

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. The certification shall
3 be on a form to be provided by the Secretary. This Section
4 applies whether it is known or unknown whether the testator is
5 living.

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

9 (d) Fee. The Secretary of State shall collect a fee of \$15
10 for each deposit of a will. The Secretary of State shall not
11 collect a separate fee for additional documents concurrently
12 deposited in relation to a single testator or for a single
13 joint will prepared for a husband and wife.

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

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

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

24 (3) designate on the envelope:

25 (A) the date of deposit;

26 (B) the name, address, and telephone number of the

1 depositor;

2 (C) the name and last known address of the testator
3 as provided by the depositor;

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

6 (i) alternate names by which the testator may
7 have been known;

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

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

11 (E) with respect to each document enclosed:

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

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

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

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

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

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

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

24 (2) deliver the envelope to:

25 (i) the testator;

26 (ii) a person authorized, in writing signed by the

1 testator and notarized, to receive the envelope; or
2 (iii) a person, entity, court, or government
3 agency authorized to receive the envelope pursuant to
4 an order entered by a court of competent jurisdiction.

5 (h) Duty of Secretary of State upon notification of death
6 of testator. If the Secretary of State has custody of the will
7 after the death of the testator and is notified of the death of
8 the testator by means of a certified copy of the testator's
9 death certificate or by a certified copy of an order of court
10 determining the testator to be deceased, upon receipt of
11 payment of a retrieval fee in the amount of \$10, the Secretary
12 of State shall promptly deliver the sealed will envelope to the
13 clerk of the circuit court of the county in which the probate
14 of the testator's will may occur as determined under Section
15 5-1 of the Probate Act of 1975 (755 ILCS 5/5-1).

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

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

3 (1) the Secretary of State has not received notice of
4 the death of the testator; and

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

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

10 Section 10. The Probate Act of 1975 is amended by changing
11 Section 6-1 as follows:

12 (755 ILCS 5/6-1) (from Ch. 110 1/2, par. 6-1)

13 Sec. 6-1. Duty to file will - altering, destroying or
14 secreting.)

15 (a) Immediately upon the death of the testator any person
16 who has the testator's will in his possession shall file it
17 with the clerk of the court of the proper county and upon
18 failure or refusal to do so, the court on its motion or on the
19 petition of any interested person may issue an attachment and
20 compel the production of the will, subject to the provisions of
21 Section 5.15 of the Secretary of State Act.

22 (b) If any person wilfully alters or destroys a will
23 without the direction of the testator or wilfully secretes it
24 for the period of 30 days after the death of the testator is

1 known to him, the person so offending, on conviction thereof,
2 shall be sentenced as in cases of theft of property classified
3 as a Class 3 felony by the law in effect at the date of the
4 offense. The 30-day period does not apply to the Secretary of
5 State when acting pursuant to Section 5.15 of the Secretary of
6 State Act.

7 (Source: P.A. 90-159, eff. 7-23-97.)