



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1050

Introduced 01/31/11, by Rep. Robert W. Pritchard

SYNOPSIS AS INTRODUCED:

15 ILCS 305/5.15

Amends the Secretary of State Act. Adds that a depositor, an attorney licensed or formerly licensed to practice in the State or his or her representative, may deposit a will with the Secretary of State by certified mail. Provides that a depositor is responsible for any postage or delivery costs associated with the deposit of a will by certified mail. Provides that a depositor must prepay any postage or delivery costs associated with the mailing of a receipt by the Secretary of State to verify the deposit of the will. Makes conforming changes.

LRB097 05410 RLJ 45468 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
5 changing Section 5.15 as follows:

6 (15 ILCS 305/5.15)

7 Sec. 5.15. Deposit of wills.

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

9 "Date of deposit" means the date that a will is deposited
10 in person or the date that a will mailed by certified mail is
11 received by the Secretary of State.

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

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

19 "Will" refers to an original:

20 (1) will;

21 (2) codicil;

22 (3) will and one or more codicils;

23 (4) trust; or

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

2 (b) Deposit of wills. A depositor may deposit a will with
3 the Secretary of State in person or by certified mail, return
4 receipt requested, if the depositor certifies in writing to the
5 Secretary of State that the depositor is unable to locate the
6 testator after a diligent search. The certification shall be on
7 a form to be provided by the Secretary. No later than 90 days
8 after the effective date of this amendatory Act of the 97th
9 General Assembly, the form must be made available on the
10 Secretary of State's official website. This Section applies
11 whether it is known or unknown whether the testator is living.

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

15 (d) Fee. The Secretary of State shall collect a fee of \$15
16 for each deposit of a will. The Secretary of State shall not
17 collect a separate fee for additional documents concurrently
18 deposited in relation to a single testator or for a single
19 joint will prepared for a husband and wife. If the deposit is
20 made by certified mail, then the \$15 fee must be mailed with
21 the will.

22 (d-5) Postage and delivery costs. A depositor is
23 responsible for any postage or delivery costs associated with
24 the deposit of a will by certified mail and the mailing of a
25 receipt verifying the deposit of a will under paragraph (1) of
26 subsection (e). A depositor must prepay any postage or delivery

1 costs associated with the receipt verifying the deposit of a
2 will.

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

5 (1) provide the depositor with a receipt for the will
6 at the time of deposit, if the deposit is made in person,
7 or within 10 business days after the will is received by
8 the Secretary of State if the deposit is made by certified
9 mail and the depositor has prepaid any postage or delivery
10 fees as required under subsection (d), which receipt shall
11 contain the information designated on the envelope in
12 accordance with paragraph (3) of this subsection;

13 (2) place the will or wills deposited concurrently in
14 relation to a single testator in one envelope and seal the
15 envelope securely and, if the will is deposited in person
16 by the depositor or the depositor's agent, the envelope
17 must be sealed in the presence of the depositor or
18 depositor's agent;

19 (3) designate on the envelope:

20 (A) the date of deposit;

21 (B) the name, address, and telephone number of the
22 depositor;

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

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

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

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

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

6 (E) with respect to each document enclosed:

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

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

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

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

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

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

19 (2) deliver the envelope to:

20 (i) the testator;

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

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

26 (h) Duty of Secretary of State upon notification of death

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

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

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

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

26 (2) at least 100 years have passed since the date the

1 will was deposited.

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

5 (Source: P.A. 96-137, eff. 1-1-10.)