

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                   [REDACTED]

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.