



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0151

Introduced 1/14/2009, by Rep. Sidney H. Mathias

#### SYNOPSIS AS INTRODUCED:

15 ILCS 305/5.15 new

Amends the Secretary of State Act. Provides that an attorney (or an attorney's representative or guardian) who certifies that he or she has been unable to locate a testator after a diligent search may deposit the testator's will with the Secretary of State. Requires the Secretary of State to: index, store, and perform other duties with respect to deposited wills; deliver the will to the testator or a designee or to a person specified in a court order; deliver the will to a court upon being notified of the death of the testator; and respond to inquiries regarding the will under specified circumstances. Contains provisions regarding fees, destruction of wills, immunity, and other matters. Provides that the index of wills created by the Secretary of State is a public record. Provides that fees collected in connection with the deposit of wills must be deposited into the Secretary of State Special Services Fund.

LRB096 03114 RCE 13130 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Secretary of State Act is amended by adding  
5 Section 5.15 as follows:

6 (15 ILCS 305/5.15 new)

7 Sec. 5.15. Deposit of wills.

8 (a) Definitions. As used in this Section:

9 "Depositor" means an attorney licensed or formerly  
10 licensed to practice in the State of Illinois, the attorney's  
11 representative, the guardian for the attorney, or the personal  
12 representative of the attorney's decedent's estate.

13 "Testator" means a person who executed a will, other than  
14 as a witness or official to whom acknowledgment of signing was  
15 given.

16 "Will" refers to an original:

17 (1) will;

18 (2) codicil;

19 (3) will and one or more codicils;

20 (4) trust; or

21 (5) trust and one or more trust amendments.

22 (b) Deposit of wills. A depositor may deposit a will with  
23 the Secretary of State if the depositor certifies in writing to

1 the Secretary of State that the depositor is unable to locate  
2 the testator after a diligent search. This Section applies  
3 whether it is known or unknown whether the testator is living.

4 (c) Assumptions. The Secretary of State may assume, without  
5 inquiring into the facts, that the depositor has first made a  
6 diligent search for the testator.

7 (d) Fee. The Secretary of State shall collect a fee of \$25  
8 for each deposit of a will. The Secretary of State shall not  
9 collect a separate fee for additional documents concurrently  
10 deposited in relation to a single testator or for a single  
11 joint will prepared for a husband and wife.

12 (e) Duty of Secretary of State upon receipt. Upon receipt  
13 of a will under this Section, the Secretary of State shall:

14 (1) provide the depositor with a receipt for the will,  
15 which receipt shall contain the information designated on  
16 the envelope in accordance with paragraph (3) of this  
17 subsection;

18 (2) place the will or wills deposited concurrently in  
19 relation to a single testator in one envelope and seal the  
20 envelope securely in the presence of the depositor or  
21 depositor's agent;

22 (3) designate on the envelope:

23 (A) the date of deposit;

24 (B) the name, address, and telephone number of the  
25 depositor;

26 (C) the name and last known address of the

1 testator;

2 (D) at the depositor's option, any and all of the  
3 following information:

4 (i) alternate names by which the testator may  
5 have been known;

6 (ii) the testator's birth date, and

7 (iii) the last 4 digits of the testator's  
8 Social Security number; and

9 (E) with respect to each document enclosed:

10 (i) a short description of the document,  
11 including, if shown, its date of execution; and

12 (ii) the number of pages in the document; and

13 (4) index the will alphabetically by the name of the  
14 testator, and by the alternate names set forth by which the  
15 testator may have been known.

16 (f) Status as a public record. An envelope and will  
17 deposited under this Section are not public records. The index  
18 created under item (4) of subsection (e) is a public record.

19 (g) Duty of Secretary of State during testator's lifetime.

20 During the testator's lifetime, the Secretary of State shall:

21 (1) keep the envelope containing the will sealed; and

22 (2) deliver the envelope to:

23 (i) the testator;

24 (ii) a person authorized, in a writing signed by  
25 the testator and notarized, to receive the envelope; or

26 (iii) a person, entity, court, or government

1           agency authorized to receive the envelope pursuant to  
2           an order entered by a court of competent jurisdiction.

3           (h) Duty of Secretary of State upon notification of death  
4           of testator. If the Secretary of State has custody of the will  
5           after the death of the testator and is notified of the death of  
6           the testator by means of a certified copy of the testator's  
7           death certificate or by a certified copy of an order of court  
8           determining the testator to be deceased, upon receipt of  
9           payment of a retrieval fee in the amount of \$10, the Secretary  
10           of State shall deliver the sealed will envelope to the court  
11           that has jurisdiction of the administration of the decedent's  
12           estate within 30 days after receiving notification of the  
13           testator's death. If there is any doubt as to whom a will  
14           should be delivered, the Secretary of State, or any other  
15           person, may apply to the circuit court having jurisdiction over  
16           the testator's estate for directions as to whom the Secretary  
17           of State should deliver the will.

18           (i) Duties of Secretary of State upon inquiry. Upon inquiry  
19           by a person identified in paragraph (2) of subsection (g), or  
20           upon inquiry of any person presenting a certified copy of the  
21           testator's death certificate or a certified copy of an order of  
22           a court determining the testator to be deceased, the Secretary  
23           of State shall inform the person whether the name of the  
24           relevant testator appears in the Secretary of State's index of  
25           wills. For the purposes of this subsection, the Secretary of  
26           State need not be certain that the testator is the one being

1 inquired about, but may release that information if it is  
2 possible that the testator is that one.

3 (j) Destruction of will. The Secretary of State may destroy  
4 a will deposited under this Section if:

5 (1) the Secretary of State has not received notice of  
6 the death of the testator; and

7 (2) at least 100 years have passed since the date the  
8 will was deposited.

9 (k) All fees received by the Secretary of State under this  
10 Section must be deposited into the Secretary of State Special  
11 Services Fund.