

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 24-0744.01 Chelsea Princell x4335

HOUSE BILL 24-1077

HOUSE SPONSORSHIP

Soper and Joseph,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A COURT'S MAINTENANCE OF A LODGED WILL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, the court must maintain lodged wills for an indefinite period of time. The bill requires the clerk of the court to retain a lodged will for 3 years following the date the will is accepted for lodging if no probate proceeding is filed and 2 years following the date the estate is closed if a probate proceeding is filed with the court.

Additionally, the bill sets requirements for a clerk of the court to accept, preserve, return, and destroy an original will and requirements for retaining an electronic record of a lodged will.


Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 15-10-305.5 as
3 follows:

4 **15-10-305.5. Lodged wills.** (1) AS USED IN THIS SECTION, UNLESS
5 THE CONTEXT OTHERWISE REQUIRES:

6 (a) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
7 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,
8 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

9 
10 (b) "ELECTRONIC WILL" HAS THE MEANING SET FORTH IN SECTION
11 15-11-1302.

12 (c) "LODGED WILL" MEANS A WILL THAT IS DELIVERED TO THE
13 CLERK OF THE COURT FOR LODGING PURSUANT TO SECTION 15-11-516.

14 (d) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
15 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
16 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

17 (e) "WILL" MEANS:

18 (I) AN INSTRUMENT IDENTIFIED IN SECTION 15-10-201 (59);

19 (II) A COPY OF AN ELECTRONIC ESTATE PLANNING DOCUMENT
20 THAT IS A WILL **CERTIFIED** BY THE STATE COURT ADMINISTRATOR AS
21 REQUIRED BY SECTION 15-23-120 (2)(b);

22 (III) A PAPER COPY OF AN ELECTRONIC WILL THAT IS CERTIFIED BY
23 AN INDIVIDUAL PURSUANT TO SECTION 15-11-1309; **OR**

24 (IV) A SEPARATE WRITING OR MEMORANDUM THAT IS CREATED BY
25 THE TESTATOR OF A WILL PURSUANT TO SECTION 15-11-513.

26 (2) **Accepting a will for lodging.** THE CLERK OF A COURT SHALL

1 ACCEPT A WILL THAT IS DELIVERED FOR LODGING PURSUANT TO SECTION
2 15-11-516 AND KEEP A RECORD OF THE NAME, MAILING ADDRESS,
3 TELEPHONE NUMBER, AND E-MAIL ADDRESS OF THE PERSON WHO DELIVERS
4 THE WILL TO THE COURT.

5 (3) **Preservation of lodged will.** (a) THE CLERK OF THE COURT
6 SHALL PRESERVE A LODGED WILL IN THE CLERK'S RECORDS.

7
8 (b) UPON THE APPLICATION OR PETITION FOR ADMISSION TO
9 PROBATE OF A WILL IN THE COURT WHERE THE WILL IS LODGED, THE CLERK
10 OF THE COURT SHALL TRANSFER THE WILL TO THE PROBATE CASE WITHOUT
11 FURTHER REQUIREMENTS.

12 (4) **Retaining original wills.** THE CLERK OF THE COURT SHALL
13 RETAIN AN ORIGINAL LODGED WILL AS FOLLOWS:

14 (a) IF NO PROCEEDING IS FILED WITH THE COURT TO PROBATE THE
15 WILL, THE CLERK OF THE COURT SHALL RETAIN THE ORIGINAL WILL FOR
16 THREE YEARS FOLLOWING THE DATE THE WILL IS ACCEPTED FOR LODGING
17 PURSUANT TO SUBSECTION (2) OF THIS SECTION; AND

18 (b) IF A PROCEEDING IS FILED WITH THE COURT TO PROBATE THE
19 WILL, THE PROBATE COURT SHALL RETAIN THE ORIGINAL WILL FOR TWO
20 YEARS FOLLOWING THE DATE THAT THE ESTATE IS CLOSED.

21 (5) **Returning or destroying original will.** (a) UPON EXPIRATION
22 OF THE PERIOD OF TIME THAT THE CLERK OF THE COURT MUST RETAIN AN
23 ORIGINAL WILL PURSUANT TO SUBSECTION (4) OF THIS SECTION, IF THE
24 CLERK OF THE COURT DECIDES TO NO LONGER RETAIN THE ORIGINAL WILL,
25 THE CLERK OF THE COURT MUST MAKE AND RETAIN AN ELECTRONIC
26 RECORD OF THE ORIGINAL WILL IN ACCORDANCE WITH RULES ADOPTED BY
27 THE STATE COURT ADMINISTRATOR AND, PURSUANT TO SUBSECTION (6) OF

1 THIS SECTION, SEND NOTICE STATING THAT THE COURT WILL NO LONGER
2 RETAIN THE WILL AS FOLLOWS:

3 (I) IF A PROCEEDING IS NOT FILED WITH THE COURT TO PROBATE
4 THE WILL, THE CLERK OF THE COURT MUST SEND NOTICE TO THE PARTY
5 WHO DELIVERED THE WILL TO THE COURT STATING THAT THE PARTY MAY
6 PICK UP THE WILL IN PERSON WITHIN THIRTY DAYS AFTER THE DATE OF
7 NOTICE, AND THAT IF THE WILL IS NOT PICKED UP WITHIN THIRTY DAYS,
8 THE CLERK OF THE COURT SHALL DESTROY THE WILL;

9 (II) IF A PROCEEDING IS FILED WITH THE COURT TO PROBATE THE
10 WILL, THE CLERK OF THE COURT MUST SEND NOTICE TO:

11 (A) THE ATTORNEY OF RECORD FOR THE LAST-APPOINTED
12 PERSONAL REPRESENTATIVE OF THE ESTATE STATING THAT THE ATTORNEY
13 OF RECORD OR A DESIGNATED MEMBER OF THE ATTORNEY'S OFFICE MAY
14 PICK UP THE WILL IN PERSON WITHIN THIRTY DAYS AFTER THE DATE OF
15 NOTICE, AND THAT IF THE WILL IS NOT PICKED UP WITHIN THIRTY DAYS,
16 THE CLERK OF THE COURT SHALL DESTROY THE WILL; OR

17 (B) IF THERE IS NOT AN ATTORNEY OF RECORD PURSUANT TO
18 SUBSECTION (5)(a)(II)(A) OF THIS SECTION, THEN TO THE LAST-APPOINTED
19 PERSONAL REPRESENTATIVE OF THE ESTATE STATING THAT THE
20 LAST-APPOINTED PERSONAL REPRESENTATIVE OF THE ESTATE MAY PICK UP
21 THE WILL IN PERSON WITHIN THIRTY DAYS AFTER THE DATE OF NOTICE,
22 AND THAT IF THE WILL IS NOT PICKED UP WITHIN THIRTY DAYS, THE CLERK
23 OF THE COURT SHALL DESTROY THE WILL; AND

24 (b) IF THE CLERK OF THE COURT HAS SENT THE NOTICE AND:

25 (I) A PERSON SPECIFIED IN SUBSECTION (5)(a) OF THIS SECTION
26 TAKES POSSESSION OF THE ORIGINAL WILL, THEN THE PERSON MAY
27 DESTROY THE ORIGINAL WILL; OR

1 (II) A PERSON SPECIFIED IN SUBSECTION (5)(a) OF THIS SECTION
2 DOES NOT TAKE POSSESSION OF THE ORIGINAL WILL WITHIN THIRTY DAYS
3 AFTER THE NOTIFICATION, THEN THE CLERK MUST DESTROY THE ORIGINAL
4 WILL.

5 (6) **Notice - method and time of giving.** (a) THE CLERK OF THE
6 COURT SHALL GIVE NOTICE TO THE PERSON ENTITLED TO NOTICE
7 PURSUANT TO SUBSECTION (5) OF THIS SECTION BY SENDING A NOTICE IN
8 A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND
9 LIKELY TO RESULT IN RECEIPT. PERMISSIBLE METHODS OF SENDING THE
10 NOTICE INCLUDE:

11 (I) A LETTER SENT BY CERTIFIED, REGISTERED, OR ORDINARY
12 FIRST-CLASS MAIL AND ADDRESSED TO THE PERSON'S LAST ADDRESS OF
13 RECORD; AND

14 (II) A PROPERLY DIRECTED ELECTRONIC MESSAGE.

15 (b) NOTICE IS DEEMED GIVEN ON THE DATE OF MAILING OR
16 SENDING.

17 (7) **Certified copy of electronic record of a lodged will.** AFTER
18 A LODGED WILL HAS BEEN RETURNED OR DESTROYED PURSUANT TO
19 SUBSECTION (5) OF THIS SECTION, THE CLERK OF THE COURT SHALL
20 CERTIFY A COPY OF THE ELECTRONIC RECORD OF THE LODGED WILL UPON
21 REQUEST.

22 (8) **Preservation of electronic record of a lodged will.** THE
23 CLERK OF THE COURT SHALL RETAIN THE ELECTRONIC RECORD OF A
24 LODGED WILL IN THE RECORDS OF THE COURT FOR ONE HUNDRED YEARS
25 FROM THE DATE THAT IT IS LODGED.

26 **SECTION 2.** In Colorado Revised Statutes, **amend** 15-12-304 as
27 follows:

1 **15-12-304. Informal probate - unavailable in certain cases.**

2 (1) Applications for informal probate that relate to any of the following
3 must be declined:

4 (a) One or more of a known series of testamentary instruments,
5 other than a will and one or more codicils thereto, the latest of which does
6 not expressly revoke the earlier; ~~or~~

7 (b) A copy of the decedent's original will certified by the state
8 court administrator pursuant to article 23 of this title 15; OR

9 (c) AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL
10 CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO SECTION
11 15-10-305.5.

12 **SECTION 3.** In Colorado Revised Statutes, 15-12-402, **amend**
13 (1)(c) and (2) as follows:

14 **15-12-402. Formal testacy or appointment proceedings -**
15 **petition - contents.** (1) Petitions for formal probate of a will, or for
16 adjudication of intestacy with or without request for appointment of a
17 personal representative, must be directed to the court, request a judicial
18 order after notice and hearing, and contain further statements as indicated
19 in this section. A petition for formal probate of a will must:

20 (c) State whether the original of the last will of the decedent, or
21 a copy of the decedent's original will certified by the state court
22 administrator pursuant to article 23 of this title 15, OR AN ELECTRONIC
23 RECORD OF THE DECEDENT'S ORIGINAL WILL CERTIFIED BY THE CLERK OF
24 THE COURT PURSUANT TO SECTION 15-10-305.5, is in the possession of the
25 court or accompanies the petition.

26 (2) If the original will, or a copy of the decedent's original will
27 certified by the state court administrator pursuant to article 23 of this title

1 15, OR AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL
2 CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO SECTION
3 15-10-305.5, is neither in the possession of the court nor accompanies the
4 petition and no authenticated copy of a will probated in another
5 jurisdiction accompanies the petition, the petition also must state the
6 contents of the will and indicate that it is lost, destroyed, or otherwise
7 unavailable.

8 **SECTION 4.** In Colorado Revised Statutes, 15-10-305, **repeal** (2)
9 as follows:

10 **15-10-305. Records and certified copies.** (2) ~~All instruments~~
11 ~~purporting to be the original wills, upon presentation for probate thereof,~~
12 ~~shall be recorded by the clerk of the court, in a well-bound book, to be~~
13 ~~provided by him for that purpose, or photographed, microphotographed,~~
14 ~~or reproduced on film as a permanent record, and shall remain and be~~
15 ~~preserved in the office of the clerk of the court. Upon admission of such~~
16 ~~will to probate, such record shall be sufficient, without again recording~~
17 ~~the same in the records of the clerk of the court.~~

18 **SECTION 5. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly; except
21 that, if a referendum petition is filed pursuant to section 1 (3) of article V
22 of the state constitution against this act or an item, section, or part of this
23 act within such period, then the act, item, section, or part will not take
24 effect unless approved by the people at the general election to be held in
25 November 2024 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.