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LRB096 03114 RCE 22152 a

1 AMENDMENT TO HOUSE BILL 151

2 AMENDMENT NO. _____. Amend House Bill 151 by replacing
3 everything after the enacting clause with the following:

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:

1 (1) will;

2 (2) codicil;

3 (3) will and one or more codicils;

4 (4) trust; or

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

6 (b) Deposit of wills. A depositor may deposit a will with
7 the Secretary of State if the depositor certifies in writing to
8 the Secretary of State that the depositor is unable to locate
9 the testator after a diligent search. The certification shall
10 be on a form to be provided by the Secretary. This Section
11 applies whether it is known or unknown whether the testator is
12 living.

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

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

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

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

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

5 (3) designate on the envelope:

6 (A) the date of deposit;

7 (B) the name, address, and telephone number of the
8 depositor;

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

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

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

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

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

18 (E) with respect to each document enclosed:

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

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

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

25 (f) Status as a public record. An envelope and will
26 deposited under this Section are not public records. The index

1 created under item (4) of subsection (e) is a public record.

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

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

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

5 (2) deliver the envelope to:

6 (i) the testator;

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

9 (iii) a person, entity, court, or government
10 agency authorized to receive the envelope pursuant to
11 an order entered by a court of competent jurisdiction.

12 (h) Duty of Secretary of State upon notification of death
13 of testator. If the Secretary of State has custody of the will
14 after the death of the testator and is notified of the death of
15 the testator by means of a certified copy of the testator's
16 death certificate or by a certified copy of an order of court
17 determining the testator to be deceased, upon receipt of
18 payment of a retrieval fee in the amount of \$10, the Secretary
19 of State shall promptly deliver the sealed will envelope to the
20 clerk of the circuit court of the county in which the probate
21 of the testator's will may occur as determined under Section
22 5-1 of the Probate Act of 1975 (755 ILCS 5/5-1).

23 (i) Duties of Secretary of State upon inquiry. Upon inquiry
24 by a person identified in paragraph (2) of subsection (g), or
25 upon inquiry of any person presenting a certified copy of the
26 testator's death certificate or a certified copy of an order of

1 a court determining the testator to be deceased, the Secretary
2 of State shall inform the person whether the name of the
3 relevant testator appears in the Secretary of State's index of
4 wills. For the purposes of this subsection, the Secretary of
5 State need not be certain that the testator is the one being
6 inquired about, but may release that information if it is
7 possible that the testator is that one.

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

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

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

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

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

19 (755 ILCS 5/6-1) (from Ch. 110 1/2, par. 6-1)

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

22 (a) Immediately upon the death of the testator any person
23 who has the testator's will in his possession shall file it
24 with the clerk of the court of the proper county and upon

1 failure or refusal to do so, the court on its motion or on the
2 petition of any interested person may issue an attachment and
3 compel the production of the will, subject to the provisions of
4 Section 5.15 of the Secretary of State Act.

5 (b) If any person wilfully alters or destroys a will
6 without the direction of the testator or wilfully secretes it
7 for the period of 30 days after the death of the testator is
8 known to him, the person so offending, on conviction thereof,
9 shall be sentenced as in cases of theft of property classified
10 as a Class 3 felony by the law in effect at the date of the
11 offense. The 30-day period does not apply to the Secretary of
12 State when acting pursuant to Section 5.15 of the Secretary of
13 State Act.

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