

AMENDED IN SENATE MAY 6, 2010

**SENATE BILL**

**No. 1041**

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**Introduced by Senator Harman**

February 12, 2010

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An act to amend Section 1260 of the Evidence Code, relating to hearsay evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 1041, as amended, Harman. Hearsay evidence: wills and revocable trusts.

Existing law, known as the "hearsay rule," provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible. Existing law also provides exceptions to the hearsay rule to permit the admission of specified kinds of evidence, including evidence of a statement made by a declarant who is unavailable as a witness that he or she has or has not made a will, or has or has not revoked his or her will, or that identifies his or her will.

~~This bill would provide that evidence of a statement made by a declarant who is unavailable as a witness that he or she has or has not made a will or established a revocable trust, or has or has not revoked his or her will or revocable trust, or that identifies his or her will or revocable trust, is not made inadmissible by the hearsay rule~~ *expand that exception to the hearsay rule to permit the admission of evidence of a statement made by a declarant who is unavailable as a witness that he or she has or has not established or amended a revocable trust, or has or has not revoked his or her revocable trust or an amendment to a revocable trust, or that identifies his or her revocable trust or an amendment to a revocable trust.*

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 1260 of the Evidence Code is amended  
2 to read:

3 1260. (a) ~~Evidence—~~Except as provided in subdivision (b),  
4 evidence of a statement any of the following statements made by  
5 a declarant who is unavailable as a witness ~~that he has or has not~~  
6 ~~made a will, or has or has not revoked his will, or that identifies~~  
7 ~~his will,~~ is not made inadmissible by the hearsay rule::

8 (1) *That the declarant has or has not made a will or established*  
9 *or amended a revocable trust.*

10 (2) *That the declarant has or has not revoked his or her will,*  
11 *revocable trust, or an amendment to a revocable trust.*

12 (3) *That identifies the declarant’s will, revocable trust, or an*  
13 *amendment to a revocable trust.*

14 (b) Evidence of a statement is inadmissible under this section  
15 if the statement was made under circumstances ~~such as to~~ *that*  
16 indicate its lack of trustworthiness.

17 SECTION 1. ~~Section 1260 of the Evidence Code is amended~~  
18 ~~to read:~~

19 ~~1260. (a) Evidence of a statement made by a declarant who is~~  
20 ~~unavailable as a witness that he or she has or has not made a will~~  
21 ~~or established a revocable trust, or has or has not revoked his or~~  
22 ~~her will or revocable trust, or that identifies his or her will or~~  
23 ~~revocable trust, is not made inadmissible by the hearsay rule.~~

24 ~~(b) Evidence of a statement is inadmissible under this section~~  
25 ~~if the statement was made under circumstances that indicate its~~  
26 ~~lack of trustworthiness.~~