

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 15, 2021

1:35 p.m.

**MEMBERS PRESENT**

Senator Lora Reinbold, Chair  
Senator Mike Shower, Vice Chair  
Senator Shelley Hughes  
Senator Robert Myers  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

BRIEFING: LAWSUIT ON GOVERNOR APPOINTEES

- HEARD

SENATE BILL NO. 90

"An Act relating to wills and the probate of wills; relating to the making, witnessing, self-proving, revocation, and probate of wills by electronic means; relating to the choice of law for execution of wills; relating to the certification of copies of wills; relating to the establishment of the validity of a will before death; and providing for an effective date."

- HEARD & HELD

CONFIRMATION HEARING(S) :

Commission on Judicial Conduct  
Aldean Kilbourn - Fairbanks

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 90

SHORT TITLE: ELECTRONIC WILLS

SPONSOR(S): SENATOR(S) MYERS

02/22/21 (S) READ THE FIRST TIME - REFERRALS  
02/22/21 (S) JUD, L&C  
03/03/21 (S) JUD AT 1:30 PM BUTROVICH 205  
03/03/21 (S) Heard & Held  
03/03/21 (S) MINUTE (JUD)  
03/15/21 (S) JUD AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

MEGAN WALLACE, Director  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Provided a briefing on the lawsuit on governor appointees.

ABIGAIL O'CONNOR, Attorney  
O'Connor Law Office, LLC  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 90.

CHELSEA RIEKKOLA, Attorney  
Foley & Pearson  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 90.

NANCY MEADE, General Counsel  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 90.

**ACTION NARRATIVE**

[1:35:43 PM](#)

**CHAIR LORA REINBOLD** called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Kiehl, Myers, Hughes, Shower, and Chair Reinbold.

**BRIEFING: Lawsuit on Governor Appointees**

[1:37:12 PM](#)

CHAIR REINBOLD announced the consideration of a briefing on the Lawsuit on Governor Appointees.

1:37:42 PM

MEGAN WALLACE, Director, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, began a briefing on the ongoing and pending lawsuit between the Legislative Council and Governor Dunleavy regarding governor appointees that happened during the regular session last year.

MS. WALLACE provided background information. In March 2020, the legislature did not meet in joint session to confirm governor appointees due to public health concerns related to COVID-19. Instead, the legislature passed House Bill 309, which extended the legislature's timeframe to meet in joint session to confirm governor appointees to 30 days upon expiration of the governor's March 2020 disaster declaration. Since the governor's disaster declaration expired on November 15, 2020, that means that the governor appointees expired 30 days later under the bill. One provision in the bill stated that if the legislature did not confirm the appointments, it would be tantamount to declination. She reported that 30 days after the March 2020 disaster declaration expired, the governor issued a letter to the presiding officers stating he would extend the appointments of the pending appointees. Governor Dunleavy indicated that he considered their appointments valid, so appointees could continue to serve.

MS. WALLACE stated that based on that letter, Legislative Council voted to file a lawsuit asking the court to enforce the provisions of House Bill 309 and the existing statute, AS 39.05.080. The Legislative Council sought a preliminary injunction to stop the appointees from acting from December 15, 2020, through the beginning of the 32nd Legislative session, which convened on January 19, 2021. The Juneau Superior Court denied Legislative Council's request for a preliminary injunction. However, ruling was not on the merits of the case, so the matter proceeded through the Superior Court. Since the matter is related to substantive legal issues and no disputes of fact, the case went directly to summary judgment briefing. After extensive briefing, on February 18, Judge Pallenberg issued a summary judgment opinion, ruling that the governor appointments expired and were tantamount to declination on December 15, 2020. Further, the court ruled that the governor lacked the legal authority to extend those appointments under Article 3, Sections 25, 26, or 27 of the Alaska Constitution. Based on that summary judgment order, a final judgment was entered in favor of the

legislature on February 25, 2021. Shortly thereafter, Governor Dunleavy filed a notice of appeal in the Alaska Supreme Court.

MS. WALLACE stated that this matter is still under litigation, currently being briefed in the Alaska Supreme Court (ASC). She anticipated that ASC would issue a decision in early to mid-April. One key question or issue that arose is the impact of the lawsuit or decision on the legislature's ability to consider governor appointments this legislative session.

[1:43:15 PM](#)

MS. WALLACE stated there has never been a dispute that AS 39.05.080 (B)(3) indicates the person whose name is refused for appointment by the legislature may not be appointed to the same position or membership during the interim between regular legislative sessions. Nor has there been a dispute that the governor had the authority to reappoint appointees, who were considered rejected by law via House Bill 309, at the beginning of this legislative session. In fact, on January 19, 2021, Governor Dunleavy reappointed most of the individuals who were considered rejected. However, nothing about the lawsuit prevents the legislature from continuing its normal confirmation process in this legislative session. This means the legislature will operate under AS 39.05.080, which governs the procedure of appointments, she said.

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SENATOR HUGHES explained that Governor Dunleavy's appointments made from January 19, 2021, going forward were not affected. However, there is a "doughnut hole" situation to address for appointments made during the period from December 15, 2020, until January 19, 2021. She asked if the legislature could retroactively approve governor appointees. If so, it could save public dollars being spent on litigation, she said.

MS. WALLACE answered that she was unsure what options were available to the legislature to retroactively confirm the appointments made last session. Since the governor's office filed an appeal, unless the parties resolve the issues or the governor withdraws his appeal, Legislative Council will continue to litigate the issue.

[1:46:42 PM](#)

SENATOR HUGHES recalled a similar action in which Legislative Council ratified the RPL process to ensure the actions taken were constitutional. She wondered if it would be possible to ratify and retroactively approve the appointments. She asked

whether any board or commission took actions between December 15, 2020, and January 19, 2021, since that action would be considered invalid.

MS. WALLACE agreed that the legislature sometimes had taken action to ratify past events. However, she was unsure if it could do so for confirmations. She related her understanding that several boards met. However, the Superior Court did not render a decision on any specific actions board members might have taken during that period. If anyone were to challenge the actions of the affected appointees, it would be a separate and independent legal challenge, she said. She offered to research this and report back to the committee.

[1:49:13 PM](#)

SENATOR MYERS summarized his understanding of the briefing. He stated that the original statute confirming board and commission appointments indicated the legislature shall meet in joint session. The legislature passed House Bill 309, which gave an option to the legislature if it did not meet. However, the legislature did not meet in joint session due to COVID-19, it did not pass permission to operate remotely and it did not call itself into special session, he said. Governor Dunleavy could also have called the legislature into a special session, but he did not.

MS. WALLACE agreed with his assessment that the legislature did not reconvene after it adjourned last legislative session to take up confirmations or any other legislation.

SENATOR MYERS asked if a future legislature could decide to simply not hold a joint session, thereby disqualifying governor appointments to hamstring the governor.

MS. WALLACE responded that she did not want to speculate on that. She reported that AS 39.05.080 has been in effect since 1964. This statute states that the legislature's failure to act, confirm or decline results in an appointment being tantamount to declination. She highlighted that this had been a longstanding procedural statute. As far as she knew, the legislature has never exercised that statute as a means to decline a large number of appointees. Last year, the legislature did not meet in joint session to confirm the appointees due to COVID-19 public health concerns.

[1:52:10 PM](#)

SENATOR MYERS surmised that this could be an instance where a party might be right legally but not morally. He said he is uncomfortable with that possibility. He offered his view that the statutes might give the legislature power it should not have and allow it to avoid its duty.

[1:53:02 PM](#)

SENATOR SHOWER pointed out that the legislature attempted to pass a remote operation bill, but it was thwarted. He said he hoped the legislature would pass a bill to allow it to operate remotely so the legislature can do its duty. He echoed earlier comments that the governor could have called the legislature into special session did not do so. However, he was never polled by Senate leadership on whether he favored holding a special session. He offered his view that the responsibility rests with both parties.

[1:54:39 PM](#)

SENATOR HUGHES agreed. She stated that the governor could have left the positions vacant. As the legislature works on disaster legislation, it should put in provisions to trigger remote operations and suspend the Uniform Rules. She further asked if boards and commissions were prevented from meeting their statutory obligations by the governor's actions.

MS. WALLACE responded that this was difficult for her to answer since she is unaware of what matters were before the boards and commissions. She acknowledged that the governor could have advised the board not to meet or the governor could have asked the appointees in question not to participate in those meetings. He could then have reappointed board members who were affected.

[1:56:33 PM](#)

SENATOR HUGHES expressed concern about the time and money spent by the legislature, executive branch and the judiciary on the lawsuit. She asked for an estimate of costs for all three branches of government on this litigation. She asked if Legislative Legal Services itemizes its time in the same manner that private sector attorneys track time spent on cases.

MS. WALLACE responded that Legislative Legal attorneys track litigation time to a certain extent. However, she said she is not aware of any extra costs this litigation caused for the legislative branch since it is being handled in house within the agency's regular budget.

[1:58:10 PM](#)

CHAIR REINBOLD asked if the legislature should add a remote operation option in the disaster declaration bill.

MS. WALLACE responded that it would be difficult to take a position as to whether the legislature should adopt permanent remote voting or other remote legislative proceeding protocols. She said this is a policy call for the legislature. With respect to the ongoing pandemic, the legislature should consider the possibility a sudden widespread outbreak could occur. If so, the legislature might not be able to meet or establish a quorum. Thus, the legislature may wish to adopt provisions for holding remote sessions to avoid a long recess or an inability to meet. Once COVID-19 ends, there may be future events the legislature should consider planning for, such as earthquakes, other major disasters, or health-related disasters. She said these are policy decisions for the legislature to consider.

[2:02:53 PM](#)

CHAIR REINBOLD remarked she was unsure when the pandemic will end given that different strains of the virus were cropping up. She asked for an explanation about the emergency Legislative Council meeting action to delegate authority to its Chair.

MS. WALLACE responded that Legislative Council recently held a meeting and delegated authority to the Chair to make decisions on ongoing and pending legal matters. Typically, matters come up and filings need to be made, she said. The decision to delegate authority was not made to initiate an appeal but rather to delegate the authority to the Legislative Council Chair to work with the Legislative Affairs attorney on these ongoing matters.

CHAIR REINBOLD asked if that was a normal process Legislative Legal uses to work with Legislative Council. She was unsure why the emergency Legislative Council meeting was called.

MS. WALLACE replied that the recent Legislative Council meeting was called due to urgent deadlines set for the appeal of governor's lawsuit. She said it is not unusual to delegate the authority to work on litigation with her office. She explained that Legislative Council previously decided to initiate litigation on forward funding of legislation and governor appointments. The legislature did not have the authority to [delegate these matters] since this is a new legislature and a new Legislative Council Chair, she said.

CHAIR REINBOLD asked how frequently this type of delegation of authority occurs.

2:07:16 PM

MS. WALLACE responded that she could not comment on the relationship between the Chair and Vice Chair of Legislative Council but in her experience the Chair has consistently been delegated the authority to make decisions on litigation.

CHAIR REINBOLD offered her view that this seemed unusual. Since she hasn't served on Legislative Council for several years, she would like a refresher on the powers the Chair has with respect to litigation.

MS. WALLACE asked if her question was with respect to Legislative Council's powers on litigation.

CHAIR REINBOLD expressed her interest in the last motion that was made at the emergency Legislative Council meeting.

MS. WALLACE suggested that perhaps it would be better to discuss this privately or during a Legislative Council meeting since these discussions could result in disclosing strategy.

2:09:47 PM

SENATOR KIEHL agreed it was never good when the executive branch and legislature ended up in court. He said the Superior Court ruling seemed to imply that the legislature not voting on appointees means yes. He asked for clarification on the ruling.

MS. WALLACE responded that she did not have the summary opinion before her and did not want to mischaracterize the ruling. However, Judge Pallenberg's decision upheld the language in House Bill 309 and AS 39.050.080(3) that said that the failure to vote was tantamount to declination as provided by law. The other option is if the failure to vote was not tantamount to declination, it could have resulted in what is sometime referred to as tacit confirmation, she said. If the legislature doesn't specifically and affirmatively vote to confirm someone, that the appointments just tacitly become confirmed through inaction. There was a pre-statehood court decision in the Munson matter that ruled that tacit confirmation is not something that the legislature had provided for. Therefore, it wasn't a viable solution when the legislature had not acted, she said.

SENATOR KIEHL said he would follow up with her later.

2:13:52 PM

CHAIR REINBOLD remarked that she likes checks and balances on the branches of government. She said she appreciated the briefing.

[2:14:50 PM](#)

At ease

### **SB 90-ELECTRONIC WILLS**

[2:16:01 PM](#)

CHAIR REINBOLD reconvened the meeting and announced the consideration of SENATE BILL NO. 90 "An Act relating to wills and the probate of wills; relating to the making, witnessing, self-proving, revocation, and probate of wills by electronic means; relating to the choice of law for execution of wills; relating to the certification of copies of wills; relating to the establishment of the validity of a will before death; and providing for an effective date." [The bill was last heard on March 3, 2021.]

[2:16:13 PM](#)

SENATOR MYERS recapped the reason for introducing SB 90. He said it became apparent during the pandemic that people were afraid of public contact. Although people could write their wills online, notarizing or witnessing them must be done in person. SB 90 would allow people to notarize and witness their wills online via Zoom or some other platform. This process would require verification of the person's identity to execute their will remotely.

[2:17:24 PM](#)

SENATOR HUGHES asked if he had considered any recommendations by the Uniform Law Commission (ULC). She surmised that all states must wrestle with these issues. She acknowledged that ULC's recommendations might need to be customized to address Alaska's needs.

SENATOR MYERS answered that this bill was based on ULC model legislation for wills. He acknowledged a dozen or so states have passed similar legislation and another 25 states are working to adopt changes.

[2:18:25 PM](#)

SENATOR HUGHES advised members and the public that ULC is comprised of attorneys from each state that specialize in specific areas of law. She offered her view that ULC is always a good resource.

[2:19:27 PM](#)

SENATOR MYERS moved to adopt Amendment 1, [work order 32-LS0501\B.1], which read:

32-LS0501\B.1  
Bannister  
3/5/21

**AMENDMENT 1**

OFFERED IN THE SENATE

BY SENATOR MYERS

Page 3, lines 4 - 5:

Delete "**or readable as text**"

Insert "**, which may be in electronic form**"

Page 7, lines 5 - 6:

Delete "**or in a record that is readable as text**"

Insert "**, which may be in electronic form**"

CHAIR REINBOLD objected for discussion purposes.

[2:19:33 PM](#)

SENATOR MYERS explained that Amendment 1 would correct a drafting issue and address an issue Senator Kiehl raised at the last bill hearing. Amendment 1 relates to the bill section that addresses holographic wills. In Alaska, technology is often not available so many people handwrite their wills. The courts currently recognize those wills. Amendment 1 would allow people to use electronically witnessed wills. There was concern about accepting wills that were computer typewritten documents because it was impossible to verify who typed it. However, handwritten wills could be written, then photographed via the person's smartphone to help preserve the record of the will. This is especially important since papers can get lost or easily be degraded. Amendment 1 would clarify this by removing language that the will was electronic "or readable as text" and replace it with "which may be in electronic form." He said this would allow a handwritten will to be in electronic form.

[2:21:14 PM](#)

CHAIR REINBOLD noted that the Legislative Legal Services (Legislative Legal) attorney was not online. She suggested that the legal drafter might need to participate later.

[2:21:31 PM](#)

SENATOR HUGHES said she shared the concern about handwritten wills. She wanted to make sure an image or photograph of a holographic will would be acceptable. She expressed concern that the language, "which may be in electronic form." might still allow a will to be an electronic word document or PDF. She asked why the language does not refer to an image in electronic form.

[2:22:54 PM](#)

SENATOR MYERS said the language in [AS 13.12.502(b)] of SB 90, immediately preceding the language in Amendment 1, requires that the signature and material portions of the record must be "in the testators handwriting" or "readable as text." The intent is to preserve the person's handwritten will in electronic form so that concern has been addressed.

SENATOR HUGHES stated she did not realize that "or" had been removed.

[2:23:49 PM](#)

SENATOR KIEHL expressed concern that if handwriting could be in electronic form, it could allow someone to use a cursive font. The technology to do so is currently available. Replicating handwriting may be enhanced by future algorithms such that a person could write a letter in their great-grandfather's script. He asked if anything would prevent someone from typing in a font replicating a person's handwriting.

SENATOR MYERS acknowledged that it does not but if so, it could be challenged. He said a font would reproduce things exactly but a person's handwriting is never exact. He offered his view that a handwriting expert could challenge it. After briefly consulting with staff, Josiah Nash, he deferred to Abigail O'Connor to respond.

[2:27:02 PM](#)

ABIGAIL O'CONNOR, Attorney, O'Connor Law Office, LLC, Anchorage, Alaska, said she helped draft the language for SB 90. She provided some background information on the holographic wills and what was envisioned with SB 90. Currently, a person could write out their will and sign it, which would be legal. This bill would allow someone to write their will on a tablet computer using a stylus. She acknowledged that Senator Kiehl's concern that someone might use a cursive font is valid. It certainly could happen as technology improves, she said. However, Senator Myers is also correct that the authenticity of the will may arise, but that issue could be challenged in

probate. Without any witnesses being present, it is difficult to know with any certainty who wrote and signed a holographic will. For example, a person may have written and signed their will at gunpoint. Although this change would allow one more aspect that could be challenged, it is already an issue that can be challenged. However, Alaska statutes allow for it, she said.

[2:29:25 PM](#)

SENATOR KIEHL agreed that holographic wills are challenging and risky. He offered his view that the core of bill is good. However, it may need "future-proofing." He said he is not comfortable with this amendment.

[2:29:54 PM](#)

SENATOR REINBOLD said she was unsure whether she supported Amendment 1.

[2:30:18 PM](#)

MS. O'CONNOR, after conferring with her colleague, suggested it might be possible to develop a definition for handwriting or other language that would still allow holographic wills to be updated.

[2:31:21 PM](#)

SENATOR HUGHES suggested adding a sunset provision to the bill, which would allow the legislature to revisit the matter.

SENATOR MYERS stated his preference would be to adopt Amendment 1, then develop another amendment to be taken up later to further address holographic wills in readable text.

SENATOR KIEHL said he would likely oppose Amendment 1. However, he would like to continue to work on the issue.

SENATOR SHOWER expressed concern about artificial intelligence since mimicking someone's writing can already be done. He suggested tabling Amendment 1 or revising it.

[2:33:32 PM](#)

SENATOR HUGHES argued that if artificial intelligence can mimic a holographic will, it could also be used to create a copy of an original paper will. She suggested the goal of Amendment 1 is to minimize the chance of forging a will written in an MS Word document or PDF. Currently, a person can handwrite their will or a bad actor can produce one with a computer. Amendment 1 allows for an image of that document. The probate process will

determine its authenticity, she said. She offered her support for Amendment 1.

[2:34:23 PM](#)

CHELSEA RIEKKOLA, Attorney, Foley & Pearson, Anchorage, Alaska, pointed out she has worked on legislation to update wills based on the Uniform Law Commission model legislation. A court in another state has already addressed this issue. However, she does not have a specific cite before her. She related the case pertained to a will written and signed using a stylus on a Samsung Galaxy phone. The court determined that this will was valid. She recognized that while future-proofing is preferred, she was unsure that every facet could be anticipated. This bill is being brought forth to increase the accessibility to estate planning in Alaska. This is especially important for people in remote areas who may not have access to a lawyer, witnesses, or a notary.

[2:36:28 PM](#)

SENATOR REINBOLD asked if this language is essential or if Amendment 1 could be tabled. She suggested that further work is needed on Amendment 1.

[2:36:57 PM](#)

MS. RIEKKOLA expressed her interest in passing the bill with language that recognizes a holographic will. She deferred to Ms. O'Connor.

[2:37:29 PM](#)

MS. O'CONNOR said the language in Amendment 1 was their best attempt at language to recognize a will in electronic form. She suggested that the language in [AS 13.12.502(b)(1)] is broad enough to capture this goal. She offered to consider language further or develop a definition. However, sometimes an effort to try to solve one problem creates another. She appreciated the concerns raised, yet these issues already exist with holographic wills. In her experience, holographic wills are not that common. Thus, she did not view this as a huge problem. Most of the time, people have their wills witnessed, she said. Amendment 1 would allow for an image of a handwritten will to suffice. She was not certain if that meant that someone could write their will with a stylus. She was unsure what constitutes an image and if this language captures the intent. However, she stated her support for Amendment 1, as written.

[2:40:04 PM](#)

SENATOR SHOWER pointed out that Federal Express [FedEx] and the US Postal Service (USPS) tracks and authenticate its packages. He asked whether multi-authentication could solve this problem.

SENATOR KIEHL suggested that those with access to multi-authentication tracking will likely have access to lawyers or witnesses. Holographic wills allow someone alone in a trapper's cabin who wants to write their will to do so. He acknowledged that this tool serves a valuable purpose. At the same time, holographic wills pose risks, he said. He maintained his view that holographic wills should be limited to actual handwriting to limit the risk of fraud.

SENATOR HUGHES remarked that while the committee has concerns about artificial intelligence, more and more schools are not even teaching handwriting so it is likely that the future trend will phase out written wills and phase in typewritten wills.

[2:42:20 PM](#)

SENATOR MYERS argued that not passing Amendment 1 will leave the bill in worse shape. He expressed appreciation for the concerns and issues raised, but those issues could be considered as the bill moves forward.

[2:43:19 PM](#)

CHAIR REINBOLD removed her objection to adopting Amendment 1.

[2:43:24 PM](#)

SENATOR KIEHL objected to adopting Amendment 1.

[2:43:27 PM](#)

A roll call vote was taken. Senators Shower, Hughes, Myers and Reinbold voted in favor of Amendment 1 and Senator Kiehl voted against it. Therefore, Amendment 1 passed by a 4:1 vote.

CHAIR REINBOLD stated that Amendment 1 was adopted.

[2:44:17 PM](#)

SENATOR MYERS moved to adopt Amendment 2, [work order 32-LS0501\B.2], which read:

32-LS0501\B.2  
Bannister  
3/5/21

## **AMENDMENT 2**

OFFERED IN THE SENATE

BY SENATOR MYERS

Page 6, lines 25 - 26:

Delete "the copy may be an electronic record;"

Insert "the copy of the will may be a paper copy of an electronic will certified under AS 13.12.518;"

CHAIR REINBOLD objected for discussion purposes.

SENATOR MYERS said Amendment 2 was drafted based on ULC model legislation. He explained that this would allow someone to elect to electronically file a copy of their will with the court. He related his understanding that the court system is not set up to accept electronic filings at this time. However, parties could file a paper copy of their wills with the court. Amendment 2 would allow people to write their wills electronically, then file a paper copy of the will with the court.

[2:45:40 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, Anchorage, Alaska, deferred to the probate experts on the merits of Amendment 1. With respect to Amendment 2, as the sponsor mentioned, the court system cannot currently accept or store electronic wills. However, people can certify a copy of their wills. The court system could store that filing, she said.

[2:46:32 PM](#)

CHAIR REINBOLD removed her objection.

There being no further objection, Amendment 2 was adopted.

[2:46:44 PM](#)

SENATOR KIEHL withdrew Amendment 3, [work order 32-LS0501\B.5].

[2:47:23 PM](#)

SENATOR KIEHL made a motion to adopt Amendment 4, [work order 32-LS\0501\B.6], which read:

32-LS0501\B.6  
Bannister  
3/5/21

**AMENDMENT 4**

OFFERED IN THE SENATE

BY SENATOR KIEHL

Page 6, line 5, following "direction;":

Insert "if the revocatory act is performed on an electronic will, the evidence to show the testator's intent and purpose must be clear and convincing;"

CHAIR REINBOLD objected for discussion purposes.

SENATOR KIEHL explained that Amendment 4 relates to revoking wills. The classic action of revoking a will would be to tear it up or burn it. However, multiple copies likely exist when the will is in electronic form. The question arises as to what it means if some copies are deleted but others still exist. Further, questions arise as to how to determine the person's intent. Amendment 4 would place a higher standard on revoking wills by requiring a clear and convincing standard rather than a preponderance of the evidence. For example, someone could use an online service that requires them to click three times to verify their desire to revoke the will.

[2:49:28 PM](#)

SENATOR MYERS offered his support for Amendment 4.

SENATOR HUGHES asked if Ms. O'Connor could indicate if the clear and convincing standard would cause any problems.

MS. O'CONNOR said she was not able to view the amendments online. While she has not reviewed Amendment 4, she understood the language would add a clear and convincing standard. She asked whether this was strictly limited to when someone deletes their will.

SENATOR KIEHL answered that Amendment 4 relates to revocatory acts [in Section 8] on page 6. If the revocatory act is performed on an electronic will, the evidence to show the testator's intent must be clear and convincing.

[2:51:24 PM](#)

At ease

[2:52:38 PM](#)

CHAIR REINBOLD reconvened the meeting. She read Amendment 4:

Page 6, line 5, following "direction;":

Insert "if the revocatory act is performed on an electronic will, the evidence to show the testator's intent and purpose must be clear and convincing;"

[2:53:18 PM](#)

MS. O'CONNOR informed members that she just received Amendment 4 by email. After conferring via text messaging with Ms. Riekkola, she said their immediate reaction was that this may already apply in practice. She suggested that the express requirement in the statute for deleting a will should apply to all of the revocatory acts for paper and electronic wills. The industry would like to avoid creating different standards for paper wills and electronic wills. She said she does not object to requiring clear and convincing language be applied for burning, tearing, canceling, obliterating, destroying, or deleting wills so long as it applies to all wills.

[2:55:31 PM](#)

SENATOR MYERS said that is a good point. He said he might consider offering a conceptual amendment.

[2:55:55 PM](#)

SENATOR KIEHL said that revocatory acts are somewhat problematic. The best thing a person could do to revoke their will is to do so in writing and then replace it with a new will. Since revocatory acts are allowable, they could leave the person without a will. He did not recall any ULC proceedings related to this, but Ms. O'Connor's suggestion makes a lot of sense to him.

[2:56:51 PM](#)

SENATOR MYERS moved to adopt a Conceptual Amendment to Amendment 4 to remove "on an electronic will" to ensure that it would apply to all wills.

SENATOR KIEHL agreed with the Conceptual Amendment to Amendment 4 but suggested it should apply to "revocatory acts on all wills."

SENATOR HUGHES objected for discussion purposes.

SENATOR MYERS revised the Conceptual Amendment 1 to Amendment 4 to read, "If the revocatory act is performed, the evidence to show the testator's intent and purpose must be clear and convincing."

[2:57:43 PM](#)

MS. O'CONNOR suggested on page 6, line 3, after the word intent, to add "prove by clear and convincing evidence." She said it is the intent that needs to be proved.

[2:58:26 PM](#)

SENATOR MYERS withdrew Conceptual Amendment 1 to Amendment 4.

[2:58:44 PM](#)

SENATOR KIEHL withdrew Amendment 4.

[2:59:19 PM](#)

SENATOR KIEHL moved to adopt Conceptual Amendment 5, that in Section 8, the intent for revocatory acts must be shown by a clear and convincing standard. He deferred to Legislative Legal Services to make the necessary changes.

CHAIR REINBOLD asked Ms. O'Connor whether it sounded reasonable.

[2:59:54 PM](#)

MS. O'CONNOR answered yes, it does.

CHAIR REINBOLD found no objection and Conceptual Amendment 5 was adopted.

[CHAIR REINBOLD held SB 90 in committee.]

[3:01:34 PM](#)

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 3:01 p.m.