

AN ACT concerning State government.

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

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

(15 ILCS 305/5.15 new)

Sec. 5.15. Deposit of wills.

(a) Definitions. As used in this Section:

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

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

"Will" refers to an original:

(1) will;

(2) codicil;

(3) will and one or more codicils;

(4) trust; or

(5) trust and one or more trust amendments.

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

the Secretary of State that the depositor is unable to locate the testator after a diligent search. The certification shall be on a form to be provided by the Secretary. This Section applies whether it is known or unknown whether the testator is living.

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

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

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

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

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

(3) designate on the envelope:

(A) the date of deposit;

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

depositor;

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

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

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

(ii) the testator's birth date, and

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

(E) with respect to each document enclosed:

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

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

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

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

(g) Duty of Secretary of State during testator's lifetime. During the testator's lifetime, the Secretary of State shall:

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

(2) deliver the envelope to:

(i) the testator;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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