

Memorandum 82-96

Subject: Study L-625 - Probate Law and Procedure (California Statutory Will)

Attached is the latest version of Assembly Bill 2452. (We have only a few copies of the bill, and we attach a copy only on the copy of this memorandum that is sent to members of the Commission.) The bill was sent to the Governor in this form. At the time this memorandum was written, the Governor had not acted on the bill. However, we expect that he will approve the bill.

The staff has revised the previous version of the California statutory will provisions that are contained in our comprehensive statute. The revised version is included in the draft attached to Memorandum 82-91. Accordingly, you need not read the attached bill. However, we are providing you with this copy so that you can refer to it if necessary in connection with your study of the draft statute attached to Memorandum 82-91.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

AMENDED IN SENATE AUGUST 11, 1982
AMENDED IN SENATE AUGUST 2, 1982
AMENDED IN SENATE JUNE 18, 1982
AMENDED IN ASSEMBLY APRIL 12, 1982
AMENDED IN ASSEMBLY MARCH 22, 1982

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 2452

Introduced by Assemblyman Harris
(Coauthor: Assemblyman Wyman)

January 25, 1982

**An act to add Chapter 2.1 (commencing with Section 56)
to Division 1 of the Probate Code, relating to wills.**

LEGISLATIVE COUNSEL'S DIGEST

AB 2452, as amended, Harris. Statutory will.

Under existing law, a person may dispose of his or her property by will. Existing law sets forth the requirements for the execution of a will, but does not provide the substantive provisions or terminology of the provisions of a will.

This bill would enact provisions for 2 forms of a statutory will, either of which a person could adopt upon complying with provisions for its execution. The statutory will or statutory will with trust would be a specific form with a limited choice of dispositive clauses, and would incorporate a number of mandatory clauses.

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. Chapter 2.1 (commencing with Section
2 56) is added to Division 1 of the Probate Code, to read:

3
4 CHAPTER 2.1. CALIFORNIA STATUTORY WILLS

5
6 56. For purposes of this chapter, the following
7 definitions and rules of construction shall apply unless, in
8 a particular case, the context clearly requires otherwise:

9 (a) "Testator" means any person choosing to adopt a
10 California statutory will.

11 (b) "Spouse" means the testator's husband or wife at
12 the time the testator signs a California statutory will.

13 (c) "Executor" means both the person so designated
14 in a California statutory will and any other person acting
15 at any time as the executor or administrator under a
16 California statutory will.

17 (d) "Trustee" means both the person so designated in
18 a California statutory will and any other person acting at
19 any time as the trustee under a California statutory will.

20 (e) "Descendants" means children, grandchildren,
21 and their lineal descendants of all degrees.

22 (f) A class designation of "descendants" or "children"
23 includes (1) persons legally adopted into the class during
24 minority and (2) persons naturally born into the class (in
25 or out of wedlock). The reference to "descendants" in
26 the plural includes a single descendant where the context
27 so requires.

28 (g) Masculine pronouns include the feminine, and
29 plural and singular words include each other, where
30 appropriate.

31 (h) If a California statutory will states that a person
32 shall perform an act, the person is required to perform
33 that act. If a California statutory will states that a person
34 may do an act, the person's decision to do or not to do the
35 act shall be made in the exercise of the person's fiduciary
36 powers.

37 (i) Whenever a distribution under a California
38 statutory will is to be made to a person's descendants, the

1 property is to be divided into as many equal shares as
2 there are then living descendants of the nearest degree
3 of living descendants and deceased descendants of that
4 same degree who leave descendants then living; and each
5 living descendant of the nearest degree shall receive one
6 share and the share of each deceased descendant of that
7 same degree shall be divided among his or her
8 descendants in the same manner.

9 (j) "Person" includes individuals and institutions.

10 56.1. Any person of sound mind and over the age of
11 18 may execute a California statutory will under the
12 provisions of this chapter.

13 56.2. The only method of executing a California
14 statutory will is for the following to occur:

15 (a) The testator shall do the following:

16 (1) Complete the appropriate blanks.

17 (2) Sign the will.

18 (b) The witnesses shall do the following:

19 (1) Observe the testator's signing.

20 (2) Sign their names in the presence of the testator.

21 The execution of the attestation clause provided in the
22 California statutory will by two or more witnesses shall
23 satisfy Section 329.

24 56.3. There are two California statutory wills: a
25 California statutory will and a California statutory will
26 with trust. Each will includes: (1) The contents of the
27 appropriate California Statutory Will Form, including the
28 notices that are set forth in Sections 56.7 and 56.8, and (2)
29 by reference, the full texts of each of the following:

30 (a) The definitions and rules of construction set forth
31 in Section 56.

32 (b) The clause set forth in Section 56.9.

33 (c) The property disposition clause adopted by the
34 testator.

35 (d) The mandatory clauses set forth in Sections 56.12
36 and, if applicable, 56.13.

37 56.4. If more than one property disposition clause
38 appearing in paragraph 2.3 of a California Statutory Will
39 Form is selected, or if none is selected, the property of a
40 testator who signs a California statutory will shall be

1 distributed to the testator's heirs as if the testator did not
2 make a will.

3 56.5. Only the texts of the property disposition clauses
4 and the mandatory clauses shall be considered in
5 determining their meaning. Their titles shall be
6 disregarded.

7 56.6. (a) A California statutory will may be revoked
8 and may be amended by codicil in the same manner as
9 other wills.

10 (b) Any additions to or deletions from the California
11 statutory will on the face of the California Statutory Will
12 Form, other than in accordance with the instructions,
13 shall be ineffective and shall be disregarded.

14 56.7. The following is the California Statutory Will
15 Form:

16

17 CALIFORNIA STATUTORY WILL

18

19 NOTICE TO THE PERSON WHO SIGNS THIS WILL:

20 1. IT MAY BE IN YOUR BEST INTEREST TO
21 CONSULT WITH A CALIFORNIA LAWYER
22 BECAUSE THIS STATUTORY WILL HAS SERIOUS
23 LEGAL EFFECTS ON YOUR FAMILY AND
24 PROPERTY.

25 2. THIS WILL DOES NOT DISPOSE OF PROPERTY
26 WHICH PASSES ON YOUR DEATH TO ANY PERSON
27 BY OPERATION OF LAW OR BY ANY CONTRACT.
28 FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF
29 JOINT TENANCY ASSETS OR YOUR SPOUSE'S
30 SHARE OF COMMUNITY PROPERTY, AND IT WILL
31 NOT NORMALLY APPLY TO PROCEEDS OF LIFE
32 INSURANCE ON YOUR LIFE OR YOUR
33 RETIREMENT PLAN BENEFITS.

34 3. THIS WILL IS NOT DESIGNED TO REDUCE
35 DEATH TAXES OR ANY OTHER TAXES. YOU
36 SHOULD DISCUSS THE TAX RESULTS OF YOUR
37 DECISIONS WITH A COMPETENT TAX ADVISOR.

38 4. YOU CANNOT CHANGE, DELETE, OR ADD
39 WORDS TO THE FACE OF THIS CALIFORNIA
40 STATUTORY WILL. YOU MAY REVOKE THIS

1 CALIFORNIA STATUTORY WILL, AND YOU MAY
2 AMEND IT BY CODICIL.

3 5. IF THERE IS ANYTHING IN THIS WILL THAT
4 YOU DO NOT UNDERSTAND, YOU SHOULD ASK A
5 LAWYER TO EXPLAIN IT TO YOU.

6 6. THE FULL TEXT OF THIS CALIFORNIA
7 STATUTORY WILL, THE DEFINITIONS AND RULES
8 OF CONSTRUCTION, THE PROPERTY DISPOSITION
9 CLAUSES, AND THE MANDATORY CLAUSES
10 FOLLOW THE END OF THIS WILL AND ARE
11 CONTAINED IN THE PROBATE CODE OF
12 CALIFORNIA.

13 7. THE WITNESSES TO THIS WILL SHOULD NOT
14 BE PEOPLE WHO MAY RECEIVE PROPERTY
15 UNDER THIS WILL. YOU SHOULD CAREFULLY
16 READ AND FOLLOW THE WITNESSING
17 PROCEDURE DESCRIBED AT THE END OF THIS
18 WILL. ALL OF THE WITNESSES MUST WATCH YOU
19 SIGN THIS WILL.

20 8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE
21 DEPOSIT BOX OR OTHER SAFE PLACE.

22 9. THIS WILL TREATS MOST ADOPTED
23 CHILDREN AS IF THEY ARE NATURAL CHILDREN.

24 10. IF YOU MARRY OR DIVORCE AFTER YOU
25 SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A
26 NEW WILL.

27 11. IF YOU HAVE CHILDREN UNDER 21 YEARS
28 OF AGE, YOU MAY WISH TO USE THE CALIFORNIA
29 STATUTORY WILL WITH TRUST OR ANOTHER
30 TYPE OF WILL.

31
32 [A printed form for a California statutory will shall set
33 forth the above notice in 10-point bold face type.]

34 CALIFORNIA STATUTORY WILL OF
35
36
37

38 _____
(Insert Your Name)

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Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of My Property

2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.)</p>	<p>AMOUNT OF GIFT \$ _____</p>
	<p>AMOUNT WRITTEN OUT: _____ Dollars</p> <p>_____ Signature of Testator</p>

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not

1 used" in the remaining boxes. If I sign in more than one
2 box or if I fail to sign in any box, ~~my~~ *the* property will go
3 under Property Disposition Clause (c) and I realize that
4 means the property will be distributed as if I did not
5 make a will.

6
7 **PROPERTY DISPOSITION CLAUSES (Select one.)**

8
9 (a) TO MY SPOUSE IF
10 LIVING; IF NOT LIV-
11 ING, THEN TO MY
12 CHILDREN AND
13 THE DESCEND-
14 ANTS OF ANY
15 DECEASED CHILD.

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18 (b) TO MY CHILDREN
19 AND THE DE-
20 SCENDANTS OF
21 ANY DECEASED
22 CHILD. I LEAVE
23 NOTHING TO MY
24 SPOUSE, *IF LIVING.*

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26
27
28
29 (c) TO BE DISTRIBUT-
30 ED AS IF I DID NOT
31 HAVE A WILL.

32
33
34 **Article 3. Nominations of Executor and Guardian**

35 **3.1. EXECUTOR (Name at least one.)**

36 I nominate the person or institution named in the first
37 box of this paragraph 3.1 to serve as executor of this will.
38 If that person or institution does not serve, then ~~the~~
39 *others shall I nominate the others to serve in the order I*
40

1 list them in the other boxes.

2

3

4

5 FIRST EXECUTOR. _____

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11 SECOND EXECUTOR. _____

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17 THIRD EXECUTOR. _____

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38 FIRST GUARDIAN OF

39 THE PERSON. _____

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FIRST GUARDIAN OF
THE PROPERTY. _____

SECOND GUARDIAN OF
THE PERSON. _____

SECOND GUARDIAN OF
THE PROPERTY. _____

THIRD GUARDIAN OF
THE PERSON. _____

THIRD GUARDIAN OF
THE PROPERTY. _____

(S)

3.3. BOND

My signature in this box means that a bond is not required for any individual executor or guardian named in this will. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code.

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[Empty rectangular box]

I sign my name to this California Statutory Will
on _____ at _____, _____
Date City State

Signature of Testator

STATEMENT OF WITNESSES (You must use two
adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the
laws of California that the testator signed this California
statutory will in our presence, all of us being present at
the same time, and we now, at the testator's request, in
the testator's presence, and in the presence of each other,
sign below as witnesses, declaring that the testator
appears to be of sound mind and under no duress, fraud,
or undue influence.

Signature _____ Residence Address: _____
Print Name
Here: _____

Signature _____ Residence Address: _____
Print Name
Here: _____

Signature _____ Residence Address: _____
Print Name
Here: _____

56.8. The following is the California Statutory Will
With Trust Form:

- 1 CALIFORNIA STATUTORY WILL WITH TRUST
2
3 NOTICE TO THE PERSON WHO SIGNS THIS WILL:
4 1. THIS FORM CONTAINS A TRUST FOR YOUR
5 DESCENDANTS. IF YOU DO NOT WANT TO
6 CREATE A TRUST, DO NOT USE THIS FORM.
7 2. IT MAY BE IN YOUR BEST INTEREST TO
8 CONSULT WITH A CALIFORNIA LAWYER
9 BECAUSE THIS STATUTORY WILL HAS SERIOUS
10 LEGAL EFFECTS ON YOUR FAMILY AND
11 PROPERTY.
12 3. THIS WILL DOES NOT DISPOSE OF PROPERTY
13 WHICH PASSES ON YOUR DEATH TO ANY PERSON
14 BY OPERATION OF LAW OR BY ANY CONTRACT.
15 FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF
16 JOINT TENANCY ASSETS OR YOUR SPOUSE'S
17 SHARE OF COMMUNITY PROPERTY, AND IT WILL
18 NOT NORMALLY APPLY TO PROCEEDS OF LIFE
19 INSURANCE ON YOUR LIFE OR YOUR
20 RETIREMENT PLAN BENEFITS.
21 4. THIS WILL IS NOT DESIGNED TO REDUCE
22 DEATH TAXES OR ANY OTHER TAXES. YOU
23 SHOULD DISCUSS THE TAX RESULTS OF YOUR
24 DECISIONS WITH A COMPETENT TAX ADVISOR.
25 5. YOU CANNOT, DELETE, CHANGE OR ADD
26 WORDS TO THE FACE OF THIS CALIFORNIA
27 STATUTORY WILL. YOU MAY REVOKE THIS
28 CALIFORNIA STATUTORY WILL AND YOU MAY
29 AMEND IT BY CODICIL.
30 6. IF THERE IS ANYTHING IN THIS WILL THAT
31 YOU DO NOT UNDERSTAND, YOU SHOULD ASK A
32 LAWYER TO EXPLAIN IT TO YOU.
33 7. THE FULL TEXT OF THIS CALIFORNIA
34 STATUTORY WILL, THE DEFINITIONS AND RULES
35 OF CONSTRUCTION, THE PROPERTY DISPOSITION
36 CLAUSES, AND THE MANDATORY CLAUSES
37 FOLLOW THE END OF THIS WILL AND ARE
38 CONTAINED IN THE PROBATE CODE OF
39 CALIFORNIA.
40 8. THE WITNESSES TO THIS WILL SHOULD NOT

1 BE PEOPLE WHO MAY RECEIVE PROPERTY
 2 UNDER THIS WILL. YOU SHOULD CAREFULLY
 3 READ AND FOLLOW THE WITNESSING
 4 PROCEDURE DESCRIBED AT THE END OF THIS
 5 WILL. ALL OF THE WITNESSES MUST WATCH YOU
 6 SIGN THIS WILL.

7 9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE
 8 DEPOSIT BOX OR OTHER SAFE PLACE.

9 10. THIS WILL TREATS MOST ADOPTED
 10 CHILDREN AS IF THEY ARE NATURAL CHILDREN.

11 11. IF YOU MARRY OR DIVORCE AFTER YOU
 12 SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A
 13 NEW WILL.

14

15 [A printed form for a California Statutory Will With
 16 Trust shall set forth the above notice in 10-point bold
 17 face type.]

18

19 CALIFORNIA STATUTORY WILL
 20 WITH TRUST OF

21

22

(Insert Your Name)

23

24

25 Article 1. Declaration

26

27 This is my will and I revoke any prior wills and codicils.

28

29

Article 2. Disposition of My Property

30

31 2.1. PERSONAL AND HOUSEHOLD ITEMS. I give
 32 all my furniture, furnishings, household items, personal
 33 automobiles, and personal items to my spouse, if living;
 34 otherwise they shall be divided equally among my
 35 children who survive me.

36 2.2. CASH GIFT TO A PERSON OR CHARITY. I
 37 make the following cash gift to the person or charity and
 38 in the amount stated in words and figures in the box
 39 which I have completed and signed. If I fail to sign in the
 40 box, no gift is made. If the person mentioned does not

1 survive me, or the charity designated does not accept the
2 gift, then no gift is made. No death tax shall be paid from
3 this gift.
4

<p>5 6 FULL NAME OF 7 PERSON OR CHARITY 8 TO RECEIVE CASH 9 GIFT (Name only one. 10 Please print.) 11</p>	<p>AMOUNT OF GIFT \$ _____ AMOUNT WRITTEN OUT: _____ Dollars</p>
<p>12 13 14 15 16 17 18</p>	<p>_____ Signature of Testator</p>

19
20 2.3. ALL OTHER ASSETS (MY "RESIDUARY
21 ESTATE"). I adopt only one Property Disposition Clause
22 in this paragraph 2.3 by writing my signature in the box
23 next to the title of the Property Disposition Clause I wish
24 to adopt. I sign in only one box. I write the words "not
25 used" in the remaining boxes. If I sign in more than one
26 box or if I fail to sign in any box, the property will be
27 distributed as if I did not make a will.

1
2 PROPERTY DISPOSITION CLAUSES (Select one.)
3

4 (a) TO MY SPOUSE IF
5 LIVING; IF NOT LIV-
6 ING, THEN IN ONE
7 TRUST TO PROVIDE
8 FOR THE SUPPORT
9 AND EDUCATION
10 OF MY CHILDREN
11 AND THE DE-
12 SCENDANTS OF
13 ANY DECEASED
14 CHILD UNTIL I
15 HAVE NO LIVING
16 CHILD UNDER 21
17 YEARS OF AGE. _____

[Empty rectangular box for signature or initials]

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20 (b) TO MY CHILDREN
21 AND THE DE-
22 SCENDANTS OF
23 ANY DECEASED
24 CHILD IN ONE
25 TRUST TO PRO-
26 VIDE FOR THEIR
27 SUPPORT AND ED-
28 UCATION UNTIL I
29 HAVE NO LIVING
30 CHILD UNDER 21
31 YEARS OF AGE. I
32 LEAVE NOTHING
33 TO MY SPOUSE, *IF*
34 *LIVING.* _____

[Empty rectangular box for signature or initials]

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36
37 Article 3. Nominations of Executor, Trustee, and
38 Guardian

39
40 3.1. EXECUTOR (Name at least one.)

1 I nominate the person or institution named in the first
 2 box of this paragraph 3.1 to serve as executor of this will.
 3 If that person or institution does not serve, then the
 4 others shall serve in the order I list them in the other
 5 boxes.

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 9 FIRST EXECUTOR. _____

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 15 SECOND EXECUTOR. _____

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 21 THIRD EXECUTOR. _____

22
 23 3.2. TRUSTEE (Name at least one.)

24 Because it is possible that after I die my property may
 25 be put into a trust, I nominate the person or institution
 26 named in the first box of this paragraph 3.2 to serve as
 27 trustee of that trust. If that person or institution does not
 28 serve, then the others shall serve in the order I list them
 29 in the other boxes.

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 33 FIRST TRUSTEE. _____

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 39 SECOND TRUSTEE. _____

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THIRD TRUSTEE. _____

3.3. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.3 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.3 to serve as guardian of the property of that child. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. _____

FIRST GUARDIAN OF THE PROPERTY. _____

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SECOND GUARDIAN OF
THE PERSON. _____

SECOND GUARDIAN OF
THE PROPERTY. _____

THIRD GUARDIAN OF
THE PERSON. _____

THIRD GUARDIAN OF
THE PROPERTY. _____

3.4. BOND

My signature in this box means that a bond is not required for any individual (a) executor, (b) trustee, or (c) guardian named in this will. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code.

1 I sign my name to this California Statutory Will)
 2 With Trust on _____ at _____,
 3 Date City State

4
 5 _____
 6 Signature of Testator
 7
 8

9 **STATEMENT OF WITNESSES** (You must use two
 10 adult witnesses, and three witnesses would be
 11 preferable.)
 12

13 Each of us declares under penalty of perjury under the
 14 laws of California that the testator signed this California
 15 statutory will with trust in our presence, all of us being
 16 present at the same time, and we now, at the testator's
 17 request, in the testator's presence, and in the presence of
 18 each other, sign below as witnesses, declaring that the
 19 testator appears to be of sound mind and under no duress,
 20 fraud, or undue influence.

21
 22 Signature _____ Residence Address: _____
 23 Print Name
 24 Here: _____

25
 26 Signature _____ Residence Address: _____
 27 Print Name
 28 Here: _____

29
 30 Signature _____ Residence Address: _____
 31 Print Name
 32 Here: _____

33
 34 56.9. The following is the full text of paragraph 2.1 of)
 35 both California Statutory Will Forms appearing in this)
 36 chapter : :

37 If my spouse survives me, I give my spouse all my)
 38 books, jewelry, clothing, personal automobiles, household)
 39 furnishings and effects, and other tangible articles of a)
 40 household or personal use. If my spouse does not survive)
 41 me, the executor shall distribute those items among my

1 children who survive me, and shall distribute those items
2 in as nearly equal shares as feasible in the executor's
3 discretion. If none of my children survive me, the items
4 described in this paragraph shall become part of the
5 residuary estate.

6 56.10. The following are the full texts of the property
7 disposition clauses referred to in paragraph 2.3 of the
8 California Statutory Will Form set forth in Section 56.7 :

9 (a) TO MY SPOUSE IF LIVING; IF NOT LIVING,
10 THEN TO MY CHILDREN AND THE DESCENDANTS
11 OF ANY DECEASED CHILD.

12 If my spouse survives me, then I give all my residuary
13 estate to my spouse. If my spouse does not survive me,
14 then I give all my residuary estate to my descendants who
15 survive me.

16 (b) TO MY CHILDREN AND THE DESCENDANTS
17 OF ANY DECEASED CHILD. I LEAVE NOTHING TO
18 MY SPOUSE, IF LIVING.

19 I give all my residuary estate to my descendants who
20 survive me. I leave nothing to my spouse, even if my
21 spouse survives me.

22 (c) TO BE DISTRIBUTED AS IF I DID NOT HAVE
23 A WILL:

24 The executor shall distribute my residuary estate to my
25 heirs at law, their identities and respective shares to be
26 determined according to the laws of the State of
27 California in effect on the date of my death and relating
28 to the succession of separate property not acquired from
29 a parent, grandparent, or predeceased spouse.

30 56.11. The following are the full texts of the property
31 disposition clauses referred to in paragraph 2.3 of the
32 California Statutory Will With Trust Form set forth in
33 Section 56.8:

34 (a) TO MY SPOUSE IF LIVING; IF NOT LIVING,
35 THEN IN ONE TRUST TO PROVIDE FOR THE
36 SUPPORT AND EDUCATION OF MY CHILDREN
37 AND THE DESCENDANTS OF ANY DECEASED
38 CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21
39 YEARS OF AGE.

40 (1) If my spouse survives me, then I give all my

1 residuary estate to my spouse.

2 (2) If my spouse does not survive me and if any child
3 of mine under 21 years of age survives me, then I give all
4 my residuary estate to the trustee, in trust, on the
5 following terms:

6 (A) As long as any child of mine under 21 years of age
7 is living, the trustee shall distribute from time to time to
8 or for the benefit of any one or more of my children and
9 the descendants of any deceased child (the beneficiaries)
10 of any age as much, or all, of the (i) principal or (ii) net
11 income of the trust, or (iii) both, as the trustee deems
12 necessary for their health, support, maintenance, and
13 education of my descendants. Any undistributed income
14 shall be accumulated and added to the principal.
15 "Education" includes, but is not limited to, college,
16 graduate, postgraduate, and vocational studies, and
17 reasonably related living expenses. Consistent with the
18 trustee's fiduciary duties, the trustee may distribute trust
19 income or principal in equal or unequal shares and to any
20 one or more of the beneficiaries to the exclusion of other
21 beneficiaries. In deciding on distributions, the trustee
22 may take into account, so far as known to the trustee, the
23 beneficiaries' other income, outside resources, or sources
24 of support, including the capacity for gainful
25 employment of a beneficiary who has completed his or
26 her education.

27 (B) The trust shall terminate when there is no living
28 child of mine under 21 years of age. The trustee shall
29 distribute any remaining principal and accumulated net
30 income of the trust to my descendants who are then
31 living.

32 (3) If my spouse does not survive me and if no child of
33 mine under 21 years of age survives me, then I give all my
34 residuary estate to my descendants who survive me.

35 (b) TO MY CHILDREN AND THE DESCENDANTS
36 OF ANY DECEASED CHILD IN ONE TRUST TO
37 PROVIDE FOR THEIR SUPPORT AND EDUCATION
38 UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS
39 OF AGE. I LEAVE NOTHING TO MY SPOUSE, *IF*
40 *LIVING.*

1 (1) I give all my residuary estate to the trustee, in
2 trust, on the following terms:

3 (A) As long as any child of mine under 21 years of age
4 is living, the trustee shall distribute from time to time to
5 or for the benefit of any one or more of my children and
6 the descendants of any deceased child (the beneficiaries)
7 of any age as much or all, of the (i) principal, or (ii) net
8 income of the trust, or (iii) both as the trustee deems
9 necessary for their health, support, maintenance, and
10 education. Any undistributed income shall be
11 accumulated and added to the principal. "Education"
12 includes, but is not limited to, college, graduate,
13 postgraduate, and vocational studies, and reasonably
14 related living expenses. Consistent with the trustee's
15 fiduciary duties, the trustee may distribute trust income
16 or principal in equal or unequal shares and to any one or
17 more of the beneficiaries to the exclusion of other
18 beneficiaries. In deciding on distributions, the trustee
19 may take into account, so far as known to the trustee, the
20 beneficiaries' other income, outside resources, or sources
21 of support, including the capacity for gainful
22 employment of a beneficiary who has completed his or
23 her education.

24 (B) The trust shall terminate when there is no living
25 child of mine under 21 years of age. The trustee shall
26 distribute any remaining principal and accumulated net
27 income of the trust to my descendants who are then
28 living.

29 (2) If no child of mine under 21 years of age survives
30 me, then I give all my residuary estate to my descendants
31 who survive me.

32 (3) I leave nothing to my spouse, *even if my spouse*
33 *survives me.*

34 56.12. The mandatory clauses of all California
35 statutory wills are as follows:

36 (a) **INTESTATE DISPOSITION.** If the testator has
37 not made an effective disposition of the residuary estate,
38 the executor shall distribute it to the testator's heirs at
39 law, their identities and respective shares to be
40 determined according to the laws of the State of

1 California in effect on the date of the testator's death and
2 relating to the succession of separate property not
3 acquired from a parent, grandparent, or predeceased
4 spouse.

5 (b) POWERS OF EXECUTOR.

6 (1) In addition to any powers now or hereafter
7 conferred upon executors by law, including all powers
8 granted under the Independent Administration of
9 Estates Act, the executor shall have the power to: (A) sell
10 estate assets at public or private sale, for cash or on credit
11 terms, (B) lease estate assets without restriction as to
12 duration, and (C) invest any surplus moneys of the estate
13 in real or personal property, as the executor deems
14 advisable.

15 (2) The executor may distribute estate assets
16 otherwise distributable to a minor beneficiary to (A) the
17 guardian of the minor's person or estate, (B) any adult
18 person with whom the minor resides and who has the
19 care, custody or control of the minor, or (C) a custodian,
20 serving on behalf of the minor under the Uniform Gifts
21 to Minors Act of any state.

22 The executor is free of liability and is discharged from
23 any further accountability for distributing assets in
24 compliance with the provisions of this paragraph.

25 (3) On any distribution of assets from the estate, the
26 executor shall have the discretion to partition, allot, and
27 distribute the assets (1) in kind, including undivided
28 interests in an asset or in any part of it, or (2) partly in
29 cash and partly in kind, or (3) entirely in cash. If a
30 distribution is being made to more than one beneficiary,
31 the executor shall have the discretion to distribute assets
32 among them on a pro rata or non-pro rata basis, with the
33 assets valued as of the date of distribution.

34 (c) POWERS OF GUARDIAN. A guardian of the
35 person nominated in the California statutory will shall
36 have the same authority with respect to the person of the
37 ward as a parent having legal custody of a child would
38 have. A guardian of the estate nominated in a California
39 statutory will shall have all of the powers conferred by
40 law. All powers granted to guardians in this paragraph

1 may be exercised without court authorization.

2 56.13. In addition to the mandatory clauses contained
3 in Section 56.12, the California Statutory Will With Trust
4 Form shall also incorporate the following mandatory
5 clauses:

6 (a) **INEFFECTIVE DISPOSITION.** If, at the
7 termination of any trust created in the California
8 statutory will with trust, there is no effective disposition
9 of the remaining trust assets, then the trustee shall
10 distribute those assets to the testator's then living heirs at
11 law, their identities and respective shares to be
12 determined as though the testator had died on the date
13 of the trust's termination and according to the laws of the
14 State of California then in effect and relating to the
15 succession of separate property not acquired from a
16 parent, grandparent, or predeceased spouse.

17 (b) **POWERS OF TRUSTEE.** (1) In addition to any
18 powers now or hereafter conferred upon trustees by law,
19 the trustee shall have all the powers listed in Section
20 1120.2. The trustee may exercise those powers without
21 court authorization.

22 (2) In addition to the powers granted in the foregoing
23 paragraph, the trustee may:

24 (A) Hire and pay from the trust the fees of investment
25 advisors, accountants, tax advisors, agents, attorneys, and
26 other assistants for the administration of the trust and for
27 the management of any trust asset and for any litigation
28 affecting the trust.

29 (B) On any distribution of assets from the trust, the
30 trustee shall have the discretion to partition, allot, and
31 distribute the assets (i) in kind, including undivided
32 interests in an asset or in any part of it, or (ii) partly in
33 cash and partly in kind, or (iii) entirely in cash. If a
34 distribution is being made to more than one beneficiary,
35 the trustee shall have the discretion to distribute assets
36 among them on a pro rata or nonpro rata basis, with the
37 assets valued as of the date of distribution.

38 (C) The trustee may, upon termination of the trust,
39 distribute assets to a custodian for a minor beneficiary
40 under the Uniform Gifts to Minors Act of any state.

1 The trustee is free of liability and is discharged from
2 any further accountability for distributing assets in
3 compliance with the provisions of this paragraph.

4 (c) TRUST ADMINISTRATIVE PROVISIONS. The
5 following provisions shall apply to any trust created by a
6 California Statutory Will With Trust:

7 ~~(1) A trustee or successor trustee when serving under~~
8 ~~this will, may sign and file in the court in which the~~
9 ~~California statutory will is probated, a document naming~~
10 ~~one or more persons, other than a current income~~
11 ~~beneficiary of the trust, in the order of preference and~~
12 ~~succession listed in that document, as successor trustees~~
13 ~~to fill any unprovided for vacancy.~~

14 ~~(2)~~

15 (1) The interests of trust beneficiaries shall not be
16 transferable by voluntary or involuntary assignment or
17 by operation of law and shall be free from the claims of
18 creditors and from attachment, execution, bankruptcy, or
19 other legal process to the fullest extent permissible by
20 law.

21 ~~(3)~~

22 (2) Any trustee serving hereunder shall be entitled to
23 reasonable compensation for ordinary and extraordinary
24 services, and for all services in connection with the
25 complete or partial termination of any trust created by
26 this will.

27 ~~(4)~~

28 (3) All persons who have any interest in a trust under
29 a California statutory will with trust are bound by all
30 discretionary determinations the trustee makes in good
31 faith under the authority granted in the California
32 statutory will with trust.

33 56.14. Except as specifically provided in other parts of
34 this chapter, a California statutory will shall include only
35 the texts of the property disposition clauses and the
36 mandatory clauses as they exist on the day the California
37 statutory will is executed.

38 SEC. 2. Except as specifically provided, nothing in
39 this bill is intended to change the substantive law of
40 California.