



Sen. Bill Cunningham

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10400SB3291sam001

LRB104 17378 JRC 35866 a

1 AMENDMENT TO SENATE BILL 3291

2 AMENDMENT NO. _____. Amend Senate Bill 3291 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Clerks of Courts Act is amended by adding
5 Section 16.2 as follows:

6 (705 ILCS 105/16.2 new)

7 Sec. 16.2. Will depository.

8 (a) The clerk of any circuit court may establish and
9 maintain a will depository for the voluntary safekeeping of
10 original wills before the death of the testator.

11 (b) As used in this Section:

12 "Certified death certificate" means a record of death
13 issued by a governmental vital records authority that is
14 certified as a true copy and does not include an
15 electronically transmitted certificate unless expressly
16 authorized by the clerk.

1 "Depository" or "will depository" means the secure, sealed
2 repository for original wills established and maintained under
3 this Section.

4 "Depositor" means the person delivering the will for
5 deposit and includes:

6 (1) the testator, who is a resident in the county
7 where the will is being deposited; or

8 (2) a person authorized by court order.

9 "Sealed envelope" means an envelope approved by the clerk
10 that conceals the contents of the will and bears the clerk's
11 identifying marks, date of deposit, and index number.

12 "Testator" means the person who executed the will being
13 deposited and whose death will trigger release of the will.

14 "Will" means a document deposited by a person intended to
15 be a testamentary instrument.

16 "Withdrawal" means the physical return of the deposited
17 will to the testator or to a person authorized to receive the
18 will under subsection (h).

19 (c) A depositor may deposit a will of a living person with
20 the clerk under this Section. The depositor must be a resident
21 of the county in which the will is being deposited. The clerk
22 may assume, without inquiring further, that the depositor of
23 the will is correct about the depositor's county of residence.

24 (d) The clerk may charge a fee up to \$25 for each will
25 deposited. The clerk shall not collect a separate fee for
26 additional documents concurrently deposited in relation to a

1 single testator or for a single joint will prepared for a
2 spouse or legally married person. These fees shall be included
3 in the fee schedule established under this Section and may be
4 revised as provided in this Section.

5 (e) Upon receipt of a will under this Section, the clerk
6 shall:

7 (1) provide the depositor with a receipt for the will,
8 and the receipt shall contain the information designated
9 on the envelope in accordance with paragraph (3) of this
10 subsection;

11 (2) place the will or wills deposited concurrently in
12 relation to a single testator in one envelope and seal the
13 envelope securely in the presence of the depositor;

14 (3) designate on the envelope:

15 (A) the date of deposit;

16 (B) the name, address, and telephone number of the
17 depositor;

18 (C) the full legal name and last known address of
19 the testator as provided by the depositor;

20 (D) the full legal names of the executor or
21 co-executors; and

22 (E) with respect to each document enclosed:

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

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

26 (4) index the will alphabetically by the name of the

1 testator and by the alternate names set forth by which the
2 testator may have been known.

3 (f) An envelope and will deposited under this Section are
4 not public records or court records, and are prohibited from
5 public access and inspection.

6 At the depositor's option, the depositor shall disclose 2
7 of the 3 listed pieces of information:

8 (1) alternate names by which the testator may have
9 been known;

10 (2) the testator's birth date, and

11 (3) the last 4 digits of the testator's social
12 security number.

13 (g) During the testator's lifetime, the clerk shall keep
14 the envelope containing the will sealed.

15 (h) During the testator's lifetime, the clerk may release
16 the deposited will only to:

17 (1) the testator in person upon proof of identity; or

18 (2) a court pursuant to an order.

19 No other person may inspect, copy, or obtain information
20 concerning the contents of the will.

21 (i) The clerk shall release the testator's sealed will
22 envelope to any of the executors named on the front of the
23 envelope if presented with a certified death certificate of
24 the testator or with a certified copy of an order of court
25 determining the testator to be deceased. To receive the sealed
26 will envelope the executor must provide proof of identity. If

1 12 months from the testator's date of death have elapsed, and
2 no named executor has removed the sealed will envelope from
3 the depository, the clerk shall release it to any heir,
4 creditor, or interested party who presents a court order
5 granting them the authority to receive it.

6 The testator may withdraw the deposited will at any time
7 upon written request and proof of identity. A will withdrawn
8 under this subsection is no longer subject to this Section.

9 (j) If 100 years have elapsed from the date of deposit, and
10 the clerk has not received either a certified death
11 certificate or a withdrawal request, the clerk may destroy the
12 sealed will without further notice.

13 (k) The clerk is not liable for loss or destruction of a
14 will deposited under this Section, except for willful
15 misconduct. If a will cannot be located within a reasonable
16 period of time, the clerk's office will provide certification
17 with the information contained in subparagraphs (A) through
18 (D) of paragraph (3) of subsection (e).

19 (l) The clerk may adopt forms, affidavits, withdrawal
20 procedures, and other rules necessary to administer this
21 Section.

22 (m) The depositing of a will with any clerk does not confer
23 validity upon the will or any greater or lesser legal weight,
24 validity, consideration, or priority than any other will of
25 the same testator or testators under the provisions of the
26 Probate Act of 1975."