

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2248

Introduced by Assembly Members Spitzer and Ma

February 20, 2008

An act to amend Section 6110 of the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

AB 2248, as amended, Spitzer. Wills: requirements.

Existing law requires, except as specified, that a will be in writing and be signed by the testator, or by another person in the testator's presence in the testator's name and at the testator's direction, or by a conservator pursuant to a court order to make a will. Existing law also requires that a will be witnessed by being signed by at least 2 persons, each of whom being present at the same time witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and understand that the instrument they sign is the testator's will.

This bill would require the witnesses to the will to sign the will during the testator's lifetime. The bill would also require that a will, ~~or a writing upon a will~~, that fails to meet the above-described requirements to be treated as if it has met those requirements if the proponent of the will ~~or writing~~ establishes by clear and convincing evidence that the ~~decedent testator, at the time the testator signed the will~~, intended the will ~~or writing~~ to constitute the ~~decedent's his or her~~ will, a ~~partial or complete~~ revocation of the will, an addition to, or alteration of, the will, or a ~~partial or complete~~ revival of a formerly revoked will or a formerly revoked portion of the 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 6110 of the Probate Code is amended to
 2 read:
 3 6110. (a) Except as provided in this part, a will shall be in
 4 writing and satisfy the requirements of this section.
 5 (b) The will shall be signed by one of the following:
 6 (1) By the testator.
 7 (2) In the testator’s name by some other person in the testator’s
 8 presence and by the testator’s direction.
 9 (3) By a conservator pursuant to a court order to make a will
 10 under Section 2580.
 11 (c) (1) Except as provided in paragraph (2), the will shall be
 12 witnessed by being signed, during the testator’s lifetime, by at
 13 least two persons each of whom (A) being present at the same
 14 time, witnessed either the signing of the will or the testator’s
 15 acknowledgment of the signature or of the will and (B) understand
 16 that the instrument they sign is the testator’s will.
 17 (2) If a will, ~~or a writing added upon a will,~~ was not executed
 18 in compliance with paragraph (1), the will ~~or writing~~ shall be
 19 treated as if it was executed in compliance with that paragraph if
 20 the proponent of the will ~~or writing~~ establishes by clear and
 21 convincing evidence that ~~the decedent, at the time the testator~~
 22 *signed the will, the testator* intended the will ~~or writing~~ to constitute
 23 ~~any of the following:~~
 24 ~~(A) The decedent’s will.~~
 25 ~~(B) A partial or complete revocation of the will.~~
 26 ~~(C) An addition to, or alteration of, the will.~~
 27 ~~(D) A partial or complete revival of a formerly revoked will or~~
 28 ~~a formerly revoked portion of the will.~~
 29 *the testator’s will.*

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