whether or not witnessed, if the signature and the material provisions are in the hand writing of the testator." (Emphasis added)

The California Supreme Court, in Estate of Black (1982) 30 Cal.3d 880, held that an instrument of the decedent was a valid holographic Will despite the fact that the testatrix physically incorporated portions of preprinted language into the Will where

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1 the printed language, including a preamble and testimonial clause
 2 was unnecessary to be an effective Will. The Court ruled that the
 3 decedent had accomplished in clearly expressed words of the
 4 document that were written in her own hand and to which she had
 5 dated the instrument the dispositive provisions of the Will. Of
 6 critical importance in the reasoning of the California Supreme
 7 Court's decision was the fact that the material portions of the
 8 Will were all hand written by the decedent and that the printed
 9 portions (including the printed portion designating the executor)
 10 could be disregarded without effecting the substance of the Will.

11 Said the Court:

12 "Unanimously in Baker, we stressed that
 13 'The policy of the law is toward' a
 14 construction favoring validity, in
 15 determining whether a Will has been
 16 executed in conformity with statutory
 17 requirements' [Citations]. 'Moreover
 18 we affirmed 'the tendency of both the
 19 courts and the Legislature . . .
 20 towards greater liberality in accepting
 21 a writing as an holographic Will . . .
 22 .'(Ibid). 'Substantial compliance with
 23 the statute and not absolute precision
 24 is all that is required . . .' (Id,
 25 at page 685, italics added). (30
 26 Cal.3d 880, at 883).

27 In Black, the Court went on to observe that:

28 "No sound purpose or policy is served
 by invalidating a holograph where every
 statutorily required element of the
 Will is concededly expressed in the
 testatrix' own hand writing and where
 her testamentary intent is clearly
 revealed in the words as she wrote
 them. Francis Black's sole mistake was
 her superfluous utilization of a small
 portion of the language of the
 preprinted form. Nullification of her
 carefully expressed testamentary
 purpose because of such error is
 unnecessary to preserve the sanctity of

1008A

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the statute. Moreover, rejection of the instrument as a Will would have the unfortunate practical consequence of passing her estate through the laws of intestacy to the daughter of a predeceased husband through a former marriage - in fact, a stranger to her - thereby excluding those who she described in the holograph as 'my very dear friends' and 'my adopted family' and the charity which was apparently close to her heart and which she specifically wished to benefit. The resulting frustration and defeat of her testamentary plan would be directly contrary to our Bakar reasoning and would serve neither valid public policy nor common sense." (30 Cal.3d 880, at 888.).

Both Black, and decisions rendered by the appellate courts since then, have shown that the Courts favor allowing a testator's wishes to be achieved, when the document is not witnessed, by finding the document to be a valid holographic Will. In Estate of Archer, (1987) 193 Cal.App. 3d 238, the Appellate Court held the trial court had properly sustained the demurrer as to the allegation that the addition made to a holographic codicil was invalid due to lack of a signature, since the addition adopted the date and signature on the front side of the sheet as a matter of law. In reviewing the decision, the Court noted that the replacement of former Probate Code § 53 with § 6111 in 1983 was modeled after § 2.503 of the Uniform Probate Code and that the Law Revision Commission in making its recommendations issued in support of the 1983 changes to the prior section were in part to:

"Prevent the invalidation of hand written Wills with non-essential provisions that are not in the

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testator's hand writing - such as a
printed date, or a letterhead.
[Citation.] Nowhere in the
Commission's recommendations is there
any indication that the new subdivision
in any other way changes prior law."
(193 Cal.App.3d 238, at 243).

In Archer, the appellant had first argued that because the
first Will of the decedent had been witnessed, although written in
his hand writing, it could not therefore be a holographic Will.
In reply, the Appellate Court stated:

"We therefore conclude that the words
"whether or not witnessed" in § 6111,
subdivision (a), mean exactly what they
say, and that the longstanding rule
continues to apply to post - 1984
cases: 'the presence of the signatures
of witnesses will not invalidate an
otherwise effective holographic Will.'
(Citation)." (193 Cal.App.3d, 238, at
243).

No doubt the addition of § 6111 to the Probate Code in 1983,
effective for decedent's dying in 1985 and thereafter, was
prompted by the Supreme Court decision in Estate of Black.
Section 6111 was clearly an attempt by the legislature to
liberalize the requirements for the admission of Wills as
holographic Wills notwithstanding that they had certain printed or
typed portions to them and notwithstanding the fact that they were

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE COUNSEL No. 16472

REQUEST OF _____

Senator Alan Robbins
Per Barbara Swentowsky

AMENDMENT--

Amend SB 1984 per attached.

Attachments:

Note.
SB 1984.
One-page draft.

Holographic Wills (Amdt. SB 1984)

6/14/90

rec'd 6/19

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Ms. Fisher 5-1929

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

LEGISLATIVE COUNSEL No. 14764

REQUEST OF Senator Alan Robbins
Per Joan Hall, 5-1046

AMENDMENT--

Amend SB 1894.

On p. 2, lines 31 and 32, s/o "on the face of the document"

Attachments:

Marked SB 1894.

Wills (Amdt. SB 1894)

5/16/90

rec'd 5/18

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Mr. Dewitt 5-7137

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

LEGISLATIVE COUNSEL No. 07001

REQUEST OF Senator Alan Robbins
Per Joan Hall

AMENDMENT--

Amend SB 1984 per attached re wills.

Any question, contact Joan at 5-1046.

Attachments:

One-page memo.
SB 1984.

Estates and Trusts: Wills
(Amdt. SB 1984)

3/26/90

rec'd 3/28

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Mr. Dewitt 5-7137

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

LEGISLATIVE COUNSEL

No. 06183

REQUEST OF

Senator Alan Robbins

Per Joan Hall

AMENDMENT—(SB 1984)

Amend SB 1984 per attached relating to holographic wills.

Any question, contact Joan Hall at (5-1046).

ATTACHMENTS:

None with green.

Holographic wills.

3/15/90

rec'd 3/14

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Ms. Gates

5-6941

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE COUNSEL No. 01128

REQUEST OF Senator Alan Robbins
per Joan Hall

BILL

Require a holographic will to manifest an intent to be a will.

Any question, contact Joan 5-1046

Attachment:
1-pg memo

Wills

1-18-90

rec'd 2/6

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Chris deWitt 5-7137

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

1-20

15-3121

LC	IR	PUC
BTH	LEGAL	DPA
EQ	OLGA	ED
FIN	RES	
F&A	SCS	
HSW	YAC	

AUTHOR Robbins

DATE RECEIVED 7-9 1990

LAST DAY TO ACT 7-23 1990

11

ACTION OF GOVERNOR 7-13 1990

SB 1984 1990 CHAPTER 263



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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
July 24, 1990

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Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1984

ROBBINS. Wills.

SUMMARY:

See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS:

This bill would amend Section 6111 of, and add Section 6111.5 to, the Probate Code, to revise the law regarding the validity of holographic wills. A.B. 759, enacted as Chapter 79 of the Statutes of 1990, repeals and reenacts the Probate Code (contingent upon the enactment of A.B. 831, to take effect on or before January 1, 1991), operative July 1, 1991 (Sec. 37, Ch. 79, Stats. 1990). A.B. 831 has not yet passed the Legislature.

Thus, whether or not A.B. 831 is chaptered and takes effect on or before January 1, 1991, if this bill is chaptered, it would amend Section 6111 of, and add Section 6111.5 to, the current Probate Code effective January 1, 1991 (subd. (c), Sec. 8, Art. IV, Cal. Const.). If A.B. 831 is chaptered and takes effect on or before January 1, 1991, the version of Section 6111.5 contained in this bill, as the higher chaptered bill,

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would continue and prevail over the version of Section 6111 of the Probate Code reenacted by Chapter 79 of the Statutes of 1990 (Sec. 9605, Gov. C.) when the latter chapter becomes operative July 1, 1991. Moreover, Section 6111.5 added by this bill would, by virtue of the same rule, continue in existence.

Bion M. Gregory
Legislative Counsel



By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:dfb

Two copies to:

Honorable Alan Robbins,
Honorable Terry B. Friedman,
and Honorable Elihu M. Harris,
pursuant to Joint Rule 34.



ASSEMBLY COMMITTEE ON JUDICIARY REPUBLICAN ANALYSIS

SB 1984 (Robbins) -- HOLOGRAPHIC WILLS

Version: 6/21/90

Vice-chairman: Tom McClintock

Recommendation: Support

Vote: Majority.

Summary: Provides that a person may execute a holographic will (a signed will in the maker's own handwriting) declaring his testamentary intent on a commercially-printed form will. Existing law generally requires a will on printed form be signed and witnessed by two other persons. Existing law also provides for the execution of a holographic will, without witnesses, where the signature and the material provisions are in the handwriting of the testator (maker). This bill specifically revises statutory law on holgraphic wills to provide that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially-printed form will. Also provides that extrinsic evidence is admissable in court proceedings to determine (1) whether a document constitutes a will under law or (b) the meaning of any portion of a will that is unclear. Fiscal Impact: Unknown.

Supported by: Unknown Opposed by: Unknown Governor's position: Unknown

Comments: A bill to allow the use of form wills obtainable in stationary stores for purposes of making a holgraphic will without the necessity of witnesses. The bill further provides for the admissability of extrinsic evidence if necessary to clearly determine the intent of the testator. The author views this measure as helping to avoid litigation over whether the technical requirements of a holgraphic will have been met. This bill is consistent with a public policy favoring the distribution of an estate according to the intent of a deceased who executes such a handwritten will.

Senate Republican Floor Vote -- 4/26/90

(25-0)

Ayes: All Republicans except

Abs/NV: Beverly, Craven, Doolittle, Leonard, Morgan, Seymour

Assembly Republican Committee Vote

Judiciary -- 6/27/90

(11-0)

Ayes: All Republicans

Consultant: Mark Redmond



**POST-ENROLLMENT
DOCUMENTS REGARDING
SENATE BILL 1984**

DEPARTMENT OF
CONSUMER
AFFAIRS

1020 N STREET, SACRAMENTO, CALIFORNIA 95814

NO ENROLLED BILL REPORT REQUIRED

Agency: State and Consumer Services	Bill Number: SB 1984
Department: Department of Consumer Affairs	Author: Robbins

- Technical bill - No program or fiscal changes to existing program. No recommendation on signature.
- Bill as enrolled no longer within scope of responsibility or program of this Department.

Comments:

Existing law requires a will to be in writing, and to be signed and witnessed, as specified. Existing law provides that a will is valid as a holographic will, whether or not it is witnessed, if the signature and material provisions are in the handwriting of the testator.

This bill would provide that any statement of the testator's intent may be set forth either in the testator's own handwriting or as part of a commercially printed form will. This bill would also provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified.

The department has not followed this bill, although the public policy issue it addresses - effectuating the intent of those who execute handwritten wills - affects consumers generally. The high cost of attorney assistance may deter many from seeking such assistance in drafting their wills; others may deem the matter to be a private one and choose to draft their wills themselves, in their own handwriting. By providing for the use of a preprinted will form in the drafting of a holographic will, this bill would avoid defeating the testamentary instrument on a technicality, and would also avoid litigation over the issue. By permitting extrinsic evidence, as specified, to ascertain the intent of the testator, the bill would also help effectuate the intent of those who die after executing a handwritten will.

The department notes the overwhelming support for the bill and recommends that the Governor SIGN SB 1984.

RECOMMENDATION:

SIGN

DEPARTMENT DIRECTOR:
Michael D. Kelley

DATE:
7/8/90

AGENCY SECRETARY:
Debra S. Taylor

DATE:
7/9/90

PE-5



STATE BILL NO. 1984 1990 REGULAR SESSION CHAPTER 263

SB 1984 1990 CHAPTER 263

15-3121

LC	IR	PUC
BTH	LEGAL	DPA
ED	OLGA	ED
FIN	RES	
F&A	SCS	
HAW	YAC	

AUTHOR Robbins

DATE RECEIVED 7-9 1990

LAST DAY TO ACT 7-23 1990

ACTION OF GOVERNOR 7-13 1990



Legislative Counsel of California

MON M. GREGORY

Sacramento, California
July 24, 1990

William A. Anderson
Charles E. Baker
Linda J. Barlow
John A. Blythe
Barbara A. Brown
Diane F. Brown-Wood
Sharon J. Burton
Mary J. Cantelero
Brooks Carter
Ron E. Case
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Charles J. DeWitt
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Maureen S. Dunn
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John Fossett
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Thomas R. Heuer
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Elizabeth M. Wolf
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Thomas D. Whelan
Belinda Whisen
Debra J. Zidich
Deputies

Administrative Services
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Legal Services
Public Information
Research Services
Special Services
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Telephone Services
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Printing Services
Records Management
Information Systems
Security Services
Facilities Management
Human Resources
Procurement Services
Risk Management
Compliance Services

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Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1984

ROBBINS. Wills.

SUMMARY: See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM: Approved.

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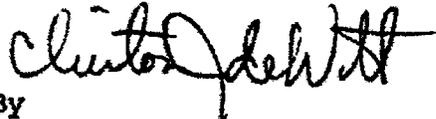
Thus, whether or not A.B. 831 is chaptered and takes effect on or before January 1, 1991, if this bill is chaptered, it would amend Section 6111 of, and add Section 6111.5 to, the current Probate Code effective January 1, 1991 (subd. (c), Sec. 8, Art. IV, Cal. Const.). If A.B. 831 is chaptered and takes effect on or before January 1, 1991, the version of Section 6111.5 contained in this bill, as the higher chaptered bill,

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would continue and prevail over the version of Section 6111 of the Probate Code reenacted by Chapter 79 of the Statutes of 1990 (Sec. 9605, Gov. C.) when the latter chapter becomes operative July 1, 1991. Moreover, Section 6111.5 added by this bill would, by virtue of the same rule, continue in existence.

Bion M. Gregory
Legislative Counsel



By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:dfb

Two copies to:

Honorable Alan Robbins,
Honorable Terry B. Friedman,
and Honorable Elihu M. Harris,
pursuant to Joint Rule 34.

SB 1984 (Robbins)
Analyzed: 6/26/90

ASSEMBLY COMMITTEE ON JUDICIARY REPUBLICAN ANALYSIS

SB 1984 (Robbins) -- HOLOGRAPHIC WILLS

Version: 6/21/90

Recommendation: Support

Vice-chairman: Tom McClintock

Vote: Majority.

Summary: Provides that a person may execute a holographic will (a signed will in the maker's own handwriting) declaring his testamentary intent on a commercially-printed form will. Existing law generally requires a will on printed form be signed and witnessed by two other persons. Existing law also provides for the execution of a holographic will, without witnesses, where the signature and the material provisions are in the handwriting of the testator (maker). This bill specifically revises statutory law on holgraphic wills to provide that any statement of testamentary intent contained in the will may be set forth either in the testator's own handwriting or as part of a commercially-printed form will. Also provides that extrinsic evidence is admissible in court proceedings to determine (1) whether a document constitutes a will under law or (b) the meaning of any portion of a will that is unclear. Fiscal Impact: Unknown.

Supported by: Unknown Opposed by: Unknown Governor's position: Unknown

Comments: A bill to allow the use of form wills obtainable in stationary stores for purposes of making a holgraphic will without the necessity of witnesses. The bill further provides for the admissability of extrinsic evidence if necessary to clearly determine the intent of the testator. The author views this measure as helping to avoid litigation over whether the technical requirements of a holgraphic will have been met. This bill is consistent with a public policy favoring the distribution of an estate according to the intent of a deceased who executes such a handwritten will.

Senate Republican Floor Vote -- 4/26/90

(25-0)

Ayes: All Republicans except

Abs/NV: Beverly, Craven, Doolittle, Leonard, Morgan, Seymour

Assembly Republican Committee Vote

Judiciary -- 6/27/90

(11-0)

Ayes: All Republicans

Consultant: Mark Redmond

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FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

ARGUMENTS IN SUPPORT: The author's office states that this bill will help to avoid litigation over whether the technical requirements of a holographic will have been met. Most importantly, the author hopes to effectuate the intentions of those who die after executing a handwritten will.

RJG:naf 7/5/90 Senate Floor Analyses



DEPARTMENT OF
CONSUMER
AFFAIRS

1020 N STREET, SACRAMENTO, CALIFORNIA 95814

NO ENROLLED BILL REPORT REQUIRED

Agency:	State and Consumer Services	Bill Number:	SB 1984
Department:	Department of Consumer Affairs	Author:	Robbins

- Technical bill - No program or fiscal changes to existing program. No recommendation on signature.
- Bill as enrolled no longer within scope of responsibility or program of this Department.

Comments:

Existing law requires a will to be in writing, and to be signed and witnessed, as specified. Existing law provides that a will is valid as a holographic will, whether or not it is witnessed, if the signature and material provisions are in the handwriting of the testator.

This bill would provide that any statement of the testator's intent may be set forth either in the testator's own handwriting or as part of a commercially printed form will. This bill would also provide that extrinsic evidence is admissible to determine whether a document is a will or to determine the meaning of a will, as specified.

The department has not followed this bill, although the public policy issue it addresses - effectuating the intent of those who execute handwritten wills - affects consumers generally. The high cost of attorney assistance may deter many from seeking such assistance in drafting their wills; others may deem the matter to be a private one and choose to draft their wills themselves, in their own handwriting. By providing for the use of a preprinted will form in the drafting of a holographic will, this bill would avoid defeating the testamentary instrument on a technicality, and would also avoid litigation over the issue. By permitting extrinsic evidence, as specified, to ascertain the intent of the testator, the bill would also help effectuate the intent of those who die after executing a handwritten will.

The department notes the overwhelming support for the bill and recommends that the Governor SIGN SB 1984.

RECOMMENDATION:

SIGN

DEPARTMENT DIRECTOR
Michael J. Kelley

DATE
7/10/90

AGENCY SECRETARY
Clayton J. Harper

DATE
7/11

LEGISLATIVE INTENT SERVICE (800) 666-1917



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On January 13, 2012, I served the foregoing document described as:
**APPELLANTS' MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR JUDICIAL NOTICE; AND [PROPOSED] ORDER**
on the parties in this action by serving:

Richard Caplan
8350 Wilshire Boulevard, Suite 200
Beverly Hills, California 90211
Counsel for Estate of Duke Administrator

Wilfrid Roberge
Donahue Gallagher Woods
1999 Harrison Street, 25th Floor
Oakland, California 94612
**Counsel for Respondents
Robert and Seymour Radin**

Margaret Lodise
Sacks, Glazier, Franklin & Lodise
3500 South Grand Avenue, Suite 3500
Los Angeles, California 90071
**Counsel for Respondents
Robert and Seymour Radin**

Clerk for
The Honorable Mitchell Beckloff
Los Angeles Superior Court
111 North Hill Street
Los Angeles, California 90012
(LASC Case No. BP108971)

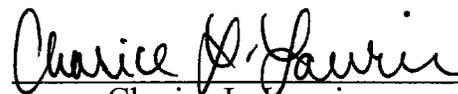
Clerk of the Court
California Court of Appeal
Second Appellate District, Division Four
300 S. Spring Street, Floor 2 North Tower
Los Angeles, California 90013-1213
(Court of Appeal Case No. B227954)

(X) By Envelope: by placing a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

(X) By Mail: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on January 13, 2012, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Charice L. Lawrie