

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0744.01 Chelsea Princell x4335

HOUSE BILL 24-1077

HOUSE SPONSORSHIP

Soper and Joseph,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

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 (b) "ELECTRONIC ESTATE PLANNING DOCUMENT THAT IS A WILL"
10 MEANS AN ELECTRONIC ESTATE PLANNING DOCUMENT AND ORIGINAL
11 DOCUMENT AS DEFINED IN SECTION 15-23-103.

12 (c) "ELECTRONIC WILL" HAS THE MEANING SET FORTH IN SECTION
13 15-11-1302.

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

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

19 (f) "WILL" MEANS:

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

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

24 (III) A PAPER COPY OF AN ELECTRONIC WILL THAT IS CERTIFIED BY
25 AN INDIVIDUAL PURSUANT TO SECTION 15-11-1309; AND

26 (IV) A SEPARATE WRITING OR MEMORANDUM THAT IS CREATED BY

1 THE TESTATOR OF A WILL PURSUANT TO SECTION 15-11-513.

2 (2) **Accepting a will for lodging.** THE CLERK OF A COURT SHALL
3 ACCEPT A WILL THAT IS DELIVERED FOR LODGING PURSUANT TO SECTION
4 15-11-516 AND KEEP A RECORD OF THE NAME, MAILING ADDRESS,
5 TELEPHONE NUMBER, AND E-MAIL ADDRESS OF THE PERSON WHO DELIVERS
6 THE WILL TO THE COURT.

7 (3) **Preservation of lodged will.** (a) THE CLERK OF THE COURT
8 SHALL:

9 (I) PRESERVE A LODGED WILL IN THE CLERK'S RECORDS; AND

10 (II) MAKE AND RETAIN AN ELECTRONIC RECORD OF THE LODGED
11 WILL IN ACCORDANCE WITH RULES ADOPTED BY THE STATE COURT
12 ADMINISTRATOR'S OFFICE.

13 (b) UPON THE APPLICATION OR PETITION FOR ADMISSION TO
14 PROBATE OF A WILL THAT IS LODGED PURSUANT TO THIS SECTION, THE
15 CLERK OF THE COURT SHALL TRANSFER THE WILL TO THE PROBATE CASE
16 WITHOUT FURTHER REQUIREMENTS.

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

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

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

26 (5) **Returning or destroying original will.** (a) UPON EXPIRATION
27 OF THE PERIOD OF TIME THAT THE CLERK OF THE COURT MUST RETAIN AN

1 ORIGINAL WILL PURSUANT TO SUBSECTION (4) OF THIS SECTION, IF THE
2 CLERK OF THE COURT DECIDES TO NO LONGER RETAIN THE ORIGINAL WILL,
3 THE CLERK OF THE COURT MUST, PURSUANT TO SUBSECTION (6) OF THIS
4 SECTION, SEND NOTICE STATING THAT THE COURT WILL NO LONGER RETAIN
5 THE WILL AS FOLLOWS:

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

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

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

20 (B) THE LAST-APPOINTED PERSONAL REPRESENTATIVE OF THE
21 ESTATE STATING THAT THE LAST-APPOINTED PERSONAL REPRESENTATIVE
22 OF THE ESTATE MAY PICK UP THE WILL IN PERSON WITHIN THIRTY DAYS
23 AFTER THE DATE OF NOTICE, AND THAT IF THE WILL IS NOT PICKED UP
24 WITHIN THIRTY DAYS, THE CLERK OF THE COURT SHALL DESTROY THE
25 WILL; AND

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

27 (I) A PERSON SPECIFIED IN SUBSECTION (5)(a) OF THIS SECTION

1 TAKES POSSESSION OF THE ORIGINAL WILL, THEN THE PERSON MAY
2 DESTROY THE ORIGINAL WILL; OR

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

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

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

16 (II) A PROPERLY DIRECTED ELECTRONIC MESSAGE.

17 (b) NOTICE IS DEEMED GIVEN ON THE DATE OF MAILING OR
18 SENDING.

19 (7) **Authenticity of electronic record of a lodged will.** IF THE
20 CLERK OF THE COURT DESTROYS THE ORIGINAL WILL PURSUANT TO
21 SUBSECTION (5) OF THIS SECTION, THEN THE ELECTRONIC RECORD OF A
22 LODGED WILL THAT IS CERTIFIED BY THE CLERK OF THE COURT WHERE THE
23 WILL IS LODGED IS DEEMED TO BE THE ORIGINAL WILL FOR ALL PURPOSES
24 UNDER COLORADO LAW.

25 (8) **Preservation of electronic record of a lodged will.** THE
26 CLERK OF THE COURT SHALL RETAIN THE ELECTRONIC RECORD OF A
27 LODGED WILL IN THE RECORDS OF THE COURT FOR ONE HUNDRED YEARS

1 FROM THE DATE THAT IT IS LODGED.

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

4 **15-12-304. Informal probate - unavailable in certain cases.**

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

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

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

12 (c) AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL
13 CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO SECTION
14 15-10-305.5.

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

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

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

1 court or accompanies the petition.

2 (2) If the original will, or a copy of the decedent's original will
3 certified by the state court administrator pursuant to article 23 of this title
4 15, OR AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL
5 CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO SECTION
6 15-10-305.5, is neither in the possession of the court nor accompanies the
7 petition and no authenticated copy of a will probated in another
8 jurisdiction accompanies the petition, the petition also must state the
9 contents of the will and indicate that it is lost, destroyed, or otherwise
10 unavailable.

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

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

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

1 November 2024 and, in such case, will take effect on the date of the
2 official declaration of the vote thereon by the governor.